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New IRS Guidance for Implementation of SECURE Act and CARES Act Provisions

The Internal Revenue Service (IRS) On June 19, 2020, released Notice 2020-50, to provide plan sponsors with additional guidance regarding coronavirus-related distributions and loan relief offered under the CARES Act. Much of IRS Notice 2020-50 reiterates the IRS's position in the FAQs released last month and incorporates the IRS's guidance for similar distribution options released following Hurricane Katrina.

The IRS also released Notice 2020-51 on June 23, 2020, providing additional guidance on the impact of the SECURE Act and CARES Act on required minimum distribution payments made in 2020.

IRS Notice 2020-50

Coronavirus Related Distributions

The CARES Act permits sponsors of qualified retirement plans to allow qualified individuals to receive distributions of up to $100,000. Under the statute, a “qualified individual” is someone diagnosed with COVID 19, someone whose spouse or dependent is diagnosed with COVID 19 or someone who experiences adverse financial consequences because of furlough, layoff, quarantine, school or the closure of their employer or needed childcare facility.

Qualified Individuals. In Notice 2020-50, the IRS expanded the definition of an "eligible individual" to include individuals who experience adverse financial consequences due to:

- A reduction in pay, rescinded job offer or delayed start date for a job because of COVID-19;
- The individual's spouse or a member of the individual's household being quarantined, furloughed or laid off, experiencing a reduction of hours, unable to work because of lack of childcare, experiencing a reduction in pay, or having a job offer rescinded or a start date for a job delayed, because of COVID-19; or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 because of COVID-19.

POSTED:

Jun 29, 2020

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Notice 2020-50 defines a member of the individual's household as someone who shares the individual's principal residence.

Reinhart Analysis: The expansion of eligibility factors could significantly increase the number of plan participants eligible for such a distribution. A member of the individual's household could be any individual living at the same primary residence, regardless of any familial relationship or co-mingling of finances. For example, based on the definition of "member of individual's household," a participant could request a coronavirus-related distribution of up to $100,000 if the participant's roommate was laid off because of COVID-19, provided the participant certifies that he or she experienced some level of adverse financial consequences.

Excluded Distributions and Administration of Coronavirus Related Distributions. While nearly any distribution received by a qualified individual could be deemed a coronavirus-related distribution, the Notice excludes certain distributions from this treatment. Specifically, this exclusion includes distributions made to comply with Code Section 415 limitations, loans treated as a deemed distribution and permissible withdrawals from an eligibility automatic contribution arrangement.

The Notice also confirms that if the plan is subject to the qualified joint and survivor annuity rules, spousal consent is required to receive a coronavirus-related distribution.

Coronavirus related distributions are not eligible for rollover distributions and plan sponsors are not required to provide a Code Section 402(f) notice upon distribution. The coronavirus-related distribution is subject to the voluntary withholding requirements.

Taxation of a Coronavirus Related Distribution. The Notice provides significant guidance to participants regarding appropriate reporting and taxation of a coronavirus related distribution. Highlights include:

- A participant may elect to either include a coronavirus-related distribution in his or her taxable income in 2020 or spread ratably over three years. No alternate taxation schedules are permitted.
- All coronavirus-related distributions received in 2020 must be reported using the same taxation schedule.

- The amount of any re-contribution will reduce the amount of the coronavirus-related distribution reported in that taxable year.
- Participants must complete Form 8915-E to report the coronavirus-related distribution.
- If the participant's re-contribution of his or her coronavirus-related distribution exceeds the portion of the coronavirus-related distribution included in his or her taxable income during the same year, the participant is required to file an amended income tax return to reduce the amount of coronavirus-related distribution reported in the prior year. Participants may only carry forward the tax offset if they will have coronavirus-related distribution tax liability to report in a future year.

Impact on Deferred Compensation Plans. Notice 2020-50 provides that a non-qualified deferred compensation plan may provide for a cancellation of an individual's deferral election, or such cancellation may be made, because the individual received a coronavirus-related distribution.

Plan Loan Relief

The CARES Act also provided plan sponsors with an option to automatically delay any deadline for a period of one year to repay a plan loan occurring in 2020 for a qualified individual. The CARES Act required plan sponsors to adjust the loan repayment schedule accordingly and increase the loan for interest because of the longer period of payments.

Notice 2020-50 provides a safe harbor form of administration, which permits an individual to suspend his or her obligation to repay the loan by a period not to extend beyond December 31, 2020. The safe harbor requires the loan payments to resume after the suspension period. Additionally, the safe harbor permits the life of the loan to be extended by up to one year from the date the loan was originally required to be repaid. Any interest that accrued during the suspension period must be added to the remaining principal loan amount.

The Notice explicitly permits re-amortization of the loan on January 1, 2021, but also recognizes that other re-amortization schedules may satisfy the provisions of the CARES Act.

IRS Notice 2020-51

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Required Minimum Distribution Transition Relief Under the SECURE Act

Notice 2020-51 provides relief for plan sponsors that treat distributions paid in 2020 to individuals attaining age 70-1/2 in 2020 as required minimum distributions rather than an eligible rollover distribution.

Required Minimum Distribution Waiver Under the CARES Act

Under the CARES Act, any required minimum distribution (RMD) payments due during calendar year 2020 are automatically waived for participants in a defined contribution plan qualified under Code Sections 401(a), 403(a), 403(b) and 457(b). The waiver also applies to any participant experiencing a required beginning date on April 1, 2020, who would begin required minimum distributions in 2020.

Administration of the Waiver. Notice 2020-51 provides that plan sponsors are required to implement the RMD waiver. However, the plan sponsor may elect to either:

- Waive RMDs unless a participant elects to receive the distribution; or
- Distribute RMDs unless a participant elects to waive the distribution.

The waiver does not impact a participant's required beginning date. Additionally, the Notice is clear that the RMD waiver does not postpone any RMDs due in 2021.

Reinhart Analysis: If a plan generally pays RMDs in the year preceding the year of the required beginning date (e.g., the plan pays RMDs in December 2020 for individuals whose Required Beginning Date is April 1, 2021), the waiver will also apply to those payments. While payment would not be made in 2020, the plan will not be relieved of its obligation to pay the RMDs of individuals whose required beginning date is April 1, 2021. Those RMDs must now be paid in 2021 rather than in December 2020.

Consent to suspend a participant's RMD is generally not required. However, if the plan is amended to provide a new annuity starting date in 2021, spousal consent to waive an ongoing distribution may be required.

The Notice also provides a model amendment that plan sponsors may use to implement the RMD waiver.

The waiver also applies to any deadline occurring in 2020 for a surviving spouse or beneficiary to elect a form of benefit. For example, if a participant died in 2019 and designated a non-spouse beneficiary, the beneficiary would be required to elect a form of payment by December 31, 2020. The waiver permits an extension of this deadline to elect a benefit to December 31, 2021, provided the plan is amended accordingly. If the participant dies in 2020, the waiver will not impact the deadline to elect for a beneficiary to elect a form of payment.

The Notice also explicitly provides that the RMD waiver applies only to RMD payments. Any optional form of benefit that pays a benefit amount equal to the required minimum distribution may not also be suspended. Additionally, the waiver does not impact any benefit suspension provisions under the terms of the plan.

Rollover Relief. Notice 2020-51 permits individuals that received a required minimum distribution payment from a defined contribution plan in 2020, including individuals with a required beginning date of April 1, 2021, that are paid in 2020, to rollover the distribution. Additionally, the Notice further extends the 60-day rollover period for any required minimum distribution paid in 2020 to be no earlier than August 31, 2020. Accordingly, if a participant received a required minimum distribution payment in January 2020, the participant would be permitted to rollover the payment until August 31, 2020.

Notice 2020-51 also allows plan sponsors to accept rollovers of required minimum distribution payments paid in 2020, including amounts distributed from the plan. Plan sponsors may elect any of these options:

- Permit rollovers of only RMDs paid out in 2020;
- Permit rollovers of RMDs paid out in 2020 and any distributions paid out as RMDs that, under the SECURE Act, could have been paid as an eligible rollover distribution; or
- Permit rollovers of any distribution, provided the distribution consists of part or all of a RMD and any additional amount is an eligible rollover distribution.

Inclusion of any of these options requires a plan amendment.

If you have any questions about the potential impact these legal changes could have on your benefit plans, please contact your Reinhart attorney.

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