

CARES ACT: IRS ISSUES NEW RETIREMENT PLAN GUIDANCE FOR THE 2020 WAIVER OF MINIMUM REQUIRED DISTRIBUTIONS

Hodgson Russ Employee Benefits Alert
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On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. We previously reported on the CARES Act provisions relevant to employer-sponsored retirement plans that delivered certain relief in connection with the Coronavirus pandemic (see our March 30, 2020 Hodgson Russ Employee Benefits Alert [here.](#)) Recently released IRS Notice 2020-51, which focuses on the relief under CARES Act Section 2203, addresses the waiver of 2020 minimum required distributions (MRDs) payable by IRAs, qualified defined contribution retirement plans, governmental 457(b) plans, and 403(a)/(b) plans (covered plans). Highlights of the Notice 2020-51 guidance include the following:

1. Payor and Plan Administrator Guidance Related to SECURE Act Change to Required Beginning Date. The Setting Every Community Up for Retirement Enhancement (SECURE) Act amended the MRD rules to change the required beginning date applicable to § 401(a) plans and other eligible retirement plans, including IRAs. The new required beginning date for an employee or IRA owner is generally April 1 of the calendar year following the calendar year in which the individual attains age 72 (previously age 70½). The new required beginning date applies to distributions required to be made after December 31, 2019. If a participant who attains age 70½ in 2020 received a distribution in 2020 and part of the distribution was improperly characterized as an MRD, then the payor and plan administrator will not be considered as having failed to satisfy the direct and automatic rollover rules, the 20% mandatory withholding rules, and the Code Section 402(f) special tax notice rules with respect to that distribution.
2. Rollover Guidance for Plan Participants. So that taxpayers may avoid taking MRDs in 2020, the Notice permits rollovers of the following distributions from a plan (other than a defined benefit plan):
 - Distributions to a plan participant paid in 2020 (or paid in 2021 for the 2020 calendar year in the case of an employee who has a required beginning date of April 1, 2021) if the payments (i) equal the amounts that would have been MRDs in 2020 (or for 2020) had the CARES Act waiver not been enacted (2020 MRDs), or (ii) are one or more payments (that include the 2020

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MRDs) in a series of substantially equal periodic payments made at least annually and expected to last for (x) the life (or life expectancy) of the participant, (y) the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or (z) for a period of at least 10 years.

- For a plan participant with a required beginning date of April 1, 2021, distributions that are paid in 2021 that would have been an MRD for 2021 had the CARES Act waiver not been enacted.
- 3. Permitted Rollovers of MRDs Previously Distributed from a Covered Plan. If an individual already received an MRD in 2020 from a covered plan, there is an opportunity to roll those funds back into a retirement plan account. To assist plan participants who have already received distributions in 2020, the Treasury Department and the IRS are extending the 60-day rollover period to August 31, 2020.
- 4. Permitted Repayments of MRDs Previously Distributed from an IRA. In the case of an IRA owner or beneficiary who has already received a distribution of an amount that would have been an MRD in 2020 had the SECURE Act and CARES Act not been enacted, the recipient may repay the distribution to the distributing IRA, even if the repayment is made more than 60 days after the distribution, as long as the repayment is made no later than August 31, 2020. The repayment generally will be treated as a rollover, but will not be treated as a rollover for purposes of the rule that limits rollovers to one rollover per 12-month period and the restriction on rollovers for nonspousal beneficiaries.
- 5. Sample Plan Amendment. The Notice includes a sample plan amendment for defined contribution plans that plan sponsors may adopt to implement CARES Act waiver of 2020 MRDs. The sample amendment generally provides participants and beneficiaries the choice between receiving or not receiving 2020 MRD amounts. The plan sponsor will have the option of setting up the amendment with a default rate, so that the 2020 MRD is *not* paid without an affirmative participant election, or so that the 2020 MRD is automatically paid unless the participant affirmatively elects not to receive it.
- 6. Questions and Answers. The Notice includes a series of 12 questions and answers that address in detail other issues related to the administration of the 2020 MRD waiver.

For any questions regarding how the new guidance described in this alert affects your employer-sponsored retirement plans, please contact Peter Bradley (716.848.1446), Ryan Murphy (716.848.1241) or Amy Walters (716.848.1481).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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