

COVID-19: IRS Provides Additional Relief for Time-Sensitive Actions Relating to Employee Benefit Plans

Over the past few weeks, the Internal Revenue Service (“IRS”) has provided relief to taxpayers impacted by the COVID-19 pandemic, by extending the deadline for payment and filing of individual income tax returns from April 15, 2020 to July 15, 2020 under Notice 2020-18 (issued on March 20, 2020, which superseded Notice 2020-17) and providing other relief relating to federal gift tax under Notice 2020-20 (issued on March 27, 2020). On April 9, 2020, the Internal Revenue Service issued [Notice 2020-23](#), which amplified the prior Notices 2020-18 and 2020-20, providing additional relief to affected taxpayers by postponing the otherwise applicable Internal Revenue Code or regulatory deadlines for certain actions to be taken.

Notably for retirement plan sponsors and administrators and for certain recipients of equity compensation, the IRS provided relief to persons performing of certain time sensitive actions described in [Revenue Procedure 2018-58](#)¹ that are due to be performed on or after April 1, 2020 and before July 15, 2020 (each a “Specified Time-Sensitive Action”). Among others, under Notice 2020-23, affected taxpayers have until July 15, 2020 to perform the Specified Time-Sensitive Actions described below.

In the context of compensatory plans, employee benefit plans and retirement plans, the relief for Specified Time-Sensitive Actions includes the following:²

1. The due date for repayments with respect to loans from qualified plans can be deferred until July 15, 2020. This applies to all borrowers, not just those affected by COVID-19. (Code Sec. 72(p)(2)(B) and (C), and Reg. Sec. 1.72(p)-1, Q&A 10)
2. The deadline for making an Internal Revenue Code Section 83(b) election (permitting employees to be taxed on restricted stock at the time of grant) is postponed. (Code Sec. 83(b) and Reg. Sec. 1.83-2(b))
3. The April 15 deadline for a plan to distribute excess employee deferrals timely identified by the plan or already timely identified by the plan participant (plus attributable income) for calendar year 2019 under Internal Revenue Code Section 402(g) is postponed. (Code Sec. 401(a)(30), 402(g)(2)(A), and Reg. Sec. 1.402(g)-1)
4. The deadline of the end of the following plan year for which an ADP testing failure occurred for distributing excess contributions made by highly compensated employees as a means of correcting the ADP testing failure under a 401(k) plan is postponed.³ (Code Sec. 401(k)(8))
5. The deadline of the end of the following plan year for which an ACP testing failure occurred for distributing excess matching contributions as a means of correcting the ACP testing failure is postponed.³ (Code Sec. 401(m)(6))
6. The 60-day window to roll over an eligible rollover distribution received from a retirement plan (or an IRA) is

¹ Revenue Procedure 2018-58 originally related to relief provided in relation to service in a combat zone or a federally-declared disaster, allowing the postponement of the performance of certain time-sensitive acts.

² The relief also extended deadlines for certain actions related to ESOPs and other actions related to IRAs, not described here.

³ Note that this postponement also applies to extend the date by which corrective distributions must be made to avoid a 10% excise tax if those corrective distributions are not made within 2 ½ months after the end of the plan year.

postponed so that the participant will have until the later of 60 days after receipt of the distribution and July 15, 2020 to complete the rollover.⁴ (Code Sec. 402(c), etc.)

7. The deadline to file the Form 5500 (and other forms in the series) to report annual information concerning employee benefit plans and the deadline to file a Form 8955-SSA to report deferred vested participants are each postponed.⁵ (Code Secs. 6057, 6058, and 6059)
8. The deadline for rolling over a qualified plan loan offset amount is postponed. (Code Sec. 402(c)(3)(C))
9. The normal 90-day deadline to elect a permissible withdrawal from an eligible automatic contribution arrangement (EACA) after the date of the employee's first elective contribution under the EACA is postponed. (Code Sec. 414(w)(2) and Reg. Sec. 1.414(w)-1(c))
10. The deadline to distribute certain nondeductible contributions to a qualified employer plan to avoid the imposition of a 10 percent tax is postponed. (Code Sec. 4972(c)(3))
11. The deadline for making distributions to satisfy the substantially equal periodic payment exception to the 10% additional tax on early distributions from qualified plans is postponed. (Code Sec. 72(t)(2)(A)(iv))
12. The deadline for qualified employees to elect to defer recognition of income upon exercise of an option or settlement of a restricted stock unit is postponed. (Code Sec. 83(i))
13. The deadline for elections that may otherwise be required before the earlier of the start of the plan year or the start of the period during which benefits are made available under certain cafeteria plans is postponed.⁶ (Prop. Reg. Sec. 1.125-2)
14. The deadline for rolling over otherwise qualified amounts to Health Savings Accounts (HSAs) is postponed. (Code Sec. 223(f)(5))
15. The deadline for receiving required minimum distributions (RMDs) is postponed (although already waived by the CARES Act) (Code Sec. 401(a)(9), etc.)
16. The remedial amendment period is extended for certain plans. (Code Sec. 401(b), Reg. Sec 1.401(b)-1, and Rev. Proc. 2016-37, 2016-29 I.R.B. 136)
17. The correction period for self-correction of certain significant operational failures (normally the last day of the second plan year following the plan year in which the failure occurred) is postponed. (Rev. Proc. 2019-19)

The above relief provided under Notice 2020-23 is automatic, meaning that affected taxpayers do not have to call the IRS or file any extension forms, or send letters or other documents to the IRS to receive this relief; however, in order to effectuate certain permissible delays (such as a possible delay in plan loan repayments), coordination with the plan administrator and employer may be required.

⁴ This would generally provide relief, through an extended rollover deadline, for eligible rollover distributions (including RMDs, which are waived for 2020) that were (or are) received between February 1, 2020 and May 15, 2020, but distributions taken before or after that window would not qualify for the relief under Notice 2020-23.

⁵ Note that this does not provide relief for Forms 5500 that are normally due after July 15, 2020 (generally, absent any other available extension, calendar year plans have a due date of July 31, 2020).

⁶ Note that this relief does not delay plan or regulatory requirements to promptly make elections in light of changes in status.

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