



# THE Pension Digest

## ALSO IN THIS ISSUE –

IRS Guidance – Section 2.  
IRA Rules for COVID-19  
Distributions, *Page 3*

IRS Guidance – Section 3.  
401(k) Rules for COVID-19  
Distributions, *Page 4*

Email Guidance – Rollovers,  
Transfers, Direct Rollovers and  
Repayments, *Page 5*

IRS Issues HSA Guidance Relating  
to the CARES Act, *Page 7*

IRS Issues 2021 Indexed Amounts  
for HSAs, *Page 8*

**Collin W. Fritz and  
Associates, Inc.,**  
*“The Pension Specialists”*



© 2020 Collin W. Fritz and Associates,  
Ltd. Copyright is not claimed in any  
material secured from official U.S. Gov-  
ernment sources. Published by Collin  
W. Fritz and Associates, Ltd. Subscrip-  
tion: \$95 per year.

## IRA Custodian Must Inform Affected IRA Owners That RMDs Have Been Waived For 2020

The IRS in Notice 2020-51 states an IRA custodian must notify affected IRA owners that RMDs have been waived for 2020. If an IRA custodian will be still be furnishing its 2019 5498 forms to IRA owners by August 31, 2020, it will meet this requirement. This assumes the 2019 Form 5498 has been completed correctly with box 11 not being checked.

An IRA custodian can meet this requirement by sending its own notice. We believe an IRA custodian will benefit by furnishing a broader notice.

IRS guidance is not clear what the specific deadline is for furnishing this special RMD notice. Possibly, the notice

could be furnished after August 31, 2020, but before December 31, 2020. It is best to furnish it by August 31, 2020.

Some IRA custodians may have already furnished a notice informing affected IRA owners that all RMDs for 2020 have been waived.

Also, in Notice 2020-51 the IRS states an IRA custodian does not have the duty to amend the IRA on account of the CARES law waiving RMDs for 2020.

## IRS Guidance for IRAs and 401(k) Plans On COVID-19 Relief For Distributions Plan Loans and Repayments

The IRS issued guidance in Notice 2020-50. This article discusses the tax relief which the IRS has issued on account of COVID-19 for distributions, plan loans and the repayment or recontribution of COVID-19 distributions.

There are three sections to this article. Section 1 deals with a general discussion of the special COVID-19 rules applying to both IRAs and 401(k) plans. Section 2 as set forth in a separate article discusses the IRA rules and situations. Section 3 as set forth in a separate article discusses the COVID-19 rules for 401(k) plans.

### General Discussion.

The 10% additional tax under section 72(t) of the Internal Revenue Code (Code) or the 25% additional tax for SIMPLE-IRAs does not apply to a COVID-19 related distribution.

A qualifying recipient of a COVID-19 distribution is able to include it in income over a 3-year period.

A qualifying recipient of a COVID-19 distribution who rolls over or repays a COVID-19 distribution within a 3-year time period is able to not include the distribution in income.

The IRS guidance is directed to multiple and different audiences: IRA custodians, employers who sponsor a 401(k)

**Continued on page 2**

plan and then individuals who are IRA accountholders, IRA beneficiaries, and 401(k) participants. The IRS instructs how the plan is to report these distributions and how individuals may report these distributions.

### **Who is a qualified individual of a COVID-19 distribution and what distributions qualify as a COVID-19 distribution?**

An IRA accountholder or a 401(k) participant may be a qualified individual as may be an IRA beneficiary or a 401(k) beneficiary.

The IRS has chosen to expand the statutory definition of who is a qualified individual. A person is a qualified individual who is diagnosed with either SARs or COVID-19 virus by a test approved by the Centers for Disease Control (CDC), whose spouse is so diagnosed, whose dependent is diagnosed or who experiences certain adverse financial consequences.

The adverse financial consequence requirement will be met if any of the following situations exist:

1. the individual is laid off, had work hours reduced due to COVID-19, has been furloughed or has been furloughed.
2. the individual is unable to work due to lack of childcare due to COVID-19.
3. is a person who owns a business or operates a business and such business is closed or there are reduced hours of operation.
4. individual suffers a reduction in pay or self-employment income due to COVID-19.
5. the individual has a job offer rescinded or has their employment start date delayed due to COVID-19.

An individual who does not meet one of these requirements will still qualify as suffering adverse financial consequences if the individual's spouse or a member of the individual's household has met one of the requirements listed above. Someone who shares with an individual the individual's principal residence is a member of his or her household.

### **What special rules apply with respect to a COVID-19 distribution?**

1. the distribution must come from an eligible retirement plan, including an IRA
2. It must occur on or after January 1, 2020, and before December 31, 2020.
3. an individual can treat no more than \$100,000 as a COVID 19 distribution. The individual must aggregate all of his her qualifying distributions.

An employer or an IRA custodian must be aware of the \$100,000 limit. The controlled group rules must be applied. However, unrelated plans or IRAs not at your institution need not be considered. For example, IRA custodian #1 does not need to consider if the individual has additional IRA funds with another IRA custodian or 401(k) plan #1 need not consider if the individual is a participant in another 401(k) plan or IRA.

4. An IRA custodian or a 401(k) plan administrator may rely on an individual's certification that his or her distribution is a COVID-19 distribution unless there is actual knowledge to the contrary.
5. An individual is not required to have an actual provable financial need.
6. The following distributions cannot qualify as a COVID-19 distribution.
  - A. Corrective distributions of excess 401(k) elective deferrals;
  - B. Corrective distributions to comply with section 415 limitations.
  - C. Loans that are treated as deemed distributions under Code section 72(p)
  - D. The cost of current life insurance protection
  - E. A hardship distribution.
  - F. Other reasons set forth in Q&A-4 of section 1.402(c)-2.
7. If a distribution is certified to be a COVID-19 distribution, then the 401(k) administrator is not required to furnish the section 402(f) direct rollover notice and withhold 20% if a direct rollover is not instructed. The standard voluntary withholding rules apply. The payer must withhold 10% unless the individual instructs to have no amount withheld or to have more withheld.

**Continued on page 3**

## Section 2. IRA Rules For COVID-19 Distributions

### Tax rights and the reporting duties of the IRA accountholder and the IRA beneficiary

#### What are the reporting duties of the IRA custodian if an individual makes one or more repayment contributions?

The individual must determine if he or she qualifies to treat a distribution as a COVID-19 distribution. The individual has the right to certify that the distribution is a COVID-19 distribution. There is an exception to the 10% (or 25%) additional tax for a COVID-19 distribution. Even if the IRA custodian does not treat the distribution as a COVID-19 distribution the individual may.

An individual who receives a COVID-19 distribution is given two options for the taxation of the distribution. First, the individual is allowed to spread out the distribution over three tax years. For example, Jane Doe who withdraws \$45,000 on June 30, 2020, is allowed to include \$15,000 in income in 2020, \$15,000 in income in 2021 and \$15,000 in income in 2022. The individual is given the second option of applying the standard tax approach, the amount withdrawn is included in that year's income. That is, the individual may elect out of using the three year rule. This election is irrevocable. It cannot be made or changed after the individual timely files his or her tax return.

An individual will use Form 8915-E to explain the amount of a COVID-19 distribution to be included in income and also to report any repayment. A repayment is a rollover and the amount previously distributed now becomes non-taxable. In some situations, the individual will need to file an amended Form 8915-E. This will occur when a repayment is made in a year later than the withdrawal year. Or, it may occur because the individual elects to carry back to a previous year.

There are two special rules related to the three year inclusion rule. First, the right to use this three year spread is lost if the individual dies during either the first or the second year. An individual dying in 2020 must include 100% of the distribution in income in 2020. If the person dies in 2021, the person must include the

remaining 66.67% in income in 2021. The second special rule is, an individual who has established a substantially equal periodic payment schedule will not have an unauthorized modification by taking a COVID-19 distribution. Presumably, the COVID-19 will be an additional distribution and the individual will need to also take the scheduled distribution. The IRS will need to clarify.

#### What are the repayment rules?

1. A qualified individual is permitted at any time during a 3-year period to repay/recontribution/rollover any portion of a COVID-19 distribution. The 3-year period begins on the day following the distribution.
2. The maximum amount eligible for repayment is the amount of the distribution.
3. Multiple repayments may be made because the once per year rollover for IRAs does not apply.
4. There are ordering rules for determining the tax consequences for a repayment when the individual is using the 3-year spread method. A repayment first affects or reduces the income (i.e. the inclusion amount) for the tax year for which the repayment is made. Any excess repayment amount for one tax year may be carried back to the prior year or forward to the following year.

**Example #1.** Jane Doe takes a COVID-19 distribution of \$60,000 on December 1, 2020. She uses the 3-year spread method. She includes \$20,000 in come for 2020. On April 10, 2022 she repays \$20,000. Her tax year 2021 is still open. She makes no other repayments during her three year repayment period. For 2021 she must include \$0.00 of income and she will include \$20,000 in income for 2022.

**Example #2.** John Doe takes a COVID-19 distribution of \$90,000 on November 1, 2020. He uses the 3-year spread method. He includes \$30,000 in come for 2020. On August 22, 2022, he repays \$30,000. His tax year 2021 is NOT still open as he did not have an extension. He makes no other repayments during his three year repayment period. For 2021 he must include \$30,000 of income and he will include \$0.00 for 2022.

**Continued on page 4**

**Example #3.** Maria Doe takes a COVID-19 distribution of \$75,000 on December 1, 2020. She uses the 3-year spread method. She includes \$25,000 in come for 2020. On November 10, 2021 she repays \$40,000. Previously she included \$25,000 in income for 2020. She has 0.00 income for 2021 as that is the year she repays the \$40,000. She has an excess repayment amount of \$15,000. She may now carry it back to 2020. She would need to file an amended tax return for 2020 or she may carry the excess of \$15,000 forward to her 2022 tax return. If she carries it forward she would include only \$10,000 in income for 2021. How is IRA custodian to administer the acceptance of a repayment contribution(s) and report it?

5. May an IRA beneficiary repay a COVID-19 distribution?

The answer is no with one limited exception. In this Notice 2020-50 the IRS expressly provides that any COVID-19 distribution (whether from an employer retirement plan or an IRA) to a qualified individual as a beneficiary cannot be recontributed. However, the IRS in Notice 2020-51 granted special relief to an IRA accountholder and also to an IRA beneficiary who was paid what was thought to be a 2020 RMD because the distribution occurred prior to enactment of the CARES Act by allowing these individuals to complete a rollover by August 31, 2020.

### **What reporting is the IRA custodian to perform with respect to a COVID-19 distribution?**

Form 5498 has boxes 14a and 14b. Box 14a shows the repayment amount. Box 14B identifies the type of the disaster distribution repayment. These boxes are used to report a repayment. The IRS will need to issue additional guidance.

The IRS guidance in Notice 2020-50 has no special guidance for IRAs. The IRS states, a qualifying individual is eligible for tax free rollover treatment as long as a COVID-19 distribution is repaid to an eligible retirement plan that has been written to accept rollover contributions. A plan administrator must “reasonably conclude” that the individual qualifies to make the repayment. An IRA custodian should have the individual sign a form certifying they are eligible to repay a specific disaster distribution.

### **How is box 7, the reason code box, on the 2020 Form 1099-R to be completed to report a COVID-19 distribution?**

The IRS has adopted a payer friendly approach. Both an IRA custodian or a 401(k) administrator are authorized by the IRS to use either Code 1 (premature distribution, no known exception) or Code 2 (premature distribution, exception known). The individual and the accountant will need to determine when Form 5329 must be filed to claim exception from the 10% additional tax.

## **Section 3. 401(k) rules for certain loans, COVID-19 distributions, and repayments of a COVID-19 distribution**

Although the CARES Act has been enacted so that individuals may benefit by being able to use new tax laws granting them certain tax relief, the general pension plan law is, an employer may choose to amend its plan to include such new tax relief laws, but it is not required to do so.

An employer wants to understand, what are the current plan provisions regarding loans and distributions. Then the employer can determine, should the 401(k) plan be amended to authorize some or all of the changes made by the CARES Act?

### **Plan Loans**

An employer may choose to amend its plan (401(k) or profit sharing) so that a participants may take a loan when in the past the plan has not permitted such loans.

More likely an employer which presently authorizes loans, may choose to adopt the tax relief loan provisions as discussed below.

### **Temporary increase in the allowable loan amount.**

In general, the maximum loan amount is the \$50,000 as long as a participant has a vested account balance of \$100,000. This amount is increased to \$100,000 as long a loan is made on or after March 27, 2020 and before September 23, 2020. A special rule applies if there is an existing loan.



### **Suspension of current loan payments and extension of a loan's term.**

In general, a loan must be repaid within 5 years. There is an exception if the loan is used to acquire a principal residence. If an individual fails to make a loan installment period when due, the individual is deemed to have a distribution. The plan may allow a participant to cure a missed installment payment as long as the installment payment is made not later than the end of the cure period, which cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment was due.

An employer is allowed to amend its plan so the due date for paying certain loan installment payments are delayed or suspended for 1 year. The relief applies to any loan payment occurring on or after March 27, 2020 and ending on December 31, 2020. The IRS provides a safe harbor. An employer may amend the plan suspending the due date of loan installment occurring between March 27, 2020 and ending not later than December 31, 2020. Interest accruing during the suspension period must be added to the remaining principal the loan. The loan must be remonetized and repaid over the remaining loan period.

### **COVID-19 Distributions as Being a Hardship Distribution.**

A profit sharing plan can be written to allow a person to withdraw their vested account balance after two years. The law imposes a restriction on a 401(k) plan. In general an individual is eligible for a distribution only if the person has separated from service, is disabled or has attained age 59½. However, the law allows for an exception for a person who has suffered a hardship. So, an employer may consider two amendments.

First, modify the definition of hardship to include COVID 19.

Secondly, the CARES Act provides that a 401(k) plan may be amended to provide that a person is eligible for a general plan distribution on account of being an eligible COVID- 19 individual.

An employer is not required to adopt either of these two amendments.

### **When must an employer adopts any COVID-19 related amendment?**

In general, the deadline is, December 31, 2022, for a plan which has a calendar year plan year.

A plan must be operated according to the plan document or the IRS can contest the plan's qualified status. The IRS grants the following relief. The IRS will not treat a plan as failing to operate as the plan document requires even though the plan administer implementing provisions of the CARES without the plan being formally amended as long as the plan is amended by December 31, 2022. Technically the deadline is, the last day of the first plan year beginning on or after January 1, 2022.

## **Email Guidance – Rollovers, Transfers, Direct Rollovers and Repayments**

**Q-1.** I have a customer that is thinking about moving his 401(k) to an IRA with our bank. He thinks he was told he can only transfer \$15,000. To the best of my knowledge there is no limit, as far as the bank is concerned, on how much he can transfer. I'm thinking the \$15,000 is the maximum he can contribute to his 401(k) annually. I know each 401(k) plan is different. Are you aware of any reason, as far as the bank is concerned, he couldn't transfer the whole \$15,000 if he chooses to?

**A-1.** How old is he?

An employer may write its plan to place restrictions on distributions. Most don't, but it can be done.

What rules does the plan have regarding distributions? What does the plan's SPD state?

Has he retired or is he still working?

How has his account been invested? Does the type of investment restrict the right to take a distribution?

**Q-1A.** He will be 60 in July.

He is still working but with a different company.

I am not sure about the answers to the other questions. So, you believe the restrictions are on the side of the 401(k) and not on the side of the IRA as well? I will have him check with his plan admin before he does anything.

**Continued on page 7**

**A-1A.** Yes the primary restrictions are on the side of the 401(k) plan or profit sharing plan.

It would be rare for a 401(k) plan not allow a distribution if a person has separated from service.

There are employers who write their plan – a person must reach retirement age (65, 62 or 60) in order to take a distribution regardless if still employed or not. Their belief – the plan is a retirement plan and there should be no prior withdrawals.

How often does this plan value the plan assets? If the plan only values the assets once per year as of 12/31, some plans will restrict the amount someone can take out, especially during a falling investment market.

The plan document of the old employer must be reviewed.

The old employer should have a form which explains the rules to him and which he can use to make his election/instruction. He should ask for a copy of this form.

### **Multiple Rollovers or Repayments**

**Q-2.** We have a customer who has done 1 Roth IRA rollover already this year. He just presented us with another check for another rollover. IF the funds come from 2 different plans the customer is ok to do this, correct? Thanks!

**A-2.** No, the customer may not do it. Your customer is in an undesired tax situation.

Since 2014/2015 a person is limited to one rollover per 12 months. No longer is a person eligible to do a second rollover just because the funds came from a second or different IRA.

Might this person qualify for a COVID-19 distribution? The person should talk with their tax accountant.

If the person is eligible for a COVID-19 distribution, then the person's withdrawal from the other Roth IRA would not be subject to the once per year rule. A person must fill out a special tax form when there (Form 8915-E) is a COVID-19 distribution and/or repayment/rollover.

The person by completing a contribution form will inform you that they are making a repayment contribution.

An IRA custodian is to report such a repayment in boxes 14a and 14b on the 2020 Form 5498.

### **A Rollover by a Personal Representative**

**Q-3.** Can you help me with this question? We have an IRA owner who took her 2020 RMD in Feb, and then passed away in April. Her son, who I believe is the executor of her estate, wants to roll this

RMD back into her IRA account, The beneficiaries of her account are her 5 children. Can this be

done? And does it have to be done by the executor or PR of her estate? Thank you.

**A-3.** The law is somewhat unclear whether the personal representative has the authority to complete the rollover on behalf the deceased IRA owner. I believe the personal representative has this power as modified by the COVID-19 relief.

I recall there is an old case where the court ruled that the personal representative had the authority to complete a rollover due to Code Section 6903. The Code section says something to the effect that a personal representative has the authority to take whatever tax action could have been taken by the deceased taxpayer.

I did find the court case (Gunther v. U.S. 1982) ruling that a personal representative did have the legal right to accomplish the rollover. The court cites Code Section 6903(a) as the authority for the personal representative being able to accomplish the rollover.

It should be understood, the IRS does not agree with this position. The IRS position is: the making of an annual or a rollover contribution is a personal right (cash basis taxpayer) and that right ends upon the person's death.

### **Transfer vs. Rollover**

**Q-4.** I have a question concerning IRA rollovers. We are being told by an investor that a rollover only applies if the customer receives the funds i.e. takes possession or if the funds are coming from a qualified plan to a traditional or roth IRA. Is this true?

**A-4.** In general, your customer is right. There are two steps in a rollover situation. Step one, a distribution is made to an eligible party and then step two is, the person makes a qualifying rollover contribution. These two transactions are IRS reportable.

## IRS Issues HSA Guidance Relating to the CARES Act

---

The IRS issued Notice 2020-15 on March 11, 2020, and Notice 2020-29 on June 19, 2020.

In Notice 2020-15 granted the following HSA relief. A health plan that otherwise qualifies as a HDHP for HSA purposes will continue to be a qualifying plan even though the health plan provides benefits for the expenses related to the testing or treatment of COVID-19 either because there is no deductible or with a deductible below the minimum deductible amount. A person remains HSA eligible even though the deductible requirement is not being met.

In Notice 2020-29 the IRS clarifies and modifies the relief granted in Notice 2020-15 and issues some new guidance. There were two clarifications. First, the relief only was extended to expenses incurred on or after January 1, 2020. Second, the expenses qualifying for the special relief were expanded. Expenses related the testing and treatment for COVID-19 also includes those related to 'the panel of diagnostic testing for influenza A & B, norovirus and other coronaviruses, and respiratory syncytial virus-(RSV) and any items or services required to be covered with zero cost sharing.

The IRS also issued new guidance because section 3701 of the CARES Act provides a temporary safe harbor for certain expenses related to telehealth and other remote care services. Section 3701 was amended to define telehealth and other remote care services as categories of coverage that do not make a person ineligible for HSA purposes just because the deductible requirement has not been met. This change is effective March 27, 2020, and apply to plan years beginning on or before December 31, 2021.

The distribution can either be an actual distribution or a deemed distribution. If the distribution is a deemed distribution there is no requirement that the person have possession of the funds. Example, J. Doe has a self-directed IRA and has their IRA participate in a prohibited transaction. There is a deemed distribution even though the person has not had actual possession of the funds.

What is your customer's situation? What transaction has occurred or might occur?

If funds are being sent directly from IRA custodian #1 to custodian #2, that transaction will generally be a transfer and not a rollover. A transfer form is generally used to make clear the transaction is a transfer and not IRS reportable.

If one of the IRA custodians incorrectly treats a transfer as a rollover, this may cause tax difficulties for the individual.

**Q-4A.** The situation is as follows: The customer's spouse had multiple IRAs at different institutions. He passed away. The spouse is choosing to treat his IRAs as her own. She wants to move the funds to IRA custodian #2 under one IRA plan. The form that was filled out to request the funds was the incorrect one and was titled "Request for Direct Rollover" instead of "Request for Transfer".

Our position is that we need to have proof of coding from the surrendering FI to ensure proper coding to the IRS. They are saying that because the funds came directly to us, in our name FBO customer, the incorrect form doesn't matter... it is a transfer because the customer never had possession of the funds.

**A-4A.** By definition a direct rollover occurs when funds are sent by a 401(k) plan to an IRA custodian; a direct rollover never occurs when IRA funds move from IRA custodian #1 to IRA custodian #2.

IRA custodian #2 use of the wrong form does not mean it must (or may) treat the distribution as a rollover. It would be nice if the other IRA custodian would sign a transfer form after the fact, but I don't think it is required. Even without a transfer form IRA custodian #2 should be willing to process the transaction as a transfer as there was no possession or deemed possession. Just note in the file what happened.

## IRS Issues 2021 Indexed Amounts for HSAs

The maximum HSA contribution for 2021 is \$3,600 for single HDHP coverage and \$7,200 for family HDHP coverage. The HSA contribution limits for 2021 are \$50 higher for single HDHP coverage and \$100 higher for family HDHP coverage.

The minimum annual deductible limits for 2021 do not change. The minimum deductible limit for single coverage for 2021 is \$1,400 and the minimum deductible limit for family coverage is \$2,800.

The maximum annual out-of-pocket expense limit for single coverage for 2021 increases to \$7,000 from \$6,900 and the out-of-pocket expense for family coverage increases to \$14,000 from \$13,800.

On May 20, 2020, the Treasury Department and Internal Revenue Service issued new guidance on the maximum contribution levels for Health Savings Accounts (HSAs) and out-of-pocket spending and deductible limits for High Deductible Health plans (HDHPs) that must be used in conjunction with an HSA. The HSA 2021 limits are set forth in IRS Revenue Procedure 2020-32.

### High Deductible Health Plans

#### HSA Maximum Contribution Limits Under Age 55

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Change</u>
Single HDHP	\$3,500	\$3,550	\$3,600	+ \$50
Family HDHP	\$7,000	\$7,100	\$7,200	+ \$100

#### HSA Maximum Contribution Limits Age 55 & Older

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Change</u>
Single HDHP	\$4,500	\$4,500	\$4,600	+ \$50
Family HDHP	\$8,000	\$8,100	\$8,200	+ \$100

#### HSA Catch-Up Contributions

	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Change</u>
Age 55 and Older	\$1,000	\$1,000	\$1,000	\$0

### High Deductible Health Plans

	Minimum Annual Deductible			Maximum Annual Out-of-Pocket Expenses		
	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Single Coverage	\$1,350	\$1,400	\$1,400	\$6,750	\$6,900	\$7,000
Family Coverage	\$2,700	\$2,800	\$2,800	\$13,500	\$13,800	\$14,000