

June 2020

IRS Issues Guidance Expanding COVID-19 Relief for Plan Participants and Employers

On June 19, 2020, the Internal Revenue Service (IRS) released Notice 2020-50 (Notice), providing guidance on Coronavirus-Related Distributions (CRDs) and loan relief under section 2202 of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). This Alert outlines key provisions of the Notice.

As background, the CARES Act permits a “qualified individual” to:

- take a CRD of up to \$100,000 in the aggregate from all 401(a), 401(k), 403(b) and governmental 457(b) plans and traditional IRAs from January 1, 2020 to December 30, 2020;
- take a loan under an enhanced loan limit up to the lesser of: (1) \$100,000 (minus outstanding plan loans of the individual), or (2) the participant’s vested account from a 401(a), 401(k), 403(b), or governmental 457(b) plan permitting loans from March 27, 2020 to September 22, 2020; and
- suspend loan repayments due from March 27, 2020 to December 31, 2020 where the loan from a 401(a), 401(k), 403(b), or governmental 457(b) plan was outstanding on or after March 27, 2020.

CRDs and Loan Relief as Optional Plan Design Features

Notice 2020-50 confirms that it is optional for employers to adopt the CARES Act’s CRD and loan relief, including the loan repayment delay, for their 401(a), 401(k), 403(b) and governmental 457(b) plans. Plans sponsors can offer some, all, or none of the CARES Act’s distribution and loan relief.

The Notice also confirms that a qualified individual is permitted to designate a distribution as a CRD, even if the distributing plan chooses not to make CRDs available. The individual will be responsible for reporting the distribution as a CRD when filing the federal individual income tax return for the 2020 tax year by completing Form 8915-E (“Qualified 2020 Disaster Retirement Plan Distributions and Repayments”, which the IRS expects to make available before the end of 2020).

Expansion of the Definition of Qualified Individual

The CARES Act’s CRD and loan relief is only available to certain “qualified individuals” who:

- are diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,
- have a spouse or dependent diagnosed with that virus or disease, or
- experience adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to that virus or disease, being unable to work due to lack of child care due to that virus or disease, closing or reducing hours of a business owned or operated by the individual due to that virus or disease.

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The CARES Act also authorized the Treasury Department and the IRS to issue guidance to expand the list of factors for a “qualified individual.” The Notice expands the definition of a “qualified individual” to include anyone who:

- is diagnosed, or whose spouse or dependent is diagnosed, with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act)
- experiences adverse financial consequences as a result of the individual, the individual's spouse, or a member of the individual's household (that is, someone who shares the individual's principal residence):
 - 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
 - closing or reducing hours of a business that they own or operate due to COVID-19
 - having pay or self-employment income reduced due to COVID-19
 - has a job offer rescinded or start date for a job delayed due to COVID-19

Reliance on Self-Certification for CRDs and CARES Loans Explained

The Notice clarifies that administrators may rely on an individual's self-certification that they meet the definition of a qualified individual unless the plan administrator has actual knowledge to the contrary. To meet this standard, the Notice states there is no requirement that the employer inquire into whether the individual meets the conditions to be classified as a qualified individual, but rather whether the employer has sufficiently accurate information to determine the veracity of a certification.

The Notice includes a self-certification example under which the employee is not required to identify the specific circumstances that make the employee a qualified individual, but must only certify that at least one of the conditions under definition of “qualified individual” is satisfied.

Employer Safe Harbor for Loan Repayment Suspension

The Notice provides a safe harbor method for commencing repayment of loans where outstanding payments were suspended during the period from March 27, 2020 to December 31, 2020. Under the safe harbor, repayments would resume after the suspension period ends, and the term of the loan may be extended for a period up to one year following the original repayment date of the loan. Any subsequent repayments of the loan shall be adjusted appropriately to reflect the interest accrued during the delay. The Notice provides other alternative approaches and suggests that there may be other reasonable, possibly more complex ways to administer the loan repayment process.

Administration of a CRD

The Notice also confirms that:

- while CRDs are limited to an overall limit of \$100,000 per person, they are not limited to the amount that is necessary to satisfy a financial need arising from COVID-19.
- pension plans, such as money purchase plans, may not permit a CRD before an otherwise permissible distributable event (i.e., in-service withdrawals are not permitted before age 59½).

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- plans that are subject to spousal consent must obtain spousal consent for a CRD.
- CRDs are reported on IRS Form 1099-R, even if repaid in the same year, using distribution code 2 (early distribution, exception applies) or code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

Recontribution of CRDs

The CARES Act permits participants who have received a CRD to recontribute the CRD amount to an eligible retirement plan within 3 years after the date that the CRD was distributed. The Notice clarifies that the recontribution is eligible for tax-free rollover treatment into a 401(a), 401(k), 403(b) or governmental 457(b) plan or traditional IRA. However, this is a permissive plan feature and a plan that does not permit rollovers is not required to change its policies or provisions to accept repayments of CRDs. The Notice indicates that individuals can designate periodic payments and distributions that would have been required minimum distributions (RMDs) but for the CARES Act's 2020 RMD waiver as CRDs. The IRS also clarified that a reduction or offset of a qualified individual's account balance in order to repay a loan can be treated as a CRD, however loans that are deemed distributions may not be classified as CRDs and are ineligible for recontribution.

The Notice also provides examples of how an individual would address reporting recontributions on the federal individual income tax return.

Clarification of Cancelling Participant Deferral Election under a Nonqualified Deferred Compensation Plan

A nonqualified deferred compensation plan under Section 409A of the Internal Revenue Code may provide for a cancellation of a deferral election due to an unforeseeable emergency or a hardship distribution from the employer's qualified plan. Notice 2020-50 states that a nonqualified plan may provide for a cancellation of a deferral election due to a CRD from the employer's plan. The deferral election must be cancelled, not merely postponed or otherwise delayed.

Voya continues to monitor these regulatory developments impacting retirement plans.

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