
**IRS ISSUES GUIDANCE
FOR
CORONAVIRUS-RELATED DISTRIBUTIONS AND
LOANS FROM RETIREMENT PLANS UNDER THE CARES
ACT**

In a [previous client alert](#), we discussed several provisions under the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”) that provide relief to “**qualified individuals**” with regard to “**coronavirus-related distributions**” (“**CRDs**”) and loans from their retirement plan accounts. Specifically, one such provision allows qualified individuals participating in specified retirement plans to take CRDs of up to \$100,000 from their accounts in 2020 (before December 31, 2020) without incurring the 10% penalty for early distributions (e.g., generally, distributions taken before age 59½). In addition, qualified individuals can elect to include the CRDs in taxable income ratably over a three-year period and/or recontribute the CRDs to a qualified retirement plan or IRA within three years after the distribution date. Another provision increases the maximum amount qualified individuals are permitted to borrow as plan loans to the lesser of \$100,000 or 100% of the participant’s vested account balance (up from \$50,000 or 50% of the vested account balance). This temporary increase applies to plan loans made on or after March 27, 2020 and before September 23, 2020. If a participant has an outstanding plan loan as of March 27, 2020, the CARES Act provides for up to a one-year suspension for repayments due between March 27, 2020 and December 31, 2020.

While the CARES Act provided welcome relief for qualified individuals, a number of open questions remained with respect to CRDs and plan loans. In response, the IRS issued **Notice 2020-50** (the “**Notice**”), which provides much needed additional guidance related to the following:

1. The definition of “qualified individuals;”
2. Amounts available for CRDs and the maximum amount that may be distributed as CRDs;
3. Tax reporting, tax treatment, and the mechanics of recontributing CRDs to eligible retirement plans;
4. Additional clarifications regarding CRDs;
5. Application of the suspension of plan loan repayments; and
6. The cancellation of deferral elections under nonqualified deferred compensation plans.

1. Definition of Qualified Individuals

Under the CARES Act, a "qualified individual" is someone who:

- Is diagnosed with SARS-CoV-2 or coronavirus disease 2019 (collectively, "COVID-19");
- Has a spouse or dependent who is diagnosed with COVID-19; or
- Experiences adverse financial consequences as a result of:
 - Being quarantined, furloughed, laid off, or having work hours reduced due to COVID-19;
 - Being unable to work due to a lack of childcare due to COVID-19; or
 - Closing or reducing hours of a business owned or operated by the individual due to COVID-19.

The Notice expands the definition of a "qualified individual" to include individuals that experience adverse financial consequences as a result of the following:

- 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 (i.e., someone who shares the individual's principal residence) being quarantined, furloughed, 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
- Closure or reduced hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

2. Amounts Available for CRDs and Maximum Amount of CRDs

The Notice clarifies that distributions do not need to have been designated as CRDs in order to be treated as such, if they meet the CRD requirements. Thus, periodic payments, required minimum distributions, distributions to beneficiaries, and plan loan offsets that occur in 2020 and meet the other CRD requirements may be treated as CRDs even if they were not originally intended as such. However, the following types of distributions may not be treated as CRDs:

- Corrective distributions in order to comply with the Code § 415 limitations;
- Excess elective deferrals under Code § 402(g), excess contributions under Code § 401(k), and excess aggregate contributions under Code § 401(m);
- Loans that are treated as deemed distributions pursuant to Code § 72(p);
- Dividends paid on applicable employer securities under Code § 404(k);
- The costs of current life insurance protection;
- Prohibited allocations that are treated as deemed distributions pursuant to Code § 409(p);
- Distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of Code § 414(w); and
- Distributions of accident or health insurance premiums under Treas. Reg. § 1.402(a)-1(e)(1)(i).

The Notice clarifies that the amount of a CRD does not need to be limited to the amount necessary to meet the financial need arising from COVID-19 (unlike the requirements that apply to a hardship withdrawal). The Notice also clarifies that the CRD relief is optional for plan sponsors; plan sponsors are not required to make CRDs available under the terms of the plan. However, even if not made available under a particular plan, if a distribution would have qualified as a CRD, a participant is still permitted to treat an otherwise permissible distribution as a CRD. As a result, it is possible for employers and qualified individuals to treat a distribution differently for tax reporting purposes.

An employer is permitted to develop any reasonable procedures for identifying which distributions are CRDs, provided that the employer applies those procedures in a consistent manner with regard to distributions from all retirement plans the employer maintains.

Guidance Related to CRD Limits

The Notice clarifies that, for purposes of applying the \$100,000 CRD limit, an employer must take into account distributions from all retirement plans sponsored by the employer maintaining the plan and those employers required to be aggregated with the employer under Code §§ 414(b), (c), (m), or (o). The employer, however, is not required to take into account distributions from an individual's IRA or from eligible retirement plans maintained by unrelated employers.

3. Tax Reporting, Tax Treatment, and Recontributions of CRDs

Tax Reporting

The Notice provides the following guidance for plan sponsors and qualified individuals with respect to the tax reporting for CRDs:

- Payors must report the payment of a CRD to a qualified individual on **Form 1099-R**, even if the qualified individual recontributes the CRD to the same eligible retirement plan in the same year. If no other appropriate code applies, payors are permitted to use either distribution code 2 (early distribution, exception applies) or distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R.
- Qualified individuals can receive favorable tax treatment for their CRDs by reporting them on their 2020 federal income tax returns and on **Form 8915-E**, "Qualified 2020 Disaster Retirement Plan Distributions and Repayments." Qualified individuals will use Form 8915-E to report any recontribution made during the taxable year and to determine the amount of the CRD includible in income for the taxable year.

Tax Treatment and Recontributions

A qualified individual may treat a CRD as income ratably over a three-year period beginning in the year of the distribution, or include the entire amount of the CRD in income in the year of distribution. However, all CRDs received in a taxable year must be treated consistently (either all must be included in income over a 3-year period or all must be included in income in the current year), and the election cannot be made or changed after the timely filing of the individual's federal income tax return (including extensions) for the year of the distribution.

The Notice confirms that CRDs that are eligible for tax-free rollover treatment may be recontributed to an eligible retirement plan, and such recontributions will be treated as trustee-to-trustee transfers and not as rollovers for purposes of the one-rollover-per-year limitation under Code § 408(d)(3)(B). However, CRDs paid to a qualified individual as a beneficiary (other than as a surviving spouse) are not available for such recontribution.

If a qualified individual includes a CRD in gross income in the year of distribution but then recontributes the CRD to an eligible retirement plan after filing his or her federal income tax return for the year of distribution, the individual will need to file an amended return and a revised Form 8915-E for the year of distribution to reduce his or her gross income by the amount of the recontribution. If a qualified individual chooses to include the CRD in gross income ratably over a three-year period and, in any of those years, recontributes an amount that is greater than the amount ratably included in income for that year, then the individual is permitted to either carry forward or carry back the excess amount of the recontribution to reduce gross income in a previous or subsequent tax year, respectively.

4. Additional Clarifications Regarding CRDs

CRDs Treated as Satisfying Certain Plan Distribution Restrictions

The CARES Act provides that the general statutory limitations on distributable events applicable to 401(k) plans, 403(b) plans, governmental 457 plans, and the Federal Employees Thrift Savings Plan will not prevent a plan sponsor from expanding distribution options under its plan(s) to allow amounts attributable to elective deferrals, qualified nonelective contributions, qualified matching contributions, or safe harbor contributions to be distributed as CRDs, even though such amounts are distributed before an otherwise permitted distributable event (such as severance from employment, disability, or attainment of age 59½). However, the Notice clarifies that the above relief does not change any other plan distribution rules (such as, for example, distribution limitations applicable to qualified pension plans).

CRDs Not Subject to Certain Eligible Rollover Distribution Requirements

For CRDs that constitute eligible rollover distributions (“ERDs”), the Notice clarifies that plans are not required to meet the following ERD requirements:

- Offering direct rollovers of ERDs;
- Providing 402(f) notices (which are notices plan administrators typically must provide to ERD recipients to explain the tax consequences of such distributions); and
- Withholding 20% from ERDs for federal income tax purposes.

Reliance on Participant Certifications

The Notice clarifies that plan administrators may rely on a participant’s certification that he or she is a qualified individual, unless the administrator has actual knowledge that the individual’s certification is not accurate, and administrators are not obligated to inquire into the truthfulness of a certification. The Notice provides a sample of an acceptable individual certification, which may be used for CRDs or loans.

5. Suspension of Plan Loan Repayments

In addition to the guidance described above regarding CRDs, the Notice provides guidance regarding the treatment of plan loans during the period specified in the CARES Act. The CARES Act provides for increased loan limits for plan loans made to qualified individuals from March 27, 2020 to September 23, 2020 and a one-year suspension of repayments for qualified individuals with outstanding loan repayments due from March 27, 2020 to December 31, 2020. The Notice provides clarification to plan sponsors regarding the application of the revised loan terms under the CARES Act. Notably, the Notice clarifies that the loan provisions of the CARES Act are optional; plan sponsors are not required to implement the CARES Act's plan loan provisions.

The Notice clarifies how the loan suspension period is intended to work and provides a safe harbor along with a helpful illustration. Under the safe harbor, loan repayments are suspended through December 31, 2020. When loan repayments resume on January 1, 2021, they are reamortized to account for the suspension period. The term of the underlying loan may then be extended by up to one year from the date the loan was originally due to be fully repaid. Interest accruing during the suspension period must be added to the remaining principal of the loan, with that entire amount then reamortized over the new remaining period of the loan (which is the date the loan originally would have been fully repaid, plus up to one year).

The Notice acknowledges that this method is merely a safe harbor, and that there are other reasonable, but perhaps more complex, methods to administer coronavirus-related loan suspensions. For example, in a plan with a suspension period beginning April 1, 2020, each repayment that becomes due during the suspension period may be delayed to April 1, 2021. After originally scheduled repayments for January through March of 2021 are made, the outstanding balance of the loan on April 1, 2021, including the delayed repayments with interest, may be reamortized over a period that is up to one year longer than the original term of the loan.

6. Cancellation of Nonqualified Deferred Compensation Plan Elections

Finally, the Notice provides additional relief for individuals participating in nonqualified deferred compensation plans. A nonqualified deferred compensation plan subject to Code § 409A can allow participants who receive a CRD from an eligible retirement plan to cancel their nonqualified deferral election for the remainder of 2020, or the nonqualified deferred compensation plan may provide that a participant's deferral election is automatically cancelled when the participant receives a CRD. All nonqualified deferrals for these participants must be cancelled prospectively, not just reduced or delayed.

For more information about anything discussed in this Client Update, please contact a member of Maynard Cooper & Gale's [Employee Benefits & Executive Compensation practice group](#).

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