

Guidance on Waiver of 2020 Required Minimum Distributions

Key Highlight

To assist plan participants who have already received distributions in 2020, IRS [Notice 2020-51](#) permits rollovers of waived required minimum distributions (RMDs) and certain related payments, including an extension of the 60-day rollover period for certain distributions to August 31, 2020. For example, if a participant received a single-sum distribution in January 2020, part of which was treated as ineligible for rollover because it was considered an RMD, that participant will have until August 31, 2020, to roll over that part of the distribution.

More Details

IRS [Notice 2020-51](#) (the “Notice”), provides guidance on the waiver of required minimum distributions (“RMDs”) for 2020 as part of the CARES Act and on certain similar issues under the SECURE Act. Here is a summary of the key parts of the guidance.

1. **Rollover relief.** The Notice provides rollover relief in the following situations:
 - a. **Extension of the 60-day rollover period to August 31, 2020; January distributions covered.** Section III.C of the Notice extends the 60-day rollover period for certain distributions from IRAs and other eligible retirement plans to August 31, 2020. For IRAs, the guidance applies only with respect to distributions in 2020 that would have been RMDs in 2020 but for (i) the CARES Act waiver of 2020 RMDs, or (ii) the SECURE Act extension of the required beginning date (“RBD”) to age 72. Please note that earlier guidance ([Notice 2020-23](#)) had extended the 60-day deadline to July 15, but only for certain distributions taken after January. The new guidance is not so limited; it covers distributions taken in January.
 - b. **One-rollover-per-year rule.** Section III.D of the Notice waives the “one-rollover-per-year” limitation that otherwise applies to IRAs, if certain requirements are met. First, the distribution must have been one that would have been treated as an RMD in 2020 but for (i) the CARES Act waiver of RMDs for 2020, or (ii) the SECURE Act extension of the RBD to age 72. Second, the distribution must be repaid to “the distributing IRA” by August 31, 2020 (emphasis added).
 - c. **Repayments by non-spouse IRA beneficiaries.** Section III.D of the Notice also waives the rules that otherwise prohibit non-spouse IRA beneficiaries from rolling over distributions *via* indirect rollovers. The relief is conditioned on satisfying the same two requirements described above for the one-rollover-per-year rule relief, *i.e.*, the distribution must have been an RMD but for the CARES Act waiver of RMDs or SECURE Act extension of the RBD, and the repayment must be made to the same IRA by August 31, 2020.
 - d. **Distributions from retirement plans.** The Notice provides rollover relief for qualified plans that is consistent with the relief for IRAs described in item (a) above, while addressing certain additional issues that are particular to plans. In particular:
 - **SEPPs** – Section III.B.1 of the Notice addresses the rules that otherwise prevent distributions from retirement plans (but not IRAs) from being rolled over if they are part of a series of substantially equal periodic payments (“SEPPs”) described in Code section 402(c)(4)(A). The Notice provides that such SEPPs can be rolled over if they include “2020 RMDs.” For this purpose, the Notice defines 2020 RMDs as distributions that are either (i) paid in 2020, or (ii) paid in 2021 for the 2020 calendar year, if such distributions in (i) or (ii) would have been RMDs but for the CARES Act. The reference to distributions paid in

2021 for the 2020 calendar year addresses situations where an individual's required beginning date ("RBD") is April 1, 2021. In that regard, we also note that the guidance applies to annuity payments that are treated as SEPPs under Code section 402(c)(4).

- ***RBD based on retirement date rather than age***—The Notice further addresses the situation where a plan participant's RBD is April 1, 2021. This can occur only where the plan participant attained age 70½ before 2020 (and thus the SECURE Act's "age 72" rule does not apply), but retired in 2020 so the RBD is based on the retirement date, not age. Section III.B.2 of the Notice provides that in such cases, the rollover relief applies to distributions that are paid in 2021 that would have been an RMD "for 2021," but for the CARES Act RMD waiver. We think the latter (emphasized) reference to 2021 may have been a mistake, and that it should have referred to distributions paid in 2021 "for 2020," as the Notice did in the rule for SEPPs described above. A special ordering rule is provided in Q&A-5 of the Notice that treats distributions in 2021 first as RMDs for 2021 that are not rollover-eligible and then as RMDs for 2020 that can be rolled over.

2. **IRA amendments are not necessary.** IRAs do not need to be amended for the 2020 RMD waiver. Q&A-1 of the Notice.
3. **Extension of the deadline to elect life expectancy payments.** The deadline for electing whether to take post-death RMDs under the 5-year rule in section 401(a)(9)(B)(ii) or the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) normally is the end of the calendar year following the calendar year of the death of the employee or IRA owner. Q&A-2 of the Notice clarifies that if this deadline otherwise is the end of 2020, it is extended to the end of 2021.
4. **The 5-year and 10-year periods are not extended for deaths in 2020.** Q&A-6 of the Notice provides that if a participant or beneficiary dies in 2020, there is no extension of the 5-year period described in section 401(a)(9)(B)(ii) or the 10-year period described in new section 401(a)(9)(H)(i) and (iii).

In this regard, the RMD waiver provision that the CARES Act added to new Code section 401(a)(9)(I)(iii)(II) states that "the 5-year period ... shall be determined without regard to calendar year 2020." For this purpose, the Notice appears to reflect the view that the 5-year period is the full 5 calendar years, without regard to the year of death. For example, if an IRA owner dies in 2020, the 5-year rule normally would require the entire interest to be distributed by the end of the calendar year containing the fifth anniversary of the owner's death, which in this example would be December 31, 2025. The 5-year period would consist of calendar years 2021, 2022, 2023, 2024, and 2025, and the calendar year 2020 would not be part of the 5-year period. As a result, determining the 5-year period without regard to 2020 does nothing to change the duration of the 5-year period.

This would mean that the 5-year period is extended only in situations where deaths occur before 2020. This also would seem to mean that the 10-year period under the SECURE Act is not extended at all by the CARES Act waiver of RMDs. In that regard, pursuant to the SECURE Act effective date provision, the 10-year rule applies only with respect to deaths occurring in 2020 or later. This also seems to indirectly confirm that, like the 5-year rule, the new 10-year period under the SECURE Act will expire at the end of the year containing the 10th anniversary of the decedent's death, rather than on the actual 10th anniversary of such death. Otherwise, the year of death would be included in the 10-year period, which would seem inconsistent with the position reflected in the Notice.

5. **Extension of time for a direct rollover by a non-spouse beneficiary.** If a plan participant died in 2019, and the 5-year rule applies to a benefit under the plan, the time prescribed in Q&A-17 of Notice 2007-7 for a non-spouse beneficiary to roll over the benefit tax-free directly to an inherited IRA and elect to take distributions under the life expectancy rule is extended from the end of the calendar year following the year of death (2020) to the end of 2021. Q&A-3 of Notice 2020-51.
6. **Other deadlines also are NOT extended.** The Notice also provides that there is no extension of –

- the September 30 deadline in Treas. Reg. section 1.401(a)(9)-4, Q&A-4 (relating to the determination of designated beneficiaries);
 - the October 31 deadline in Treas. Reg. section 1.401(a)(9)-4, Q&A-6(b) (relating to the date by which the trustee of a trust that is a plan's designated beneficiary must provide the plan administrator certain information); or
 - the last-day-of-the-year deadline in Treas. Reg. section 1.401(a)(9)-8, Q&A-2(a)(2) (relating to the date by which separate accounts must be established).
- 7. IRA owners must be notified of the 2020 RMD waiver.** IRA trustees, issuers, and custodians are required to notify IRA owners that no RMD is due for 2020. This requirement can be satisfied by indicating on the Form 5498 for 2019 that no RMD is required for 2020. Q&A-11 of the Notice. Form 5498 for 2019 (found [here](#)) calls for box 11 to be checked if there is an RMD for 2020, and provides that the RMD date and RMD amount can be entered in boxes 12a and 12b, respectively. Because the CARES Act waived RMDs for 2020, on the Form 5498 for the 2019 tax year, box 11 does not need to be checked and no entries need to be made in boxes 12a or 12b regarding RMDs due in 2020. The deadline for filing Form 5498 with the IRS and furnishing copies to IRA owners with respect to the 2019 tax year was extended by Notice 2020-35 to August 31, 2020.
- 8. No effect on the required beginning date.** The RMD waiver for 2020 does not change an individual's required beginning date. Q&A-4 of the Notice.
- 9. Rollovers can be to the same plan.** Distributions from a plan may be rolled back into the same plan, provided that the plan permits rollover contributions and the rollover otherwise satisfies the requirements in section 402(c), taking into account the relief provided in the Notice. Q&A-8 of the Notice.
- 10. SEPPs must continue in order to avoid recapture of the penalty tax.** The RMD waiver for 2020 does not operate to permit the cessation for 2020 of distributions being made under the "RMD method" in Rev. Rul. 2002-62 that are designed to satisfy the SEPP exception to the 10% penalty tax in section 72(t)(2)(A)(iv). If SEPPs are stopped in 2020 (other than as permitted in section 72(t)(4) because of death or disability) prior to age 59½ or within 5 years from the date of the first payment, the cessation of the payments constitutes a modification under section 72(t)(4) that triggers a recapture of the penalty tax. Q&A-10 of the Notice.

As indicated above, the Notice provides that distributions from eligible retirement plans can be rolled over without regard to whether they are SEPPs (if such distributions include 2020 RMDs), and IRA distributions can be rolled over without regard to the one-rollover-per-year limitation. However, section 2.02(e) of Rev. Rul. 2002-62 provides that for purposes of the penalty tax exception, a modification of SEPPs will occur if there is "a rollover by the taxpayer of the amount received resulting in such amount not being taxable." Hence, while the Notice permits SEPPs to be rolled over, the rollover of payments that are being made to satisfy the SEPP exception to the 10% penalty tax will result in a modification that could trigger the recapture of the penalty tax.

- 11. Mandatory 20% withholding does not apply to 2020 RMDs.** Voluntary withholding under section 3405 applies to distributions from an eligible retirement plan in 2020 that would have been RMDs if not for the RMD waiver. A payer does not have the option of applying the mandatory 20% withholding to such distributions. The Notice further clarifies that if an individual was receiving monthly distributions that exceeded their RMDs, and such distributions are expected to last for a period of more than 10 years, the entire amount of each distribution is subject to the voluntary withholding rules that apply to periodic payments under section 3405(a). Q&A-9 of the Notice.
- 12. Relief from eligible rollover distribution rules for qualified plans.** Section 114 of the SECURE Act delays the age at which RMDs must commence from age 70½ to age 72, effective for distributions after 2019 with respect to individuals who attain age 70½ after 2019. Section III.A of the Notice provides that if an individual who will attain age 70½ in 2020 receives a distribution from an eligible retirement plan this year that would have been an RMD but for this change by the SECURE Act and which was not properly treated as an eligible rollover distribution, the payer and plan

administrator will not be considered as having failed to satisfy (1) the eligible rollover distribution requirements in section 401(a)(31), (2) the section 402(f) notice requirements, and (3) the mandatory 20% withholding requirements that apply to eligible rollover distributions. The IRS provided relief in Notice 2020-6 for IRA issuers that furnished statements to IRA owners who attained age 70½ in 2020 incorrectly indicating that a RMD must be taken for 2020.

13. RMD waiver not applicable to defined benefit plans. The waiver of 2020 RMDs does not apply to a defined benefit plan. This is the case even if the defined benefit plan is using the rule in § 1.401(a)(9)-6 Q&A-1(d)(1) to determine the portion of a single sum distribution that is an RMD (Q&A-12).

14. Spousal consent. A defined contribution plan subject to the spousal consent rules may provide for either option described in Q&A-8 of Notice 97-75, 1997-2 C.B. 337, choosing whether or not to have a new annuity starting date when distributions restart. If the plan does not provide for a new annuity starting date, spousal consent is not required under most circumstances. If the plan provides that there is a new annuity starting date, 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 (Q&A-7).

15. Various plan provisions. Section IV of the Notice addresses plan amendments that need to be made to implement the RMD waiver for 2020 and discusses the sample plan amendment to defined contribution plans for this purposes that is set forth in the Appendix to the Notice.

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