

Employee Benefits Alert

IRS Provides Guidance Regarding 2020 Required Minimum Distributions

By William S. Carter

The IRS provided anticipated guidance in Notice 2020-51 on the CARES Act's suspension of required minimum distributions ("RMDs") for 2020, as well as some transitional relief for sponsors with respect to the Setting Every Community Up for Retirement Enhancement Act's ("SECURE Act") change in required beginning date. The Notice also provides relief to individuals who may have received an amount that would be an RMD but for the application of the CARES Act's suspension of RMDs or the SECURE Act's changes to required beginning date for participants attaining age 70 ½ after 2019.

Specifically, the guidance permits taxpayers to roll over distributions paid in 2020, or that will be paid in 2021 for the 2020 calendar year on account of an April 1, 2021 required beginning date, that would have been RMDs but for the suspension of such distributions under the CARES Act ("2020 RMDs"). Importantly, the guidance permits a rollover of the amount that would have been an RMD even if the 2020 RMD is payable in a series of substantially equal periodic payments made at least annually for the life of the participant, the joint lives of the participant and designated beneficiary, or for a period of at least ten years. With respect to a participant whose required beginning date is April 1, 2021, to the extent an amount was distributed in 2021 and is in excess of the amount that would be required to be distributed by December 31, 2021 for the 2021 calendar year, that amount may also be rolled over. The rollovers may be made to any eligible retirement plan, including the plan from which the distribution was made if it otherwise permits rollover contributions.

To facilitate the rollovers, the IRS also granted an extension of the 60-day period for making a rollover of 2020 RMDs, as well as for any amount that would have been an RMD for 2020 but for the change in required beginning date under the SECURE Act, so that taxpayers have until the later of August 31, 2020, or the 60-day period following a distribution to effect the rollover.

The guidance affords relief to plan sponsors who may have made distributions to individuals attaining age 70 ½ in 2020 that would have been RMDs absent the change in required beginning date under the SECURE Act. The relief excuses sponsors making distributions that would have been RMDs but for the SECURE Act from the mandatory withholding, direct rollover, and notice of rollover options otherwise required in connection with distributions that are eligible rollover distributions.

For sponsors wishing to adopt the 2020 RMD waivers, the IRS provides sample amendments that provide the participant or beneficiary with a choice whether to receive a distribution of the 2020 RMD, and, to the extent a sponsor may wish, treats such distributions as eligible rollover distributions for purposes of the direct rollover rules. While sponsors may adopt their own form of amendments, the IRS makes clear in the Notice that it will deny sponsors relief from the prohibition on cutbacks of protected benefits if, for example:

- the plan prior to amendment would have provided for a distribution of amounts equal to the 2020 RMD, and the plan after amendment does not preserve that right to a distribution of amounts equal to the 2020 RMD, or
- the plan prior to amendment would have automatically suspended the 2020 RMD, and the plan after amendment does not preserve the right to defer the distribution of the 2020 RMD.

Sponsors have until the end of the first plan year beginning on or after January 1, 2022 to adopt the amendment for the suspension of 2020 RMDs, provided that the amendment is from its effective date consistent with the operation of the plan.

The notice also clarifies through FAQs how the suspension impacts certain elections under rules applicable to employees who die before their required beginning date, clarifying that if on account of the death of the employee, an election would be due by the end of 2020, the election is not required until the end of 2021. Alternatively, if an employee or beneficiary dies in 2020, no extension of the applicable 5-year or 10-year period for making distributions is afforded under the CARES Act.