July 2020

PENSION ANALYST
COMPLIANCE BULLETIN

Prudential

IRS provides guidance on RMD waivers and mid-year safe harbor plan changes

On June 23, the IRS released Notice 2020-51, which provides guidance on the waiver of required minimum distributions provided by the Coronavirus Aid, Recovery, and Economic Security Act (the "CARES Act"). This guidance:

- Permits rollovers of waived required minimum distribution (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 waiver of 2020 RMDs; and
- Provides a sample plan amendment for RMD waivers.

The notice also provides transition relief for plan administrators and payors in connection with the change in required beginning date for RMDs under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

On June 29, the IRS issued Notice 2020-52, providing relief for safe harbor plans that reduce or suspend employer contributions during the period March 13, 2020, and August 31, 2020.

RMD guidance

Background on recent RMD legislative changes

The SECURE Act changed the RMD age from 70½ to 72 for participants born on or after July 1, 1949. The CARES Act then waived RMDs for IRAs, defined contribution plans, 403(b) plans, and governmental 457(b) plans for that were required to made in 2020. This waiver applies to:

- Plan participants who attained age 70½ before 2019 and have begun taking RMDs;
- Plan participants who attained age 70½ in 2019 with a required beginning date of April 1, 2020, who did not take their first RMD in 2019;
- Non-5% owners who attained age 70½ before 2020, retired in 2020, and took a distribution in 2020, even if they are able to delay taking their first RBD until April 2021; and
- Certain beneficiaries who are required to take RMDs for 2020.

Under the CARES Act, payments that would have been 2020 RMDs are eligible to be directly rolled over to other eligible retirement plans and IRAs. However, those distributions are not subject to the 402(f) notice requirements and are not subject to the 20% mandatory federal income tax withholding. As a result, if the portion that would otherwise be the 2020 RMD is paid as a cash distribution, that portion is subject to 10% federal income tax withholding, unless the participant elects out of withholding.

Extended rollover deadline for 2020 RMD amounts

The IRS issued guidance in April that extended the indirect rollover deadline to July 15, 2020, if the 60-day rollover period would have otherwise ended on or after April 1, 2020 and before July 15, 2020. This extension provided additional time to complete a rollover for certain employees who received a required minimum distribution for 2020 but are no longer required to take it due to the CARES Act. The latest guidance now extends the time frame for indirect rollover of amounts received in 2020 that would otherwise have been RMDs to August 31, 2020. Also, due to changes made by the SECURE Act in late December 2019, the recent guidance permits amounts that may have been erroneously paid as RMDs early in 2020 to participants born on or after July 1, 1949, to be rolled over by August 31, 2020.

Deadlines for post-death distributions

The guidance confirmed that the 2020 CARES Act waiver applies to the deadline to elect life expectancy payments and the 5-year period for deaths occurring before 2020. As a result, beneficiaries of such accounts will receive an extra year to receive total payouts of their account balances if the payment deadline was December 31, 2020, or later. *For example, for an account of an individual who died in 2018, the five-year period ends on December 31, 2024 instead of December 31, 2023.*

The notice clarifies that this same relief is not available, however, when the deaths occur in 2020 or later. As a result, the 10-year period for certain designated beneficiaries under the SECURE Act is not extended by the CARES Act waiver of RMDs.

Sample plan amendment for RMD changes

The guidance includes a sample amendment for defined contribution plans to adopt the RMD waiver for 2020. The sample amendment includes options regarding default approaches for payment of 2020 RMD amounts, as well as direct rollover choices for distributions in 2020.

For plan sponsors that use Prudential Retirement’s document services, we will work with you to ensure necessary amendments are adopted by the plan amendment deadline. This deadline remains the last day of the first plan year beginning on or after January 1, 2022 for non-governmental plans and the last day of the first plan year beginning on or after January 1, 2024 for governmental plans.

Additional items of interest

The guidance also includes the below additional points of interest in the RMD guidance:

- The 2020 RMD waiver does not change an individual’s required beginning date. This date is important as it may be a key factor for determining death distribution provisions in certain situations.
- Amounts that would have otherwise been RMDs may be rolled over, even if the participant was receiving the RMDs as a series of substantially equal payments over their lifetimes or for a period of at least 10 years.
- For participants with a required beginning date of April 1, 2021, distributions paid in 2021 that would otherwise be RMDs may also be rolled over.
- The notice provides transition relief for the SECURE Act change to required beginning dates for RMDs from age 70½ to 72. For any plans that were unable to update systems and processes before January 1, 2020 and, as a result, made a distribution early in 2020 that was improperly characterized as an RMD, such distribution is not required to be treated as an eligible rollover distribution for purposes of the mandatory 20% withholding rules and special tax notice requirements.

Guidance on mid-year reductions or suspensions of safe harbor plan contributions

Background on mid-year reductions or suspensions of safe harbor plan contributions

Many 401(k) and 403(b) plans sponsors have adopted safe harbor plans to avoid annual nondiscrimination testing and the potential need to make corrective distributions or contributions in the event of failed tests. These plan designs require the sponsoring employer to make certain levels of nonelective or matching contributions. In general, plan sponsors must commit to making these contributions for an entire 12-month plan year and must notify participants of these contributions before the start of the plan year. However, under final rules issued in November 2013, employers may generally suspend or reduce either nonelective or matching safe harbor contributions if either:

- The employer is operating at an economic loss; or

- The safe harbor notice provided to participants before the start of the plan year includes a statement that the employer may reduce or suspend contributions mid-year and that such action won't be applicable until at least 30 days after the employees are provided with a supplemental notice of the action being taken.

Suspending safe harbor contributions for HCEs

Under the safe harbor rules, safe harbor contributions are not required to be provided to highly compensated employees (HCEs). In the recent guidance, IRS clarified that the reduction or suspension of safe harbor contributions to HCEs does not modify the safe harbor status of the plan. Due to the fact that a safe harbor notice would have been provided before the start of the plan year and safe harbor rules require a revised notice for any mid-year changes, the IRS notice clarifies that a revised notice should be provided to affected HCEs.

Relief for mid-year reductions or suspensions

Notice 2020-52 permits employers to suspend or reduce safe harbor contributions in 401(k) and 403(b) plans between March 13, 2020, and the end of the plan year, if the amendment is adopted between March 13, 2020 and August 31, 2020. This is permitted, even if an employer does not meet either the "economic loss" condition or include the statement regarding the ability to reduce or suspend contributions in the notice sent before the start of the plan year.

To be eligible for the relief, the following conditions must be met:

- The plan amendment must be adopted no later than the effective date of the reduction or suspension of safe harbor nonelective contributions; and
- The employee must be provided a revised safe harbor notice under the following timelines:
  - For a safe harbor matching contribution plan, the notice must be provided 30 days prior to the effective date of the reduction/suspension, or
  - For a safe harbor nonelective plan, notice must be provided no later than August 31, 2020.

The IRS rules regarding mid-year reduction or suspension also require the plan to be amended to provide that the ADP and/or ACP test, as applicable, will be satisfied for the entire plan year in which the reduction or suspension occurs, using the current year testing method.

Expanded notice deadline for mid-year suspension of safe harbor nonelective contributions

The IRS guidance provides temporary relief to the 30-day advance notice requirement for suspensions or reductions to safe harbor non-elective contributions, as long as the updated safe harbor notice is provided no later than August 31, 2020, and the plan amendment to reduce or suspend is adopted no later than the effective date of the reduction or suspension.

It is important to note that the IRS did not provide this same relief with respect to a mid-year reduction in suspension of safe harbor matching contributions because the level of matching contributions communicated to employees directly affect employee decisions regarding elective deferral contributions. As a result, supplemental safe harbor notices for matching contributions must still be provided 30-days before the amendment is adopted reflecting the change.

Next steps

Prudential Retirement has already updated procedures to reflect the IRS RMD guidance. Plan sponsors who are reducing or suspending safe harbor contributions should notify their Prudential representative.

Compliance Bulletin by Prudential Retirement
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