Harter Secrest & Emery LLP
ATTORNEYS AND COUNSELORS

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

IRS ISSUES REQUIRED MINIMUM DISTRIBUTION AND ROLLOVER GUIDANCE UNDER THE CARES ACT AND SECURE ACT

Normally, qualified plans and IRAs must make "required minimum distributions" ("RMDs") to participants and IRA owners who have attained a certain age, as well as to beneficiaries of deceased participants. The Setting Every Community up for Retirement Enhancement Act ("SECURE Act") extended the age at which plan participants and IRA owners must start receiving RMDs to April 1st after the year the individual attains age 72 for individuals attaining age 70½ after 2019, although the age remains April 1st after the year the individual attains age 70½ for individuals who had attained age 70½ prior to 2020.[1] This commencement age is referred to as the "required beginning date."

Under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), enacted on March 27, 2020, the RMD mandate will not apply to IRAs and defined contribution plans for 2020, although defined benefit plans must make payments as usual.[2] In addition, individuals who had not yet taken their 2019 distributions from an IRA or defined contribution plan by the end of 2019 and who were due to receive those payments by April 1, 2020 did not need to take those distributions. Finally, beneficiaries who normally would have been required to complete payment from an IRA or defined contribution plan by the end of the fifth year after the participant or IRA owner's death can calculate that five-year deadline by disregarding 2020.

On June 23, 2020, the IRS issued Notice 2020-51 (the "Notice"), which provides details on how employer plans and IRAs can administer the RMD waiver. The Notice also allows for enhanced rollover opportunities and extended deadlines to facilitate participants' ability to take advantage of the RMD waiver. On a separate but related note, the Notice offers administrative and rollover transition relief for payments made in 2020 that would have been RMDs if not for the SECURE Act's extension of the required beginning date age from 70½ to 72. This newsletter summarizes provisions of the Notice that are of particular interest to qualified plan sponsors.

SECURE Act Administrative and Rollover Relief

Usually, a plan that pays a distribution that is eligible for direct rollover must notify the participant of the rollover opportunity, and must withhold 20% of the distribution that is not rolled over. RMDs are not

[1] IRA owners are subject to RMDs regardless of employment status. Qualified plans, however, do not need to start RMDs until April 1st after the later of the year the participant has attained the requisite age or the year the participant terminates employment, unless the individual is considered a "5% owner" of the business.

[2] For this purpose, it does not matter whether a defined benefit plan is a "hybrid" plan or otherwise making payment in the form of a lump sum. Payments from the plan are not eligible for the CARES Act waiver.

Practice Group Leader
Paul W. Holloway

Retirement
Mark R. Wilson

Health and Welfare
Thomas J. Hurley
John W. Brill

Executive Compensation
Christopher M. Potash

Counsel
Leslie E. DesMarteau
Lisa G. Pelta
Joseph E. Simpson

Associates
Amanda M. Karpovich
Paige N. Monachino
Crosby A. Sommers

Benefits Litigation Counsel
Megan K. Dorritie
Erika N. D. Stanat

eligible for rollover, and hence are not subject to these rules. Recognizing the need to update plans' payment systems to reflect the change in the required beginning date under the SECURE Act, Notice 2020-51 says that plan administrators will not be penalized for distributions in 2020 to someone attaining age 70½ in 2020 which are treated as RMDs (and hence as ineligible for rollover and exempt from the notice and withholding rules), even though in fact they are not RMDs and thus should be subject to the rollover notice and withholding rules.

To assist participants with taking advantage of the SECURE Act's intended extension of the required beginning date, the 60-day rollover deadline for these payments is extended to at least August 31, 2020.

Expanded Rollover Opportunities for CARES Act Required Minimum Distribution Waiver

Following largely the same approach it used for the previous suspension of defined contribution plan RMDs under the Worker, Retiree and Employer Recovery Act of 2008, the IRS has expanded rollover opportunities for defined contribution plan participants in 2020. Even though CARES Act RMDs are not subject to rollover notice and withholding rules, participants can roll over payments that, absent the CARES Act, would have been RMDs (paid in 2020 for 2019, paid in 2020 for 2020, or paid in 2021 for 2020 for an employee whose "required beginning date" is April 1, 2021). Participants also can roll over payments that are part of an installment series that includes RMDs and which would otherwise have been ineligible for rollover as "substantially equal periodic payments" made at least annually and expected to last for the participant's life expectancy, for the joint life expectancies of a participant and a designated beneficiary, or for a period of 10 years or more (referred to as "Extended RMDs").

The Notice also extends the 60-day rollover deadline for these payments until at least August 31, 2020 for participants.[3] Rollovers can be made to the originating plan, if the plan accepts rollovers and the normal rollover rules (as modified by the Notice) are satisfied. However, the IRS did not give any indication that a plan that accepts rollovers generally would need to accept these rollovers in particular if it normally would not do so (for example, if the plan normally does not accept rollovers from terminated employees).

Administering the Required Minimum Distribution Waiver

An employer may choose to have its plan either make payments of RMD amounts and Extended RMDs in the absence of a participant's request to waive payments this year, or to have its plan suspend payment unless a participant requests that payment be made.[4] Likewise, the employer has the option to have its plan offer:

- A direct rollover of 2020 RMDs,
- A direct rollover of 2020 RMDs plus Extended RMDs,

---

[3] Relief was also offered for repayment to the distributing IRA of IRA payments that would have been RMDs in the absence of the SECURE Act and CARES Act, even if the repayment is made later than 60 days after the initial payment, if the repayment is made by August 31, 2020.

[4] The IRS has said that stopping a series of substantially equal periodic payments in connection with the CARES Act waiver will not qualify for exemption from the Section 72(t) penalty tax, but that generally should not be an issue for individuals affected by the CARES Act waiver, given the ages involved.

- A direct rollover of a distribution that includes RMDs, but only if those amounts are paid with a distribution that includes amounts that would have been rollover-eligible without regard to the CARES Act, or
- A direct rollover only of amounts that would normally have been rollover-eligible without regard to the CARES Act.

The employer does not have the authority to deny participants payment opportunities they would normally have the right to request, or to require them to take payments that normally could be deferred. However, the employer can reverse the "default" rule under its plan for payments, if it wishes to do so (e.g., if a plan normally would pay an RMD or installment payment automatically, it can require the participant to make a payment request in order to receive payment in 2020).

For participants who will reach their required beginning dates on April 1, 2021, the CARES Act waiver applies to the 2020 RMD payment that will be due then. However, the normal RMD rules apply to the 2021 payment due by the end of 2021, and that will prevent the participant from rolling over amounts paid in 2021 prior to satisfaction of the 2021 RMD.

Notice 2020-51 also provided details on calculating the deadlines associated with RMDs for non-spousal beneficiaries of deceased participants. As noted above, the CARES Act allows 2020 to be disregarded for purposes of counting a beneficiary's payment deadline if the beneficiary is subject to the rule that payment be completed within five years of the participant's death.[5] Disregarding 2020 gives these beneficiaries an extra year to complete payment (and also allows them to roll over the account balance prior to the last year of the extended period, if they qualify, under the usual rules for payments made prior to the last year of the five-year period). The Notice also allows beneficiaries more time to decide whether to use the five-year rule or the alternative "life expectancy" RMD calculation rule, if available. The Notice does not extend other deadlines associated with identifying plan beneficiaries, however.

Suspending payments temporarily normally does not require spousal consent, but if the plan will allow a "new annuity starting date" (effectively, a new payment election), then the spouse's consent may be required, depending on the form of distribution in progress and the new form to be chosen.

If you have any questions regarding this LEGALcurrents, please contact any member of the Employee Benefits and Executive Compensation group at 585.232.6500, 716.853.1616, or visit www.hselaw.com.

[5] The Notice says that if a participant or beneficiary dies in 2020, the five-year or ten-year payment deadline (as applicable) is not extended.