



Flashpoint: Wait! There's More! IRS Issues CARES RMD Guidance

Under the heading of "No Good Deed Goes Unpunished," we were just patting ourselves on the back for getting out the Notice 2020-50 FlashPoint so quickly when the IRS laughed in our face. A mere two working days later, on June 23, 2020, the IRS issued Notice 2020-51 (the "Notice"), providing guidance in relation to the waiver of required minimum distributions ("RMDs") during 2020. So, here we are, back at the drawing board!

Seriously, we are pleased to provide you with our summary of this addition to the CARES guidance and anticipate that this is going to continue to be a very busy summer for guidance.

An Extraordinarily Quick Outline of RMD Rules and How They Applied Before CARES for 2020

Normally, participants who have attained age 70½ are required to take annual distributions (called "required minimum distributions" or RMDs) from retirement plans or IRAs. (This rule does not apply to accounts in qualified plans if the affected participant does not own more than 5% of the sponsoring company and has not ceased work.)

The SECURE Act changed the age 70½ rule to age 72 for those who did not attain age 70½ prior to 2020.

RMDs must begin for the year in which the participant attains age 70½ (or 72), although the deadline for those first distributions is extended until April 1 of the following calendar year. Once those RMDs begin, subsequent years' distributions are due by the last day of the year to which they apply. Therefore, those who delay their first RMD to the following year will need to take the first RMD by April 1 (the "required beginning date" or RBD), and then a distribution for that year by December 31. RMDs must also be taken by beneficiaries of deceased participants.

Therefore, before CARES, there were four categories of participants who potentially would have been required to receive RMDs during 2020 ("2020 RMD People"):

- Participants who had attained age 70½ prior to 2019 and were already taking RMDs;
- Participants who attained age 70½ in 2019, and had not taken their first RMD during 2019 (and had to do so by the April 1, 2020 RBD);

- Non-owners who attained age 70½ before 2020, but didn't retire until 2020, and who take a distribution for 2020, even though they can take it as late as the April 1, 2021 RBD; and
- Beneficiaries of deceased participants who are required to take RMDs for 2020.

RMDs are not eligible for rollover.

What CARES Did to RMDs

CARES Section 2203 eliminated RMDs from defined contribution plans for 2020, for all four categories of 2020 RMD People. This waiver of RMD requirements does not apply to defined benefit plans or 457(b) tax-exempt plans.

CARES also provided that payments that would have been 2020 RMDs (but weren't because of CARES) were not "eligible rollover distributions" for purposes of the mandatory 20% withholding, the requirement to cooperate with a direct rollover, and the required Special Notice Regarding Plan Payments (i.e., the 402(f) Notice). Nonetheless, CARES permits amounts that would have been RMDs but for the 2020 waiver to be rolled over to eligible retirement plans, such as qualified plans and IRAs. This is true even if the participant or beneficiary was distributing the RMDs as a series of substantially equal payments over their lifetimes (or the joint lifetimes of themselves and a beneficiary) or for a period of at least 10 years (either of which would have disqualified them from being eligible for rollover independently of the RMD classification).

By the time that CARES became law on March 27, 2020, many 2020 RMD People had already received RMD amounts due in 2020. If 60 days had elapsed from the date of the receipt of these funds before CARES became law (or before the individuals could react to the CARES changes), it was too late for the 2020 RMD People to roll over the received amount.

ACT NOW! Rollover of Received 2020 RMDs Extended to August 31, 2020

The Notice extends the time frame for rollovers of amounts received in 2020 that would have otherwise been RMDs to August 31, 2020. Therefore, any 2020 RMD People who already received one of these amounts has approximately 60 more days to move those funds back to the plan that distributed them or to another plan or IRA. IRA participants must return the distributed funds to the IRA that paid them out. The IRA repayment is not considered a rollover for purposes of the one-rollover-per-year limitation. This relief also applies to people born from July 1 to December 31, 1949, who may have received RMDs in 2020 but who, thanks to the SECURE Act, were not required to receive RMDs until 2022.

Delayed RMDs and Elections for Beneficiaries of Deceased Participants

Generally, if a participant dies before receiving his or her entire account, the beneficiary must begin receiving RMDs by December 31 of the year following the year of the participant's death. However, special rules apply if the participant dies before the RBD. If the beneficiary is a "designated beneficiary" (an individual or certain trusts), the beneficiary can stretch distributions over the beneficiary's lifetime (the "life expectancy rule," although in some situations it may be cut off at 10 years). If the beneficiary is not a designated beneficiary (such as a charity or the participant's estate), then 100% of the account must be distributed by December 31 of the year that includes the 5th anniversary of the participant's death (the "5-year rule"). Plans can give the designated beneficiary a choice between the life expectancy rule or the 5-year rule.

If the participant died in 2019, the first RMD under the life expectancy rule would be December 31, 2020. Thanks to CARES, that payment is waived, and the first RMD needs to be made in 2021. If the beneficiary had a choice between the life expectancy rule and the 5-year rule, normally the deadline to make the choice would be December 31, 2020, but Notice 2020-51 delays it to December 31, 2021. That is also the deadline to roll over the account to an IRA and elect the life expectancy rule.

For participants who died between 2015 and 2019, 5-year rule distributions are extended one year. So, if the participant died in 2017, the distribution deadline under the 5-year rule would be extended from December 31, 2022, to December 31, 2023.

Sample Amendment for RMD Changes

The Notice includes, in an appendix, a sample amendment for defined contribution plans to adopt these changes. The sample permits the plan to designate either: (a) that it will pay out amounts that would have been 2020 RMDs but for CARES unless the participant or beneficiary elects not to receive such amounts; or (b) that it will not pay out amounts that would have been 2020 RMDs but for CARES unless the participant elects to receive such amounts. The anti-cutback rule requires the plan to give the participant a choice, or to follow the terms of the plan document without amendment. Any amendment must include the effective date of when the employer began implementing the CARES rules.

The sample amendment also provides three choices in relation to whether the plan will permit direct rollovers of amounts that would have been 2020 RMDs but for CARES: (a) the plan will offer direct rollovers only for amounts that are actually eligible rollover distributions (notwithstanding CARES); (b) the plan will offer direct rollovers of any 2020 RMDs; or (c) the plan will offer direct rollovers of 2020 RMDs, but only if those amounts are distributed with an additional amount that is a normal eligible rollover distribution.

Danger, Will Robinson! Check Out the Amendment Adoption Rules for Qualified Plans!

The IRS notes that, as with other CARES guidance, the plan must be amended by the end of the first plan year beginning after December 31, 2021. However, the Notice then adds an odd requirement that appears to apply only to the RMD-related amendment: “The timely adoption of the amendment must be evidenced by a written document that is *signed and dated by the employer (including an adopting employer of a pre-approved plan)*.” (Emphasis added.) Under this section, it appears that **every plan sponsor** will need to sign the RMD amendment, notwithstanding the normal ability under IRS rules of document providers to adopt interim amendments on behalf of those who use their plans. It is likely this will be a topic of heated discussions between the IRS and document providers nationwide.

Additional Questions Answered

The Notice contains the following additional bits and pieces:

- Amounts distributed as RMDs before CARES can be rolled back to the distributing plan, assuming the plan accepts rollovers. As noted above, this is the only option for IRAs.
- An amount paid in 2020 that would have been a 2020 RMD cannot be subjected to 20% withholding, as it is not an eligible rollover distribution. Therefore, the first amount distributed in 2020 that would have been an RMD but for CARES is subject to voluntary 10% withholding, even if it is part of a larger distribution. If the balance of the distribution is an eligible rollover distribution, it is subject to 20% withholding.

- Even though the CARES rules may waive the first RMD, the “required beginning date,” i.e., the date on which the RMD recipient must normally begin to take RMDs, does not change. This may affect the classification of payments after a participant dies as being “before RMD” or “after RMD” if the participant dies in 2020 or 2021. It also means that a participant whose RBD is 2020, and would normally have to take two RMDs in 2020, will only take a single RMD in 2021.
- The extension of the deadline for RMDs does not affect other deadlines under the distribution rules, such as the September 30 beneficiary determination date, the October 31 trust documentation deadline, or the December 31 separate share deadline.
- Even if a defined benefit plan making a single-sum distribution elects to use the defined contribution-style of RMD determination (as is permitted by the regulations), the RMD from the plan is not waived.
- No RMD-related amendments need to be adopted for IRAs.
- IRA trustees must advise IRA owners that no RMD is due for 2020 and can do so by providing a copy of the Form 5498 that is filed with the IRS to the IRA owner.



FERENCZY
BENEFITS LAW CENTER

ERISA
We are your ^ solution™

Ilene Ferenczy • ilene@ferenczylaw.com | Alison Cohen • acohen@ferenczylaw.com
Adrienne Moore • amoore@ferenczylaw.com | Adriana Starr • astarr@ferenczylaw.com
Tia Thornton • tthornton@ferenczylaw.com | Leah Dean • ldean@ferenczylaw.com

2635 Century Parkway Suite 200, Atlanta, GA 30345
T 404.320.1100 | F 404.320.1105 | www.ferenczylaw.com