IRS Issues Guidance on CARES Act for Retirement Plans

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The IRS recently issued further guidance under the CARES Act expanding the categories of individuals eligible for coronavirus-related plan distributions and loans, and providing additional administrative guidance on relief offered under the Act.

Background

As described in our April 3, 2020 Advisory, the CARES Act:

- eliminates the 10% early withdrawal penalty on up to $100,000 in coronavirus-related distributions for qualifying individuals;
- allows qualifying individuals to include coronavirus-related distributions in income over three years;
- allows qualifying individuals to repay coronavirus-related distributions to a retirement plan in one or more installments within three years;
- doubles the limit on plan loans to qualifying individuals for the period from March 27, 2020 to September 22, 2020;
- permits a 1-year delay on plan loan repayments by qualifying individuals that would otherwise be due during the period beginning on March 27, 2020 and ending on December 31, 2020; and
- waives required minimum distributions (RMDs) for 2020 for all individuals.

The CARES Act defines a “qualifying individual” as an individual (a) who is diagnosed with COVID-19 or the virus that causes COVID-19 by a CDC approved test; (b) whose spouse or dependent is diagnosed with such virus or disease by such a test; or (c) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors determined by the Secretary of the Treasury.

Expanded Definition of Qualifying Individual

The IRS has now expanded this definition of “qualifying individual” as follows:

- Item (c) in the definition has been expanded to include adverse financial consequences experienced not just by the individual, but also by the individual’s spouse or someone else sharing the individual’s principal residence; and

- The list of adverse financial consequences in item (c) has been expanded to include experiencing a reduction in pay or self-employment income, or having a job offer rescinded or the start date for a job delayed, in each case, due to COVID-19.

Administrative Guidance for Coronavirus-Related Distributions and Loans

The IRS has also provided the following administrative guidance for coronavirus-related distributions and loans:

- Qualifying individuals may now designate a distribution as a coronavirus-related distribution even if the plan was not amended to treat the distribution as a coronavirus-related distribution.
- A model certification is now available for individuals claiming to be qualifying individuals. Plan administrators may rely on such certifications and have no duty to inquire into their accuracy, unless the employer has actual knowledge to the contrary.
- Coronavirus-related distributions are exempt from the IRS' notice and 20% mandatory withholding requirements normally applicable to eligible rollover distributions.
- Hardship distributions that constitute coronavirus-related distributions may be recontributed to a qualified retirement plan in one or more installments within three years.
- Coronavirus distributions must be reported on Form 1099-R even if the qualifying individual re-contributes the distribution to the same plan in the same year.
- If a qualifying individual dies before the full taxable amount of a coronavirus distribution has been included in income, the remainder must be included in income for the taxable year of the individual's death.
- A safe harbor is now available under which suspensions of plan loan payments and extensions of plan loan terms will be deemed to satisfy the CARES Act. Generally, the safe harbor requires that the loan and any interest accrued during the suspension period be re-amortized when payments resume, for an extended term of up to one year after the date the loan was originally due to be repaid.
- Receipt of a coronavirus-related distribution from a qualified retirement plan may serve as a permissible basis for cancelling a qualifying individual's deferral election under a nonqualified deferred compensation plan subject to Code Section 409A.

2020 RMD Waiver

The IRS has also announced that 2020 RMDs and certain related payments, which generally are not eligible for rollover treatment, may be rolled over to a qualified retirement plan within 60 days following distribution or, if later, by August 31, 2020. A sample plan amendment is also now available to allow participants to choose whether to receive or waive 2020 RMDs. Other matters addressed by the IRS in this guidance include transition relief for the SECURE Act's change to the required beginning date for RMDs. This guidance is described in greater detail below.

Rollover Guidance. The following distributions from a qualified plan (other than a defined benefit plan) are temporarily eligible for rollover treatment:

- distributions paid in 2020 (or paid in 2021 for the 2020 calendar year in the case of an employee whose required beginning date is April 1, 2021) that otherwise would constitute RMDs in or for 2020; and
- distributions paid for 2020 that are part of a series of substantially equal periodic payments made at least annually and expected to last for specified time periods, provided such distributions include 2020 RMDs.

Extension of 60-day Rollover Deadline. The IRS has also extended the 60-day rollover period for 2020 RMDs and related distributions to August 31, 2020 in cases where the generally applicable 60-day rollover period has already expired or will expire before such date.

Sample Plan Amendment. Employers may adopt the IRS' sample plan amendment to allow plan participants and beneficiaries to elect whether to receive 2020 RMDs. For these purposes--

- The sample amendment must include a default rule either permitting or suspending 2020 RMDs for participants and beneficiaries who fail to make an election.
- The sample amendment permits, but does not require, plans to choose from among three options for accepting rollovers of distributions covered by the IRS guidance. The first option is to allow direct rollovers of all 2020 RMDs. The second option is to allow direct rollovers of 2020 RMDs and all other amounts that may be rolled over under the guidance. The third option is to allow direct rollovers of 2020 RMDs, but only if paid with an additional amount that is an eligible rollover distribution without regard to the CARES Act. By default, plans that do not elect one of these three options will not accept rollovers of distributions covered by the guidance.

Adoption of the IRS's sample plan amendment appears to be optional. Absent additional guidance to the contrary, Plan sponsors appear to have three distinct alternatives for addressing 2020 RMDs: The first alternative is to continue paying 2020 RMDs without regard to participant preference. Participants who do not want to receive 2020 RMDs would have to roll them over to an IRA or other qualified plan that accepts rollovers of 2020 RMDs. The second alternative is to suspend payment of 2020 RMDs. Participants who want to receive their 2020 RMDs would have to request a distribution under the plan's regular distribution provisions. The third alternative is to adopt a version of the IRS's sample amendment.

Plan sponsors who do not wish to adopt the IRS's sample amendment may still have to amend their plans to implement their desired approach to 2020 RMDs, depending on the current terms of their plans. For example, if a plan sponsor wants to continue paying 2020 RMDs, but the plan document provides for payment of RMDs only to the extent required by applicable law, the plan will need to be amended to continue paying RMDs during 2020.

SECURE Act Transition Relief. As described in our February 20, 2020 Advisory, the SECURE Act increased the age by which RMDs must start from 70½ to 72. The new IRS guidance provides that a plan distribution made during 2020 to a participant who will attain age 70½ in 2020 that would have been an RMD but for the change in the required beginning date under the SECURE Act, are not subject to the notice and mandatory 20% withholding requirements generally applicable to eligible rollover distributions.

Mid-Year Suspension of Safe Harbor Contributions

Finally, the IRS has also issued temporary relief for employers who sponsor safe harbor retirement plans and want to reduce or suspend their safe harbor contributions during 2020. Ordinarily, a mid-year reduction or suspension of safe harbor contributions is prohibited unless the employer either (i) reserved the right to do so in their safe harbor notices or (ii) is operating at an economic loss for the plan year. Under the IRS's temporary relief, any employer can implement a mid-year reduction or suspension of safe harbor contributions on or before August 31, 2020, without regard to whether they are operating at an economic loss for the plan year and without regard to the content of their safe harbor notices, provided they satisfy the other applicable requirements.

If you have any questions about the IRS's guidance on coronavirus-related plan distributions and loans or the waiver of 2020 RMDs, or if you are considering a reduction or suspension of safe harbor contributions to your plan, please contact a member of our Employee Benefits Group.