

EMPLOYEE BENEFITS ADVISORY

IRS Clarifies CARES Act Provisions for Retirement Plan Coronavirus-Related Distributions, Participant Loan Enhancements, and Required Minimum Distributions



The IRS recently issued Notices 2020-50 and 2020-51, which offer guidance to plan sponsors regarding the provisions of the Coronavirus Aid, Relief, and Economic Security Act (commonly referred to as the CARES Act) that apply to qualified retirement plans.

In Notice 2020-50 (the Notice), the IRS provides welcome guidance and some expansion on the availability of coronavirus-related distributions (CRDs), increased participant loan amounts, and loan payment suspensions under qualified retirement plans pursuant to the CARES Act. It also provides guidance regarding the impact of CRDs on deferral elections in nonqualified deferred compensation plans. Please see our [prior Employee Benefits advisory](#) for our original summary of the impact of the CARES Act on retirement plans.

The Notice provides the following:

EXPANSION OF QUALIFIED INDIVIDUALS

Under the CARES Act, the following individuals were considered qualified individuals for purposes of access to CRDs, increased participant loan amounts, and loan payment suspensions:

- A participant who is diagnosed with COVID-19
- A participant whose spouse or dependent is diagnosed with COVID-19
- A participant who has suffered financial loss from the COVID-19 pandemic because he or she (a) was laid off, furloughed, quarantined, or had reduced hours; (b) could not work due to the unavailability of childcare because of the pandemic; or (c) owned or operated a business that has had to close its doors or reduce hours



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The Notice expands the above list to include the following to the definition of qualified individuals:

- A participant whose pay or self-employment income is reduced due to the COVID-19 pandemic or who has had a job offer rescinded or a new job's start date delayed due to COVID-19.
- A participant whose spouse or a member of his/her household has suffered the following financial effects due to the pandemic: (a) a layoff, furlough, quarantine, reduced hours, or reduced pay or self-employment income; (b) cannot work due to childcare unavailability; (c) has had a job offer rescinded or the start date of a new job delayed; or (d) a business owned or operated by the participant's spouse or a member of the participant's household has closed or reduced hours.

A "member of the household" is someone who shares the qualified individual's principal residence, which could include a significant other, roommate, other relative, or anyone else with whom the qualified individual is sharing a home.

EMPLOYEE CERTIFICATION OF QUALIFIED INDIVIDUAL STATUS

The Notice states that an employer may rely on an individual's certification that he or she is a qualified individual until the employer has actual knowledge to the contrary, which means that the employer "already possesses sufficient accurate information to determine the veracity of the employee's certification." The employer has no obligation to investigate or inquire further.

The Notice clarifies that an employer can rely on the individual's certification for CRDs, the loan rules, and for recontributions. The Notice also contains a sample certification that is deemed to be acceptable.

TAX IMPACT AND REPORTING OF CRDS

The Notice provides significant information about the tax reporting and payment rules relating to CRDs.

Definition of CRD:

The Notice clarifies that a CRD may be almost all distributions from a qualified retirement plan to a qualified individual (not to exceed \$100,000) in 2020, even if the plan itself did not treat the distribution as a CRD and even if the amounts were not withdrawn solely to meet a need arising from COVID-19.

Plan Reporting Requirements:

If the employer designates a distribution as a CRD from a plan, the plan must report the CRD in Box 7 of Form 1099-R whether or not the amount is recontributed. If the employer is treating the payments as a CRD and no other appropriate code applies, the Notice provides two alternatives for coding the CRD on the Form 1099-R (Code 2—early distribution, exception applies, or Code 1—early distribution, no known exception); however, the Code 2 alternative seems more logical for a CRD.

A CRD is not treated as an eligible rollover distribution from the plan (even though the participant actually can recontribute the CRD). As a result, the amount is not subject to the 20 percent mandatory withholding (waivable 10 percent withholding applies), and the participant does not need to receive the "Special Tax Notice" required under Code Section 402(f).

Individual Reporting of CRD:

A qualified individual reports a distribution as a CRD on his or her 2020 tax return by filing Form 8915-E (which the IRS says will be available by the end of 2020). A CRD reported on Form 8915-E qualifies for the waiver of the 10 percent early distribution tax, the reporting of the taxable income from the distribution over three years, and the ability to recontribute any portion of the distribution to an eligible retirement plan within three years and have it treated like a nontaxable trustee-to-trustee transfer of the funds. Form 8915-E will also be used to report amounts includible in income or recontributed in years subsequent to 2020.

The Three-Year Spread of Income Tax:

The qualified individual may choose to include the total income from the CRD in 2020 or ratably over 2020, 2021, and 2022. Once the qualified individual timely files his or her 2020 tax return, indicating which of these two methods will be used, it cannot later be changed. All CRDs received must be treated the same for this purpose.

Recontribution of CRDs:

If a CRD is permitted to be recontributed, amounts that are recontributed prior to the individual's tax return due date (including extensions) for any year may be reflected on that return. For example, a participant who recontributes a CRD on or before his/her extended 2020 tax return due date of October 15, 2021, will reflect a reduction in his/her 2020 taxable income from the recontribution on that 2020 return.

Election to include in one year: If a CRD is recontributed by the due date of the individual's 2020 income tax return, the entire CRD is shown as income in 2020 and the entire repayment is shown on Form 8915-E for 2020. The qualified individual recognizes no taxable income (or only that amount of CRD in excess of the recontribution) for 2020 from the CRD. If a CRD is recontributed after the due date of the individual's 2020 income tax return, and the qualified individual elected to treat the entire CRD as income in 2020, then, when the recontribution is made, the qualified individual must file an amended 2020 return with attached Form 8915-E, and the taxable income from the CRD on the 2020 return will be reduced by the recontribution amount.

Election to include over three years: Where, instead, the qualified individual elected to include the CRD income over a three-year period, if the recontribution is made before the due date of the 2020 tax return, then the 2020 tax return will reflect taxable income equal to one-third of the CRD received, and the Form 8915-E that is filed with the 2020 return will reflect any recontribution up to the tax return due date. If the recontribution equals or exceeds the amount of income for 2020, there will be no net taxable income from the CRD in 2020. If the recontribution exceeds the 2020 income, the reduction to income will be applied in 2021 (or, if necessary, 2022). If repayments occur after income from a CRD has been reported on the individual's tax return over the three-year period (and appropriate taxes paid), the qualified individual has a choice of amending his/her prior income tax returns to reflect the income offset or may apply that income offset in a future year (through 2022).

PARTICIPANT LOANS AND CARES ACT PROVISIONS

The CARES Act provided that a qualified individual may suspend his or her participant loan repayments for the period beginning March 27, 2020, through December 31, 2020, and that repayment of those amounts would be delayed for a year. In the Notice, the IRS has offered guidance on how these repayments would be made, including a safe harbor method, and it permits other “more complex” methods if the employer desires to use them.

Safe Harbor Approach:

- All payments are suspended for any period after March 27, 2020, through December 31, 2020.
- Beginning with the first loan payment date occurring in 2021, the loan, plus any accrued interest, is reamortized. The reamortization period will run from January 1, 2021, through the date that is one year after the original loan maturity date.
- Under the safe harbor approach, the repayments must commence with the first loan payment date in 2021 (even though the CARES Act itself states that loan repayments may be suspended for one year).

Alternative Approach:

The Notice states that “there may be additional reasonable, if more complex, ways to administer” the loan repayment process and provides an example of permitting the suspension for a full year, and then reamortizing at that time. Whether alternative approaches will be available will be dependent upon the capabilities of the plan’s recordkeeper.

OTHER DETAILS FROM THE NOTICE

The Notice provides a few details that are of note:

- A CRD may not include any corrective distributions or refunds of deferrals to comply with Code Sections 415, 402(g), or the ADP test, nor corrective distributions to comply with the ACP test, deemed loan distributions, and a few other less common payments from a qualified retirement plan.
- While CRDs can be made from all qualified plans, a qualified plan that is a pension plan is not permitted to accelerate distributable events merely because the distribution, if made, would qualify as a CRD. In other words, a CRD designation will not allow a distribution from a defined benefit plan earlier than what would be permitted under the Code (for example, termination of employment or age 59½). This limitation specifically applies to money purchase pension plans, including those maintained by governmental entities.
- Beneficiaries of death benefits, other than spouse-beneficiaries, cannot repay a CRD.
- A hardship withdrawal made to a qualified individual that is designated as a CRD can be recontributed, even though hardship withdrawals generally are ineligible for rollover.
- If the qualified individual dies during the three-year period over which the income is being spread, any balance that has not been declared becomes income in the year of death.

- If permitted by the plan, a qualified individual in a nonqualified deferred compensation plan may cancel his or her deferral election without violating Code §409A; that deferral election cancellation will be deemed to be made due to an unforeseen emergency.

IRS RELIEF FOR MINIMUM REQUIRED DISTRIBUTIONS

In Notice 2020-51, the IRS provides relief for taxpayers who have already taken required minimum distributions (RMDs) in 2020 before the CARES Act suspended the RMD requirement in response to the COVID-19 pandemic. Individuals who already took an RMD in 2020 from certain retirement plan accounts and IRAs now have the opportunity to roll those funds into a retirement account. To give taxpayers time to take advantage of this opportunity, the 60-day rollover period for any RMDs already taken this year has been extended to August 31, 2020. The Notice also allows taxpayers who receive distributions in 2020 (or paid in 2021 for the 2020 calendar year) to roll them into an eligible retirement plan (even if the distribution normally would be treated as part of a series of substantially equal periodic payments).

As background, the CARES Act allowed any taxpayer with an RMD due in 2020 from a defined contribution retirement plan (such as a 401(k) plan or a 403(b) plan) or an IRA to skip those RMDs for 2020. This includes anyone who turned age 70½ in 2019 and would otherwise have had to take their first RMD by April 1, 2020. The waiver of RMDs does not apply to defined benefit plans.

In addition to the rollover opportunity, the Notice allows an IRA owner or beneficiary who already received a distribution from an IRA of an amount that would have been an RMD in 2020 to repay the distribution to the IRA by August 31, 2020. This repayment is not subject to the one rollover per 12-month period limitation and the restriction on rollovers for inherited IRAs.

Questions

If you have any questions about the CARES Act issues, contact a member of our [Employee Benefits Group](#).