

CARES ACT: IRS ISSUES NEW RETIREMENT PLAN GUIDANCE FOR CORONAVIRUS-RELATED DISTRIBUTIONS AND PLAN LOAN RELIEF

Hodgson Russ Employee Benefits Alert
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On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. We previously reported on the CARES Act provisions relevant to employer-sponsored retirement plans that delivered certain relief in connection with the Coronavirus pandemic (see our March 30, 2020 Hodgson Russ Employee Benefits Alert [here](#).) Recently released IRS Notice 2020-50, which focuses on the relief under CARES Act Section 2202, addresses coronavirus-related distributions (CRDs), the temporary increase to the allowable plan loan amount, and the delayed due date of plan loan repayments payable during the period beginning on March 27, 2020 and ending on December 31, 2020. The noteworthy guidance in Notice 2020-50 relevant to CARES Act Section 2202 includes:

- Expanded Definition of Qualified Individual. Relief in the form of CRDs, the temporary increase to the allowable plan loan amount, and the delayed due date of 2020 plan loan repayments is available to *qualified individuals*. The new guidance **expands** the definition of qualified individual to include an individual who experiences adverse financial consequences as a result of:
 - The individual having a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;
 - The individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or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 due to COVID-19.

For purposes of applying these additional factors, a member of the individual's household is someone who shares the individual's principal residence.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

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- Guidance on Certifications of Qualified Individual Status. The administrator of an eligible retirement plan may rely on an individual's certification of his or her qualified individual status, unless the administrator has actual knowledge (i.e., already possesses sufficiently accurate information to determine the veracity of a certification) to the contrary.
- Sample Qualified Individual Certification. The Notice provides sample language for an individual certification of qualified individual status that reflects the expanded definition of qualified individual.
- CRD Guidance. CRDs are any distributions from an eligible retirement plan made on or after January 1, 2020, and before December 31, 2020, to a qualified individual. The amount of aggregate distributions to a qualified individual from all eligible retirement plans that can be treated as CRDs may not be more than \$100,000. Notice 2020-50 includes the following new guidance:
 - Employers may expand the distribution options under their 401(k) plans, 403(b) plans, and governmental 457 plans to allow CRDs, and amounts designated as CRDs will be treated as meeting the distribution restrictions applicable to those plans even if they are distributed before an otherwise permitted distributable event, such as severance from employment, disability, or attainment of age 59½. However, a pension plan (including a money purchase pension plan) may not make a distribution before an otherwise permitted distributable event merely because the distribution, if made, would qualify as a CRD. A pension plan also is not permitted to make a distribution under a distribution form that is not a qualified joint and survivor annuity without spousal consent merely because the distribution, if made, could be treated as a CRD.
 - Employers are also permitted to expand the sources from which CRDs may be taken to include elective deferrals, qualified non-elective contributions, qualified matching contributions, and safe harbor contributions.
 - CRDs are not limited to distributions of amounts withdrawn solely to meet a need arising from COVID-19. CRD treatment, for example, may be claimed for minimum required distributions, periodic payments or plan loan offset amounts. However, certain distributions are not eligible for CRD treatment, including: corrective distributions of elective deferrals; corrective distributions to comply with the Code Section 415 limitations; corrective distributions resulting from excess contributions for violating the ADP limits under Code Section 401(k); and excess aggregate contributions for violating the ACP limits under Code Section 401(m).
 - ***Significantly, even if the employer chooses not to amend the plan to implement the CRD rules, qualified individuals may claim the tax benefits of CRD rules on their individual tax returns for distributions they received, other than the distributions excluded from CRD treatment as described above.***
 - If an individual is receiving substantially equal periodic payments from an eligible retirement plan, the receipt of a CRD from that plan will not be treated as a change in substantially equal payments that potentially triggers a Code Section 72(t) recapture tax merely because of the CRD.
 - CRDs can be included in income in equal installments over a 3-year period, and an individual has three years to repay a CRD to a plan or IRA and undo the tax consequences of the distribution. The Notice includes ample guidance and examples for plan sponsors and plan participants describing the tax treatment addressing the 1-year income inclusion method, the 3-year ratable income inclusion method, and recontributions during the 3-year period.

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- Generally, only a CRD that is eligible for tax-free rollover treatment is permitted to be recontributed to an eligible retirement plan. However, if a hardship distribution is taken by a qualified individual, it will be treated as though it is a CRD and may be recontributed.
- A CRD (whether from an employer retirement plan or an IRA) paid to a qualified individual as a beneficiary of an employee or IRA owner (other than the surviving spouse of the employee or IRA owner) may not be recontributed.
- Because eligible retirement plans are not required to accept rollover contributions, a plan that does not accept rollover contributions is not required to change its terms or procedures to accept recontributions of CRDs.
- While the plan administrator or payor of a CRD is not required to withhold taxes in accordance with the 20% mandatory withholding rules, a CRD is subject to the 10% voluntary withholding requirements.
- Guidance is provided for mandatory tax reporting of CRDs on a 2020 Form 1099-R.
- A qualified individual receiving a CRD is entitled to favorable tax treatment with respect to the distribution by reporting the distribution on the individual's federal income tax return for 2020 and/or on Form 8915-E, Qualified 2020 Disaster Retirement Plan Distributions and Repayments.
- Plan Loan Guidance, Including Safe Harbor for Suspensions of Plan Loan Repayments. With respect to the temporary increase to the allowable plan loan amount for new loans taken before September 23, 2020, and the delayed due date of plan loan repayments payable during the period beginning on March 27, 2020 and ending on December 31, 2020, the Notice includes the following new guidance:
 - Employers are permitted to choose whether, and to what extent, to apply CARES Act plan loan rules, regardless of how CRDs are treated. If they do, there will not be a deemed taxable distribution due to any delayed plan loan repayment.
 - The Notice confirms the position of the Department of Labor that plans may temporarily increase the plan loan limit to the lesser of \$100,000 or 100% of the participant's vested accrued plan benefit without violating provisions of ERISA Title I, including the adequate security and reasonably equivalent basis requirements.
 - A safe harbor is provided for the administration of plan loan suspensions under which plans will be compliant with the CARES Act if the loan suspensions are structured and administered as follows:
 - The qualified individual's obligation to repay a plan loan is suspended under the plan for any period beginning not earlier than March 27, 2020, and ending not later than December 31, 2020 ("suspension period").
 - The loan repayments must resume after the end of the suspension period, and the term of the loan may be extended by up to 1 year from the date the loan was originally due to be repaid.
 - Interest accruing during the suspension period must be added to the remaining principal of the loan. A plan satisfies this rule if the loan is reamortized and repaid in substantially level installments over the remaining period of the loan, plus up to 1 year from the date the loan was originally due to be repaid.
- Non-Qualified Retirement Plan Relief. Under the Code Section 409A regulations, a nonqualified deferred compensation plan may allow for a cancellation of a covered participant's deferral election, or such a cancellation may be made, due to an unforeseeable emergency or a hardship distribution under a 401(k) plan. If the participant receives

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a CRD, that distribution will be considered a 401(k) plan hardship distribution, and the nonqualified plan may provide for a cancellation of the participant's deferral election under the plan, or such a cancellation may be made, due to the CRD. The deferral election must be cancelled, not merely postponed or otherwise delayed.

For any questions regarding how the new guidance described in this alert affects your employer-sponsored retirement plans, please contact Peter Bradley (716.848.1446), Ryan Murphy (716.848.1241) or Amy Walters (716.848.1481).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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