

MEMO# 32556

June 26, 2020

IRS Provides Guidance on CARES Act Distributions, Loans, and RMD Suspension

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June 26, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Provides Guidance on CARES Act Distributions, Loans, and RMD Suspension

In Notices 2020-50^[1] and 2020-51,^[2] the IRS and Treasury provide detailed guidance on the coronavirus-related relief for retirement plans and IRAs under sections 2202 and 2203 of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act).^[3] Section 2202 of the CARES Act permits certain qualified individuals affected by the COVID-19 emergency to take penalty-free withdrawals from defined contribution plans and IRAs (up to \$100,000), allows plans to temporarily increase limits on plan loans for qualified individuals, and delays the due date for certain plan loan repayments. Section 2203 of the CARES Act suspends or waives required minimum distributions (RMDs) for the calendar year 2020, as well as 2019 RMDs for individuals who were required to take their first RMD by April 1, 2020, if the distribution was not taken before January 1, 2020.

The two notices address many of the questions ICI raised in a list of issues relating to the CARES Act and other COVID-19 relief shared earlier this year with the Treasury Department.^[4] **Notably, Notice 2020-51 (relating to RMDs) allows certain distributions from IRAs (and inherited IRAs) to be repaid to the IRA as a rollover contribution without regard to the one-rollover-per-year rule for IRAs.** Highlights of the notices are described below, along with some additional tax filing deadline relief recently announced for individuals affected by severe storms that occurred in April in the Southeastern US.

Notice 2020-50 - Coronavirus-Related Distributions and Loans

Background

The CARES Act waives the 10 percent additional tax for early distributions associated with any “coronavirus-related distribution” (CRD) taken in 2020 from a defined contribution plan or IRA, for amounts not to exceed \$100,000.^[5] Income with respect to any CRD may be included ratably over the three taxable years beginning with the taxable year in which the

distribution was received. In addition, CRDs may be repaid to an eligible plan in multiple payments at any time over the 3-year period commencing on the day after the date the distribution was received.

With respect to plan loans, the CARES Act temporarily increases the dollar amount available for plan loans to qualified individuals from \$50,000 to \$100,000 and increases the percentage test limit for loans from half the present value of the participant's vested benefit to the entire present value of his or her vested benefit under the plan. In addition, for loans to qualified individuals outstanding on or after March 27, 2020, if any repayment on the loan is due from March 27, 2020, to December 31, 2020, the repayment may be delayed for one year from the original due date.

Eligibility for the special loan and CRD rules is limited to individuals meeting specified criteria related to the COVID-19 pandemic.[\[6\]](#)

Notice 2020-50 follows earlier informal guidance posted to the IRS website in the form of FAQs,[\[7\]](#) which indicated that guidance on CARES Act distributions and loans will apply the principles of Notice 2005-92 (relating to similar distribution and loan relief under the Katrina Emergency Tax Relief Act of 2005 (KETRA)),[\[8\]](#) to the extent the provisions of section 2202 of the CARES Act are substantially similar to the provisions of KETRA that are addressed in that notice.

Qualified Individuals

Notice 2020-50 expands eligibility for CRDs and the special loan rules, to include an individual who experiences adverse financial consequences as a result of:

- the individual having a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;
- the individual's spouse or a member of the individual's household[\[9\]](#) being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or
- closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

CRD Definition

Notice 2020-50 confirms that a qualified individual may designate a qualifying distribution as a CRD without regard to whether the distributing plan treats the distribution as a CRD, and that treatment of a distribution by the individual could differ from the plan's treatment. In this regard, periodic payments and distributions that would have been RMDs but for section 2203 of the CARES Act, received by a qualified individual from an eligible retirement plan on or after January 1, 2020, and before December 31, 2020,[\[10\]](#) are permitted to be treated as CRDs and, therefore, permitted to be included in income ratably over three years. Similarly, any distribution received by a qualified individual as a beneficiary can be treated as a CRD. In addition, a reduction or offset of a qualified individual's account balance in order to repay a plan loan, including a qualified plan loan offset, is permitted to be treated as a CRD.

The Notice describes certain types of distributions that would not qualify as CRDs, including

corrective distributions made to comply with certain contribution and deferral limitations, loans that are treated as deemed distributions, and permissible withdrawals from an eligible automatic contribution arrangement.

Notice 2020-50 specifies that the rules normally applicable to hardship distributions requiring both the existence of a financial need and that the amount of the distribution corresponds to the financial need, do not apply in the case of a CRD.

Recontribution of a CRD

CRDs that are eligible rollover distributions (regardless of the plan's designation of the distribution as a CRD or treatment as a hardship distribution) may be recontributed to an eligible retirement plan. The Notice confirms that CRDs received by a non-spouse beneficiary of a participant or IRA owner may not be recontributed.

Guidance for Plans Making CRDs

Notice 2020-50 confirms that although 401(k), 403(b), and governmental 457 plans can choose to allow CRDs as a new opportunity for in-service withdrawal, a money purchase pension plan may not make a distribution (even if otherwise qualifying as a CRD) before an otherwise permitted distributable event. Further, a plan that treats a distribution as a CRD must be consistent in its treatment of similar distributions.

The Notice follows previous indications from the IRS that a plan may rely on an individual's certification that the individual satisfies the conditions for CRD eligibility, unless the plan administrator has actual knowledge to the contrary. The Notice explains that the "actual knowledge" rule does not mean that the plan administrator has an obligation to inquire into whether an individual has satisfied the conditions to be a qualified individual, but rather, the rule is limited to situations in which the plan administrator already possesses sufficiently accurate information to determine the veracity of a certification.

The Notice provides a sample of an acceptable certification by a participant that he or she is a qualifying individual:

Name: _____ (and other identifying information requested by the employer for administrative purposes).

I certify that I meet at least one of the following conditions: (1) I was diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (referred to collectively as COVID-19) by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); (2) my spouse or my dependent was diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or (3) I have experienced adverse financial consequences because: (i) I, my spouse, or a member of my household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19; (ii) I, my spouse, or a member of my household was unable to work due to lack of childcare due to COVID-19; (iii) a business owned or operated by me, my spouse, or a member of my household closed or reduced hours due to COVID-19; or (iv) I, my spouse, or a member of my household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19.

Signature: _____

In addition, the Notice confirms that CRDs are subject to voluntary withholding under Code § 3405(b).

Guidance for Plans and IRAs Making or Accepting Recontributions of CRDs

Notice 2020-50 confirms that a plan or IRA must report the payment of a CRD on Form 1099-R, even if the qualified individual recontributes the CRD to the same plan or IRA in the same year. If a payor is treating the payment as a CRD and no other appropriate code applies, the payor is permitted to use distribution code 2 (early distribution, exception applies) in box 7 of Form 1099-R. However, a payor also is permitted to use distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

The Notice indicates that it is anticipated that plans and IRAs will accept recontributions of CRDs, which is permitted at any time within the 3-year period beginning the day after the date of the CRD. However, the Notice provides that a plan that does not accept rollover contributions generally is not required to change its rules to accept repayment of CRDs. The Notice confirms that the existing relief available under Q&A 14 of Treasury Regulation §1.401(a)(31)-1 for plans accepting invalid rollover contributions will apply in this context if the plan otherwise satisfies the criteria for that relief (i.e., it reasonably concludes that the contribution is a valid rollover and then distributes the invalid contribution and any earnings after determining that the rollover was invalid).

Guidance for Individuals Relating to CRDs

As described in Notice 2020-50, individuals receiving CRDs are entitled to the favorable tax treatment offered under the CARES Act if they report the CRD on their federal income tax return for 2020 and on Form 8915-E, Qualified 2020 Disaster Retirement Plan Distributions and Repayments (or, if there is no federal income tax return for 2020, by filing just Form 8915-E).[\[11\]](#) Qualified individuals also should use Form 8915-E to report any CRD recontribution made during the taxable year and to determine the amount of the CRD includible in income for the taxable year.

Under the CARES Act, individuals can choose to include the taxable portion of the CRD in income ratably over a 3-year period that begins in the year of the distribution or to elect out of the 3-year ratable income inclusion and include the entire amount of the taxable portion of the CRD in income in the year of the distribution. Notice 2020-50 confirms that this election cannot be changed after the timely filing of the individual's federal income tax return (including extensions) for the year of the distribution and that all CRDs received in a taxable year must be treated consistently (either all included in income over a 3-year period or all included in income in the current year).

Although recontributions of CRDs generally are treated as rollover contributions, the Notice helpfully states that a recontribution of a CRD made from an IRA will not be treated as a rollover for purposes of applying the one-rollover-per-year limitation under Code § 408(d)(3)(B).

The Notice provides several helpful examples for individuals of how to treat and report recontributions of CRDs, depending on the timing of the repayment and whether the CRD was included in income ratably over the 3-year period or included in income entirely in the year of distribution. It also provides that, if the 3-year ratable inclusion method is used,

repayments in excess of the amount of the CRD included in income for the taxable year may be carried forward or carried back.

Guidance on Loan Provisions

Notice 2020-50 provides guidance on the application of the CARES Act provision that allows plans to suspend loan repayments due during the period beginning on March 27, 2020 and ending on December 31, 2020, and to delay the repayment due dates for one year. The Notice provides a safe harbor as one way to comply with the provision. Under the safe harbor:

- A loan is suspended for a period beginning on or after March 27, 2020, and ending on or before December 31, 2020.
- The loan repayments resume after the suspension period, and the term of the loan may be extended by up to one year. Interest accrued during the suspension period is added to the remaining principal of the loan.
- The loan is reamortized and repaid in substantially level payments over the remaining period of the loan, which may be extended by up to one year from the date the loan was originally due to be repaid.

The Notice provides an example applying the safe harbor and confirms that a plan can choose other methods to administer the loan suspension (for example, by separately delaying for one year each individual repayment that becomes due during the suspension period, or by delaying all payments due during the plan's suspension period to the one-year anniversary of the start of the suspension period).

Notice 2020-50 also confirms that a plan is not required to apply the CARES Act loan provisions. Rather, an employer is permitted to choose whether, and to what extent, to apply the CARES Act plan loan rules (regardless of how the plan treats CRDs). The Notice does not address the implications of a participant missing a loan repayment during the statutory suspension period, where the plan does not adopt the loan suspension.

Finally, the Notice confirms that employers can rely on employee certifications that the individual satisfies the conditions to be a qualified individual. It was not clear in the CARES Act itself whether these self-certifications were only to be used for CRDs or could also be relied upon for purposes of the plan loan provisions.

Guidance for Nonqualified Deferred Compensation Plans

Notice 2020-50 provides that a CRD from an eligible retirement plan will be considered a hardship distribution for purposes of Treasury Regulation §1.409A-3(j)(4)(viii), whereby a nonqualified deferred compensation plan may provide for a cancellation of the individual's deferral election. The deferral election must be cancelled, not merely postponed or otherwise delayed.

Notice 2020-51 - RMD Changes

Notice 2020-51 provides guidance relating to the CARES Act suspension of RMDs. Section 2203 of the CARES Act suspends or waives RMDs for the calendar year 2020, as well as 2019 RMDs for individuals who were required to take their first RMD by April 1, 2020, if the distribution was not taken before January 1, 2020. Notice 2020-51 does the following:

- permits rollovers of waived RMDs and certain related payments, including an extension of the 60-day rollover period for certain distributions to August 31, 2020;

- answers questions relating to the 2020 waiver of RMDs; and
- provides a sample plan amendment that, if adopted, would provide participants a choice whether to receive waived RMDs and certain related payments.

In addition to addressing the CARES Act RMD waiver, Notice 2020-51 also provides transition relief for plan administrators and payors, and rollover relief for individuals, in connection with the change to the required beginning date for RMDs under section 114 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).^[12] The SECURE Act changed the required beginning date generally to April 1 of the year following the year in which an individual reaches age 72, effective with respect to individuals who attain age 70½ after December 31, 2019.

Key provisions of Notice 2020-51

- Relief for payors relating to SECURE Act change to required beginning date (Notice 2020-51 section III.A). A distribution from a plan made during 2020 to a participant who will attain age 70½ in 2020 that would have been an RMD but for the change of the required beginning date to age 72 is not required to be treated as an eligible rollover distribution for purposes of Code §§ 401(a)(31), 402(f), and 3405(c).^[13] The Notice provides the following example: if a participant who attains age 70½ in 2020 received a distribution in January 2020, and part of the distribution was not treated as an eligible rollover distribution because it was improperly characterized as an RMD, then the payor and plan administrator will not be considered as having failed to satisfy the requirements of §§ 401(a)(31), 402(f) and 3405(c) merely because of that treatment.
- Relief for plan participants with respect to rollover eligibility (Notice 2020-51 section III.B). The following distributions from a defined contribution plan may be rolled over, provided the other rules of Code § 402(c) (the general rules applicable to rollovers) are satisfied (and regardless of whether the distributions would otherwise be made as part of a series of substantially equal periodic payments):
 1. 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 equal the amounts that would have been RMDs in 2020 (or for 2020), but for the 2020 RMD suspension, or are one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years; and
 2. for a plan participant with a required beginning date of April 1, 2021, distributions that are paid in 2021 that would have been an RMD for 2021 but for the CARES Act RMD waiver (this is further explained in Q&A-5 of section V of the Notice).
- Extension of 60-day deadline for rollover of certain distributions (Notice 2020-51 section III.C). For plan participants who have already received distributions in 2020, the Notice extends the 60-day rollover period for any payments described in section III.A and section III.B (described above), so that the deadline for rolling over such a payment will not be before August 31, 2020. The Notice provides the following example: if a participant received a single-sum distribution in January 2020, part of which was treated as ineligible for rollover because it was considered an RMD, that participant will have until August 31, 2020, to roll over that part of the distribution.^[14] In addition, with respect to IRAs, the Notice extends the 60-day

rollover period for IRA distributions in 2020 that would have been an RMD in 2020 but for the CARES Act RMD waiver or the SECURE Act change to the required beginning date, so that the deadline for rolling over such distributions will not be before August 31, 2020.

- Additional rollover relief for RMDs previously distributed from an IRA (Notice 2020-51 section III.D). In the case of an IRA owner or beneficiary who has already received a distribution of an amount that would have been an RMD in 2020 but for the CARES Act RMD waiver or the SECURE Act change to the required beginning date, the recipient may repay the distribution to the distributing IRA, even if the repayment is made more than 60 days after the distribution, provided the repayment is made no later than August 31, 2020. **Notably, the repayment will be treated as a rollover for purposes of Code § 408(d)(3), but will not be treated as a rollover for purposes of the one-rollover-per-year limitation in § 408(d)(3)(B) and the restriction on rollovers for non-spousal beneficiaries in § 408(d)(3)(C).**

Sample plan amendment

Notice 2020-51 also provides a sample plan amendment (included as an Appendix) for defined contribution plans to implement the CARES Act RMD waiver. The sample amendment allows employers to select from various options to implement the change, in any case allowing participants and beneficiaries a choice in whether to receive waived RMDs. One option provides that the default approach (in the absence of a participant's or beneficiary's election) is to pay out distributions that include 2020 RMDs, and the second option provides that the default approach (in the absence of a participant's or beneficiary's election) is to suspend distributions that include 2020 RMDs.

Additional Q&As

Section V of Notice 2020-51 addresses various related questions in a series of Q&As, including specifying that IRAs do not need to be amended to reflect the RMD waiver (Q&A 1) and that IRA trustees/custodians must notify IRA owners that no RMD is due for 2020 (Q&A 11). Other Q&As address issues such as the impact of the RMD waiver on the timing of certain elections for beneficiary payments; the impact of the RMD waiver on required beginning dates; and application of the withholding rules to amounts paid in 2020.

IRS Extends IRA Contribution Deadline for Victims of Certain Federal Disasters

Separately, the IRS issued a news release^{[\[15\]](#)} announcing deadline relief for victims of the April tornadoes, severe storms and flooding that took place in parts of Mississippi, Tennessee and South Carolina. Taxpayers in these areas will have until October 15, 2020, to file various individual and business tax returns and make tax payments. This relief includes the 2019 individual tax returns that, due to COVID-19, are due on July 15. The IRS also specified that affected taxpayers will have until October 15, 2020 to make 2019 IRA contributions. The extension automatically applies to any taxpayer with an IRS address of record located in any area designated by the Federal Emergency Management Agency (FEMA) as qualifying for individual assistance. The IRS will maintain an updated list of the counties receiving this FEMA designation on the IRS disaster relief page.^{[\[16\]](#)}

endnotes

[1] Notice 2020-50 is available at <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

[2] Notice 2020-51 is available at <https://www.irs.gov/pub/irs-drop/n-20-51.pdf>.

[3] For a description of the CARES Act, see ICI Memorandum No. 32328, dated March 27, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32328.

[4] See ICI Memorandum No. 32430, dated May 1, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32430.

[5] CRDs are deemed to meet applicable limitations on in-service withdrawals under Code §§ 401(k) and 403(b). Such distributions are not required to be treated by the distributing plan as eligible rollover distributions for purposes of the direct rollover requirement, the notice and written explanation of the direct rollover requirement (“402(f) notice”), and the mandatory 20 percent income tax withholding for eligible rollover distributions.

[6] Qualified individuals are (1) those who have been diagnosed with “the virus SARS-CoV-2” or “coronavirus disease 2019 (COVID-19),” (2) individuals whose spouse or dependent is diagnosed with such virus or disease, or (3) individuals who experience adverse financial consequences as a result of: being quarantined, being furloughed or laid off or having reduced working hours due to the virus/disease; being unable to work due to lack of child care due to the virus/disease; closing or reducing hours of a business owned or operated by the individual due to the virus/disease; or other factors as determined by Treasury.

[7] See ICI Memorandum No. 32440, dated May 5, 2020, *available at* <https://www.ici.org/covid19/latest/memo32440>.

[8] Notice 2005-92 is available at <https://www.irs.gov/pub/irs-drop/n-05-92.pdf>.

[9] The Notice specifies that a member of the individual’s household is someone who shares the individual’s principal residence.

[10] The Notice confirms that the distribution must occur prior to December 31, 2020, and a distribution on that date would not qualify as a CRD.

[11] The Notice indicates that Form 8915-E is expected to be available before the end of 2020.

[12] For a description of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, *available at* https://www.ici.org/my_ici/memorandum/memo32118.

[13] These sections relate to the direct rollover requirement, the written explanation of tax consequences for distributions that are eligible for rollover (the “402(f) notice”), and the tax withholding rules for eligible rollover distributions.

[14] This rollover deadline relief covers a broader time period than the 60-day deadline relief provided in Notice 2020-23. That relief extended the due date for completing a 60-

day rollover to July 15, 2020, only if the deadline otherwise fell on or after April 1, 2020 and before July 15, 2020. Therefore, it did not permit late rollovers of distributions occurring in January 2020. For a summary of Notice 2020-23, see ICI Memorandum No. 32391, dated April 15, 2020, available at https://www.ici.org/my_ici/memorandum/memo32391.

[15] The news release is available at <https://www.irs.gov/newsroom/irs-extends-july-15-other-upcoming-deadlines-for-tornado-victims-in-parts-of-the-south-provides-other-relief>.

[16] The disaster relief page is available at <https://www.irs.gov/businesses/small-businesses-self-employed/disaster-assistance-and-emergency-relief-for-individuals-and-businesses>.

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