

June 2020

IRS Releases Additional Guidance on Waived Required Minimum Distributions

In Notice 2020-51, released on June 23, 2020, the IRS provided additional guidance regarding the waiver of the required minimum distribution (RMD) for the 2020 tax year under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The Notice also includes transition relief for plan administrators and payors related to the change in the required beginning date for RMDs under the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act of 2019.

RMD provisions were modified in two recently enacted pieces of legislation:

- The SECURE Act raised the age that triggers the required beginning date for RMDs for participants in 401(a), 401(k), 403(b), and 457(b) plans and for traditional IRA owners from age 70½ to age 72 if that participant or traditional IRA owner was not already age 70½ as of December 31, 2019.
- The CARES Act:
 - waived the RMD for the 2020 tax year for participants and beneficiaries in defined contribution 401(a), 401(k), 403(b), and governmental 457(b) plans and traditional IRAs and for beneficiaries under Roth IRAs;
 - extended the RMD waiver to the 2019 RMD for such plan participants and traditional IRA owners who had not yet taken that RMD in 2019 and would have been required to do so no later than April 1, 2020; and
 - provided that the 5-year period for nonspousal beneficiaries to take a full distribution of the account of the deceased participant or IRA owner is determined without regard to 2020.

Relief Provided for Waived RMDs under the CARES Act

- Treating distribution to participants and traditional IRA owners who attain age 70 ½ in 2020 as rollover ineligible. As amended by the SECURE Act, plan participants and traditional IRA owners who were not already age 70 ½ in 2019 become RMD eligible in the year that they attain age 72. If some or all of a distribution made in 2020 to a plan participant or traditional IRA owner who turned age 70½ in 2020 was improperly characterized as a RMD, the plan administrator and the payor have relief from the requirements that such a distribution should have been treated as a rollover eligible distribution with 20% mandatory federal withholding and provision of a Special Tax Notice.
- Permitting plan participants to roll over waived RMDs. If a participant in a defined contribution 401(a), 401(k), 403(b), and governmental 457(b) plan who received a 2020 RMD or is paid a 2020 RMD in 2021 (if the participant’s 2020 RMD would otherwise need to be taken by April 1, 2021), such distribution may be rolled over to another eligible retirement plan. This relief extends to RMDs that were part of substantially equal periodic payments made at least annually or part of a series of payments to be made over a period of at least 10 years.

Amounts may be rolled back into the plan that made the distribution in accordance with the terms of the plan and the Internal Revenue Code.

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IRS Circular 230 Disclosure

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- Extending the deadline for rolling over waived 2020 RMDs paid to plan participants. Plan participants who have already received a RMD in the 2020 year (including RMDs paid in January 2020) that would have been waived under the CARES Act may roll such amounts into an eligible retirement plan by August 31, 2020 without regard to the normal 60-day limitation. Previous IRS relief in Notice 2020-23 had applied only with respect to distributions received between February 1, 2020 and May 14, 2020 and had applied an extension to indirectly roll over by July 15, 2020.
- Extending the deadline for rolling over waived 2020 RMDs paid to traditional IRA owners and nonspousal beneficiaries under an inherited IRA. An IRA owner or beneficiary who has already received a RMD in the 2020 year (including RMDs paid in January 2020) that would have been waived under the CARES Act may roll such amounts back into the distributing IRA by August 31, 2020 without regard to the normal 60-day limitation. This rollover will not be treated as a rollover for purposes of the requirement that only one rollover per 12-month period is permitted among IRAs or (for nonspousal beneficiaries) for purposes of the restriction on rollovers for inherited IRAs.

Clarification of RMD Administration

- Determining when RMD payments over life expectancy to a beneficiary may commence. If the participant died *prior to 2020*, a plan may be amended to permit the beneficiary to elect by December 31, 2021 whether to start taking RMDs over that beneficiary's life expectancy (instead of December 31, 2020, the year following the year of the participant's death) or to take a full distribution of the account by December 31 of the calendar year containing 5th anniversary of participant's death.
- Extending determination of amount that a nonspousal beneficiary may roll over to an inherited IRA. A nonspousal beneficiary may roll over amounts other than the currently payable RMD to an inherited IRA. If a plan participant died in 2019 and has named a nonspousal beneficiary, the amount considered an ineligible rollover distribution is determined based on the RMD amount that would be payable over the nonspousal beneficiary's life expectancy as of December 31, 2021 (rather than December 31, 2020, one year following the year of the participant's death).
- Confirming that an individual's required beginning date is not changed by the CARES Act. While the CARES Act waives the 2020 RMD, it has not modified the date that a plan participant or traditional IRA owner becomes subject to the RMD rules:
 - An individual with an April 1, 2020 required beginning date who dies after that date is treated as having died after his or her required beginning date without regard to the CARES Act RMD waiver.
 - An individual with an April 1, 2021 required beginning date is not required to take the 2020 RMD (which is payable no later than April 1, 2021), but is required to take the subsequent RMD no later than December 31, 2021. Any distribution taken by such an individual in 2021 will be applied first to satisfy his 2021 RMD.
- No extension of the date of full distribution to nonspousal beneficiaries under the SECURE Act. If a participant or IRA owner dies *in 2020*, a nonspousal beneficiary who is not an eligible designated beneficiary must take a full distribution of the deceased's account by December 31, 2025 (5th year of the anniversary of a governmental plan participant's death) or by December 31, 2030 (10th year of the anniversary of a nongovernmental plan participant's or IRA owner's death).

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- Clarifying spousal consent requirements. If a plan is subject to spousal consent requirements and:
 - the plan does not provide for a new annuity starting date, then spousal consent does not need to be obtained in most circumstances.
 - the plan provides for a new annuity starting date, then spousal consent may be required for the suspension of distributions that include 2020 RMDs and the restart of distributions in 2021, depending on the form of distribution in each case.
- Confirming that 20% mandatory federal withholding does not apply to 2020 RMDs. If a 2020 RMD is paid in 2020 from an eligible retirement plan, 10% federal voluntary withholding or federal wage withholding would apply, depending on whether the form of distribution was periodic or non-periodic.
- Confirming that RMD waiver does not apply to the substantially equal periodic payments exception to the IRS 10% premature distribution penalty tax. An individual using the “RMD” method to satisfy the substantially equal periodic payments exception to the IRS 10% premature distribution penalty tax cannot use the RMD waiver to suspend the distribution payments. If an individual suspends distribution in 2020 (other than due to death or disability), this would be considered a modification of the substantial equal periodic payments method if the individual was not yet age 59½ or less than 5 years have elapsed since the date of the first payment.
- Notifying IRA owners of the waived 2020 RMD. An IRA trustee, issuer, or custodian must notify a traditional IRA owner that no RMD is due for 2020 by providing to the IRA owner a copy of the IRS Form 5498 filed with the Internal Revenue Service.

Sample Plan Amendment

The Notice also includes a sample defined contribution plan amendment to address the ability of a participant (or, if applicable, beneficiary) to elect to receive the waived RMD and the extent to which 2020 distributions may be considered direct rollovers. The amendment is designed to be compatible with IRS pre-approved plans that consist of a base plan document and an adoption agreement. Individually designed plans and plans that do not use an adoption agreement will need to modify the sample plan amendment for their particular plan designs.

The IRS notes that adoption of the sample amendment will not cause a plan to lose its reliance on a favorable IRS opinion, advisory, or determination letter or result in a plan to lose its IRS pre-approved status.

In accordance with the CARES remedial amendment period, a plan adopting the IRS sample amendment must do so by the last day of the 2022 plan year (for nongovernmental plans) or by the last day of the 2024 plan year (governmental plans). The plan must operate in accordance with the effective date of the plan amendment, which should be identified in the amended plan. The IRS cautions that a plan amendment is considered to be timely adopted only if there is a written document signed and dated by the employer.

The IRS notes that IRAs need not be amended for the waiver of 2020 RMDs.

Voya continues to monitor these regulatory developments impacting retirement plans.

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