Administering CARES Act's waiver of 2020 RMDs from DC plans

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In this article

IRS Notice 2020-51 provides much-needed guidance on the waiver of 2020 required minimum distributions (RMDs) from defined contribution (DC) plans under the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. No. 116-136). The notice gives sponsors options for implementing the waiver, provides transition guidance for sponsors and participants, and offers rollover treatment for payments that are newly eligible rollover distributions due to the waiver. The notice also includes a model amendment.

Waiver of 2020 RMDs

The CARES Act waives RMDs from DC plans — including 401(k), 403(b) and governmental 457(b) plans — and IRAs, but not defined benefit plans. The waiver applies to the following RMDs:

- Initial RMDs that were due by April 1, 2020 (and not already paid before 2020) to retired participants who turned age 70-1/2 in 2019 (or 5% owners who turned 70-1/2 in 2019, even if still working)
- RMDs that would have been due by Dec. 31, 2020, to participants who received their initial RMD before 2020 and to beneficiaries of deceased participants who died before 2020
- Initial RMDs due by April 1, 2021, to participants who retire in 2020 after turning 70-1/2 before 2020 (initial RMDs for retired participants or 5% owners turning 70-1/2 this year aren't due until April 1 after the year they turn age 72)

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Ongoing RMDs due by Dec. 31, 2021, are not waived for any participant or beneficiary — including those whose initial RMDs would have been due by April 1, 2021, absent the CARES Act waiver.

Options for implementing waiver

The sample amendment gives employers two options for implementing the 2020 RMD waiver. Both options let participants choose whether to receive their RMD for 2020:

- The plan can continue making RMD payments as a default action and let participants elect not to receive their RMD.
- The plan can suspend RMD payments as a default action but let participants elect to receive their RMD.

Must plans offer elections?

The administrative burden of offering participants elections may make this approach unappealing to some employers. Employers using the sample amendment must use one of the two options above, both of which give participants a choice about their 2020 RMDs. But the notice doesn't require employers to use the sample. Employers considering alternative methods of implementing the waiver — or doing nothing in 2020 and letting plans pay RMDs as scheduled with no participant choice — should consult with counsel about the potential consequences of not using the sample amendment.

Limited anti-cutback relief for alternative approaches. The CARES Act provides anti-cutback relief for amendments implementing the RMD waiver but gives IRS discretion to limit the relief. Notice 2020-51 states that the anti-cutback relief isn't available for any RMD waiver approach that eliminates an optional form of benefit, including the right to receive or defer a distribution. But a plan's default action under a CARES Act amendment can diverge from the plan's regular terms, as long as a participant's options aren't eliminated. For example, if a plan usually gives participants the option to take their initial RMD after age 70-1/2, a CARES Act amendment that suspends RMDs without letting participants elect to receive the payment would violate the anti-cutback rules. However, if the plan sponsor instead uses the sample amendment and suspends RMDs unless a participant elects otherwise, the plan would not violate the anti-cutback rules by suspending payments to participants who make no election.

Other distribution provisions unaffected

The sample amendment applies only to RMDs. This includes payments equal to a participant's 2020 RMD, as well as what the notice labels "extended 2020 RMDs." This type of RMD is a series of substantially equal distributions that include the 2020 RMD and are made at least annually over a period of at least 10 years or for the life of the participant or joint lives of the participant and a beneficiary. However, other distributions are unaffected. For example, if a 75-year-old retiree requests to have her remaining plan

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account balance distributed in 2020 in a lump sum, or in five approximately equal annual installments over a period that includes 2020, the amendment would not affect the distribution.

Employers not adopting SECURE Act changes. The Setting Every Community Up for Retirement Enhancement (SECURE) Act (Pub. L. No. 116-94) amended Internal Revenue Code Section 401(a)(9) to increase the triggering age for a participant's required beginning date (RBD) for distributions from 70-1/2 to 72. This change is effective for participants who turn 70-1/2 after 2019. IRS has yet to issue formal guidance on the SECURE Act's changes, but it appears sponsors can choose to retain their plans' existing RMD provisions (since payments still start by the RBD the Code requires).

If a sponsor chooses to keep its plan's RBD as April 1 after the year a participant turns 70-1/2 or retires (if later), then the sample amendment should have no effect on benefits paid under the plan's RMD rules before a participant turns age 72. For example, if a retired participant turns 70-1/2 this year, the plan can start payments to the participant next April as scheduled. The sponsor could also decide to let the participant delay commencement of the benefit until April 1 of the year after turning age 72. But since all payments before the participant turns 72 are eligible rollover distributions, the sponsor may find it easier to just make the payments and let the participant decide whether to roll them over to an IRA.

Rollovers of waived RMDs

RMDs aren't typically eligible rollover distributions. However, the waiver of 2020 RMDs means amounts paid under a plan's RMD provisions this year may be eligible for rollover (even when part of a series of substantially equal payments over a period of at least 10 years). Notice 2020-51 gives sponsors options for applying the direct rollover rules to waived RMDs. The notice also lets participants and spouses make indirect (60-day) rollovers of RMDs received this year and extends the deadline to do so.

Direct rollovers

Sponsors don't have to offer a direct rollover of any waived RMDs. However, for employers that want to offer these rollovers, the model amendment gives three options:

- Offer a direct rollover only for 2020 RMDs
- Offer a direct rollover for both 2020 RMDs and extended 2020 RMDs
- Offer a direct rollover for 2020 RMDs, but only if paid with an additional amount that is eligible for rollover without regard to the CARES Act

  Example. A participant over age 70-1/2 elected five annual installments starting in 2018. Until this year, the participant received a cash payout of the RMD portion of each installment and elected a direct rollover of the remainder. Though the plan sponsor intends to continue the five-year payment

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stream as if the CARES Act were never enacted, the sponsor can offer the participant the option to roll over the entire 2020 installment.

Indirect rollovers

Regardless of whether a plan sponsor offers a direct rollover, participants and spousal beneficiaries may elect an indirect rollover of 2020 RMDs (even back into the same plan, if the plan permits). During 2020, payments of 2020 RMDs or extended RMDs will not be treated as ineligible for rollover merely because they are part of a series of installments spanning 10 years or more. Ordinarily, indirect rollovers must be made within 60 days of the distribution, but for those who already received a 2020 RMD (or one or more payments from an extended 2020 RMD), the rollover period will not end before Aug. 31, 2020. The extended rollover option is not available for nonspouse beneficiaries (since they are not eligible for 60-day rollovers in any case).

Limit on rollover of RMDs paid in 2021

Under the CARES Act, only 2020 RMDs paid this year are eligible for the special rollover treatment discussed above. So if a participant's initial RMD is due by April 1, 2021 (i.e., because the participant retired this year after turning age 70-1/2 before 2020), the payment will be eligible for rollover only if it is paid in 2020. Sponsors might want to communicate this to participants whose RBD is April 1, 2021, and let them elect to receive the initial RMD in 2020 so they will have the option to roll over the payment.

However, if a participant receives the initial RMD for 2020 in early 2021, the rollover regulations (26 CFR § 1.402(c)-2, Q&A-7) say the payment is applied first to the 2021 RMD that's due by Dec. 31, 2021 (which isn't waived). Only any amount of the payment exceeding the 2021 RMD can be rolled over. But when the plan pays the second RMD in December 2021, a portion of that payment will be eligible for rollover to the extent the total of the first and second payments satisfied the 2021 RMD.

Sample amendments

Sponsors must amend their plans for the 2020 RMD waivers (and any other CARES Act relief offered) by the last day of the first plan year beginning in 2022 (2024 for governmental plans). Notice 2020-51 includes a sample plan amendment for the waiver. The model follows the format for preapproved plans, with amendments to both the main plan document and the adoption agreement. Adopters can check the options chosen for implementing the RMD waiver and rollover approaches. The notice states employers with individually designed plans should modify the amendment to incorporate the desired terms.

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Income tax withholding

Regardless of which direct rollover option a plan sponsor chooses, 2020 RMDs actually paid by Dec. 31, 2020, are subject to the voluntary withholding rules for periodic and nonperiodic distributions — not the 20% mandatory withholding that ordinarily applies to rollover-eligible distributions.

> Example. A 75-year-old retiree's entire account balance (including a 2020 RMD) is paid on Dec. 1, 2020. Optional 10% withholding applies to the 2020 RMD portion, while mandatory 20% withholding applies to the remainder.

> Example. In 2018, a retiree began receiving annual payments under a 10-year installment option, subject to voluntary withholding for periodic distributions. In 2020, the plan offers the retiree a choice: (i) receive a cash payment of the regular 2020 installment; (ii) forgo the entire 2020 payment; or (iii) transfer the payment to an IRA via direct rollover. If the retiree elects to receive the cash payment, the amount would still be subject to voluntary withholding (just as before), even though the retiree could have elected a direct rollover.

Transition relief for SECURE Act

Because the SECURE Act became law in late December 2019, some plans may have made payments in early 2020 to participants turning 70-1/2 this year and treated the payments as RMDs instead of eligible rollover distributions. Notice 2020-51 says these plans won't be treated as having violated the rollover rules — i.e., by not applying mandatory 20% withholding or not providing a 402(f) rollover notice for payments mischaracterized as RMDs.

Miscellaneous issues

402(f) notices. Employers apparently have no obligation to update their Section 402(f) rollover notices to explain the rollover options outlined above. Nevertheless, employers may want to prepare special communications for affected participants and beneficiaries.

No change to RBD. The waiver of the 2020 RMD has no effect on an employee's RBD. For example, if an employee's RBD is April 1, 2020, and dies in June, then that participant is treated as having died after the RBD, even if that participant had delayed commencing payments until 2021.

Death benefit elections. Some plans permit a participant or beneficiary to elect whether to receive the entire death benefit within five years or as distributions over a period not exceeding the beneficiary's life expectancy. The deadline for making this election is extended to 2021 year-end if it would otherwise fall in 2020. For example, the nonspouse beneficiary of a 50-year-old participant who died in 2019 would have until Dec. 31, 2021, to make the election.

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Rollovers by nonspouse beneficiaries. If a participant dies before the RBD with a nonspouse beneficiary, the amount that must be distributed to the beneficiary, rather than rolled over to an IRA, depends on whether the distributing plan meets Section 401(a)(9) using the life-expectancy rule or the five-year payout rule. If the five-year rule would otherwise apply, a special rule lets nonspouse beneficiaries elect to have the RMD determined instead using the life-expectancy rule. For this special rule to apply, the plan distribution normally must occur before the end of the year after the year of a participant's death. Notice 2020-51 modifies this special rule, giving nonspouse beneficiaries of participants who died in 2019 until the end of 2021 to make the direct rollover and use the life-expectancy rule.

Spousal consent. Most DC plans are exempt from the Code's spousal consent requirements. However, for plans subject to those requirements, whether a participant must obtain spousal consent to suspend payments that include 2020 RMDs and later restart payments depends on whether the plan provides a new annuity starting date once payments resume. If the participant will have a new annuity starting date, then spousal consent may be required both to suspend the 2020 RMD and to resume payments. (Notice 97-75 describes the somewhat complicated rules for applying the spousal consent requirements when an employee elects to stop receiving distributions and later recommences benefits.)

Some deadlines not extended. The CARES Act relief doesn't extend to all RMD-related deadlines. For example, the deadline for determining a participant's designated beneficiaries remains fixed at Sept. 30 of the year after the participant's death. Likewise, the year-end deadline for establishing beneficiaries' separate accounts is unchanged.

Action steps for DC plan sponsors

Working with plan vendors and counsel, DC plan sponsors may wish to consider a compliance strategy that includes these elements:

- Identify participants and beneficiaries who, without the CARES Act relief, would have received 2020 RMDs or extended 2020 RMDs in 2020 or early 2021.
- Decide whether (and if so, how) to offer individual elections to receive or forgo payments, and determine whether spousal consent is needed (generally, it won't be).
- Decide whether to offer direct rollovers with respect to 2020 RMDs and extended 2020 RMDs paid during 2020.
- Consider whether to offer participants who received 2020 RMDs and extended 2020 RMDs without being offered a direct rollover the opportunity to roll the amounts back into the plan.

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- Consider special communications targeted to specific groups, such as participants who turned 70-1/2 before 2020 and retire in 2020, beneficiaries of deceased participants, or participants not offered direct rollovers of 2020 RMDs and extended 2020 RMDs already paid this year.
- Make any necessary adjustments to income tax withholding systems, since voluntary withholding may apply even to payments eligible for rollover.

Related resources

Non-Mercer resources

- Notice 2020-51 (IRS, June 23, 2020)
- Pub. L. No. 116-136, the CARES Act (Congress, March 27, 2020)
- Division O of Pub. L. No. 116-94, the SECURE Act (Congress, Dec. 20, 2019)

Mercer Law & Policy resources

- Delving into CARES Act relief for retirement plan participants (revised) (June 22, 2020)
- Keeping track of COVID-19 laws affecting employee benefits, jobs (May 4, 2020)
- IRS, PBGC issue employee benefit plan relief for COVID-19 pandemic (April 16, 2020)
- SECURE, CARES acts change rules on required minimum distributions (April 7, 2020)
- Stimulus bill gives 2020 DB funding relief, access to DC savings (March 26, 2020)

Other Mercer resources

- Stay informed on the coronavirus (regularly updated)

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