



Employee Benefits News

July 14, 2020

IRS Guidance on 2020 RMD Waivers Includes Rapidly Approaching Rollover Deadline

Two significant changes affecting required minimum distributions under Section 401(a)(9) of the Internal Revenue Code have been made in the most recent two years:

- The age referenced in “required beginning date” is increased from age 70½ to age 72, with respect to individuals who attain age 70½ after Dec. 31, 2019. See, Section 114 of the *Setting Every Community Up for Retirement Enhancement Act of 2019* (the “**SECURE Act**”), enacted as Division O of the *Further Consolidated Appropriations Act of 2019*, Pub. L. 116-94 (Dec. 20, 2019).
- Required minimum distribution payments are waived for calendar year 2020 from (i) defined contribution plans described in Code § 401(a), 403(a), or 403(b); (ii) Code § 457(b) eligible deferred compensation plans maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (iii) IRAs and other individual retirement plans (the “**2020 RMD Waiver**”). See, Section 2203 of the *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. 116-136 (March 27, 2020) (the “**CARES Act**”).

The IRS now provides guidance in **Notice 2020-51** (the “**Notice**”) related to these two changes, which:

- permits rollovers of amounts equal to the 2020 RMD Waiver amount and certain related payments, and extends the 60-day rollover period for these distributions made in early 2020 to Aug. 31, 2020;
- provides a sample plan amendment related to the 2020 RMD Waiver provisions of the CARES Act;
- provides transition relief for plan administrators and payors in connection with the change in the definition of “required beginning date”; and
- answers a dozen questions relating to the change in required beginning date and the 2020 RMD Waiver.

Key portions of this guidance are summarized below. **Brownstein Comment:** We note that the 2020 RMD Waiver does not apply to defined benefit pension plans.

QUICK ACTION REQUIRED – Aug. 31, 2020, Is the Deadline for Rollovers of 2020 RMD Waiver Amounts Received in Early 2020

The **Notice** extends the 60-day deadline for rolling 2020 RMD Waiver amounts (described below) to an eligible retirement plan to the later of (i) Aug. 31, 2020, or (ii) the 60th day from receipt of the payment. The repayment of the distributed amount will not count against the one rollover per 12-month limitation rule applicable to IRAs under Code §§ 408(d)(3)(B) and (C). **Brownstein Comment:** We don’t know why the IRS picked August 31 as the deadline for taxpayers to roll over amounts received as RMD payments prior to the date the CARES Act was enacted and prior to the time plan administrators figured out how to implement the 2020 RMD Waiver. This deadline is less than 60 days from the official publication date of the Notice, which will be in the July 13, 2020, Internal Revenue Bulletin. We would have liked to have seen a year-end deadline. Advisors will need to work quickly to advise their clients and get rollovers accomplished by this deadline.

The **Notice** also clarifies that an extended time for acting may be applied to the following situations:

- **Direct Rollovers by Nonspouse Beneficiaries.** If a participant died in 2019, the nonspouse designated beneficiary has until the end of 2021 to make the direct rollover and use the life expectancy rule. The special five-year rule in Notice 2007-7, Q&A-17(c)(2), is modified.
- **Election to Apply the Five-Year Rule or Life Expectancy Rule.** Under current law, if a plan permits a participant or beneficiary to elect whether the five-year rule or the life expectancy rule applies in determining RMDs, then the deadline for making that election typically would be the end of the calendar year following the calendar year of the employee's death. As a result of the 2020 RMD Waiver, a plan may be amended to extend the election deadline to the end of 2021 in the case of an election that otherwise would be due by the end of 2020.

2020 RMD Waiver Amounts That Can Be Rolled Over

The **Notice** confirms that amounts equal to certain distributions to participants from defined contribution plans paid in 2020 and 2021 may be rolled over to an eligible retirement plan, even if these distributions were not reported as eligible for rollover treatment by the payor or plan administrator. The participant distributions eligible for this special rollover treatment include:

- Distributions paid in calendar year 2020 or 2021 if the amount equals the amount that would have been paid as RMD payments in calendar year 2020 but for the 2020 RMD Waiver;
- Distributions paid in calendar year 2020 consisting of one or more payments that include the RMD for calendar year 2020 and that are part of a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years;
- Distributions related to calendar year 2020 that are paid in calendar year 2021 with respect to a participant who has a required beginning date of April 1, 2021; and
- Distributions paid in calendar year 2021 with respect to a participant whose required beginning date would have been April 1, 2021, but for 2020 RMD Waiver.

The **Notice** also clarifies that the rollover can be made to the same plan that had made the distribution, if so allowed by that plan. It also reiterates that the 2020 RMD Waiver does not apply to defined benefit pension plans, even with respect to the RMD-related portion of a lump sum payment made thereunder.

Sample Plan Amendment Language for 2020 RMD Waivers

Defined contribution plan amendments related to the 2020 waiver of RMD payments are required to be adopted by the last day of first plan year beginning on or after Jan. 1, 2022 (Jan. 1, 2024, for governmental plans). The **Notice** reminds employers that the plan amendment must be evidenced by a written document that is signed and dated by the employer. **Brownstein Comment:** The **Notice** clarifies that IRAs do not need to be amended to reflect the 2020 RMD Waiver; however, the Notice indicates that IRA trustees, custodians and issuers are required to notify IRA owners that no RMD is due for 2020. The notification requirement is satisfied if a copy of IRS Form 5498, IRA Contribution Information, is provided to the IRA owner.

The **Notice** includes sample amendment language for use by defined contribution plans. This sample language provides guidance as to the information about the 2020 RMD Waivers that must be included in the plan document:

- **Default Payment Treatment**
 - The plan needs to indicate whether the default treatment generally has been applied in the absence of a participant's or beneficiary's election was to either:
 - ✓ Pay out distributions that include the 2020 RMD amount or
 - ✓ Suspend distributions that include the 2020 RMD amount.

Brownstein Comment: Note that the sample language assumes that participants and beneficiaries were given the opportunity to make an election as to whether the 2020 RMD amount would be paid or not.

- The plan needs to identify the date as of which the plan began operating under such default distribution treatment.
- **Direct Rollover Treatment**
 - The plan also needs to address what rollover treatment will be applied with respect to distributions of amounts equivalent to the 2020 RMD:
 - ✓ a direct rollover option only for pre-CARES Act eligible rollover distributions (that is, a direct rollover option is not offered for 2020 RMDs or for amounts that may be rolled over solely due to the rollover guidance provided in the Notice)
 - ✓ a direct rollover is available only for 2020 RMDs
 - ✓ a direct rollover is available for 2020 RMDs and the “extended 2020 RMDs”
 - ✓ a direct rollover is available for the entire amount of a distribution but only if the distribution consists of part or all of a 2020 RMD amount and an additional amount that is an eligible rollover distribution without regard to Code § 401(a)(9)(I)

Required Beginning Date Transition Guidance

The **Notice** confirms that payors and plan administrators making plan distributions, which were paid in 2020 to participants who were age 70½ or older in 2020 but which were not treated or reported as eligible rollover distributions, will still be treated as compliant with the direct rollover rules under Code §§ 401(a)(31), 402(f) and 3405(c). **Brownstein Comment:** As a result of this relief, payors and plan administrators are not required to (and should not) take action to try to correctly characterize these distributions as eligible for direct rollover treatment.

The **Notice** clarifies that if a participant has a required beginning date of April 1, 2021 (e.g., due to attainment of age 72 in 2020, or due to retirement in 2020 after attaining age 70½ in a year prior to 2020), then: (i) no minimum distribution for calendar year 2020 is required to be paid by April 1, 2021, but (ii) the participant must receive a minimum distribution for calendar year 2021 by Dec. 31, 2021.

How We Can Help

Please contact one of us or your regular Brownstein attorney for answers to your questions about how this new guidance affects the administration of your company’s defined contribution plans, for assistance in plan amendments and developing related employee communications.

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