

CARES ACT – Retirement Plan Provisions

IRS Notice 2020-50 Update

As background, the CARES Act permits a “qualified individual” to:

- take a CRD of up to \$100,000 in the aggregate from all 401(a), 401(k), 403(b) and governmental 457(b) plans and traditional IRAs from January 1, 2020 to December 30, 2020;
- take a loan under an enhanced loan limit up to the lesser of: (1) \$100,000 (minus outstanding plan loans of the individual), or (2) the participant’s vested account from a 401(a), 401(k), 403(b), or governmental 457(b) plan permitting loans from March 27, 2020 to September 22, 2020; and
- suspend loan repayments due from March 27, 2020 to December 31, 2020 where the loan from a 401(a), 401(k), 403(b), or governmental 457(b) plan was outstanding on or after March 27, 2020.

CRDs and Loan Relief as Optional Plan Design Features

Notice 2020-50 confirms that it is optional for employers to adopt the CARES Act’s CRD and loan relief, including the loan repayment delay, for their 401(a), 401(k), 403(b) and governmental 457(b) plans. Plans sponsors can offer some, all, or none of the CARES Act’s distribution and loan relief.

The Notice also confirms that a qualified individual is permitted to designate a distribution as a CRD, even if the distributing plan chooses not to make CRDs available. The individual will be responsible for reporting the distribution as a CRD when filing their federal individual income tax return for the 2020 tax year by completing Form 8915-E (“Qualified 2020 Disaster Retirement Plan Distributions and Repayments”, which the IRS expects to make available before the end of 2020).

Expansion of the Definition of Qualified Individual

The CARES Act’s CRD and loan relief is only available to certain “qualified individuals” as described in the Retirement Plan Provisions Update. In general, changes included the affect of COVID-19 on the spouse and other members of the individual’s household in addition to a few new circumstances.

Reliance on Self-Certification for CRDs and CARES Loans Explained

The Notice clarifies that administrators may rely on an individual's self-certification that they meet the definition of a qualified individual unless the plan administrator has actual knowledge to the contrary. To meet this standard, the Notice states there is no requirement that the employer inquire into whether the individual meets the conditions to be classified as a qualified individual, but rather whether the employer has sufficiently accurate information to determine the veracity of a certification.

The Notice includes a self-certification example under which the employee is not required to identify the specific circumstances that make the employee a qualified individual, but must only certify that at least one of the conditions under definition of “qualified individual” is satisfied.

Employer Safe Harbor for Loan Repayment Suspension

The Notice provides a safe harbor method for commencing repayment of loans where outstanding payments were suspended during the period from March 27, 2020 to December 31, 2020. Under the safe harbor, repayments would resume after the suspension period ends, and the term of the loan may be extended for a period up to one year following the original repayment date of the loan. Any



subsequent repayments of the loan shall be adjusted appropriately to reflect the interest accrued during the delay. The Notice provides other alternative approaches and suggests that there may be other reasonable, possibly more complex ways to administer the loan repayment process.

Administration of a CRD

The Notice also confirms that:

- while CRDs are limited to an overall limit of \$100,000 per person, they are not limited to the amount that is necessary to satisfy a financial need arising from COVID-19.
- pension plans, such as money purchase plans, may not permit a CRD before an otherwise permissible distributable event (i.e., in-service withdrawals are not permitted before age 59½).
- plans that are subject to spousal consent must obtain spousal consent for a CRD.
- CRDs are reported on IRS Form 1099-R, even if repaid in the same year, using distribution code 2 (early distribution, exception applies) or code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

Recontribution of CRDs

The CARES Act permits participants who have received a CRD to recontribute the CRD amount to an eligible retirement plan within 3 years after the date that the CRD was distributed. The Notice clarifies that the recontribution is eligible for tax-free rollover treatment into a 401(a), 401(k), 403(b) or governmental 457(b) plan or traditional IRA. However, this is a permissive plan feature and a plan that does not permit rollovers is not required to change its policies or provisions to accept repayments of CRDs.

The Notice indicates that individuals can designate periodic payments and distributions that would have been required minimum distributions (RMDs) but for the CARES Act's 2020 RMD waiver as CRDs. The IRS also clarified that a reduction or offset of a qualified individual's account balance in order to repay a loan can be treated as a CRD, however loans that are deemed distributions may not be classified as CRDs and are ineligible for recontribution.

The Notice also provides examples of how an individual would address reporting recontributions on the federal individual income tax return.

Clarification of Cancelling Participant Deferral Election under a Nonqualified Deferred Compensation Plan

A nonqualified deferred compensation plan under Section 409A of the Internal Revenue Code may provide for a cancellation of a deferral election due to an unforeseeable emergency or a hardship distribution from the employer's qualified plan. Notice 2020-50 states that a nonqualified plan may provide for a cancellation of a deferral election due to a CRD from the employer's plan. The deferral election must be cancelled, not merely postponed or otherwise delayed.

CARES ACT – Retirement Plan Provisions Update IRS Notice 2020-51

In Notice 2020-51 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:
 - o 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;
 - o 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
 - o 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 an 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.

- *Extending the deadline for rolling over waived 2020 RMDs paid to plan participants.* Plan participants who have already received an 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. Previously 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 an 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:
 - o 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.
 - o 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).

- Clarifying spousal consent requirements. If a plan is subject to spousal consent requirements and:
 - o the plan does not provide for a new annuity starting date, then spousal consent does not need to be obtained in most circumstances.
 - o 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.