



## ALERTS

### IRS Provides Definitive Guidance On CARES Act Retirement Plan Provisions

June 25, 2020

#### Highlights

The IRS has provided additional guidance on coronavirus-related distributions and special participant loan terms applicable to retirement plans under the CARES Act

The definition of a qualified individual has expanded to make coronavirus-related distributions and the special participant loan terms more accessible

The guidance also clarifies that retirement plan provisions in the CARES Act are optional and provides direction on tax treatment and administration of coronavirus-related distributions

Since the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was adopted in late March, [retirement plan sponsors and participants have requested clarification](#) regarding certain provisions that temporarily increase access to plan distributions (in the form of “coronavirus-related distributions”) and participant loans, and also relax loan repayment terms for participants who are “qualified individuals.”

In May, the Internal Revenue Service (IRS) addressed some questions informally on its website in the form of questions and answers. And then

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**Lori L. Shannon**

Partner  
Chicago

P 312-214-5664  
F 312-759-5646  
[lori.shannon@btlaw.com](mailto:lori.shannon@btlaw.com)



**Michael G. Paton**

Of Counsel (Retired)

P 317-231-7201  
[michael.paton@btlaw.com](mailto:michael.paton@btlaw.com)

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last week, the IRS issued its long-awaited guidance on retirement plan-related provisions in the CARES Act in [Notice 2020-50](#).

## **What Plan Distribution and Loan Provisions Are Included in the CARES Act?**

Under the CARES Act, coronavirus-related distributions of up to \$100,000 may be made from eligible retirement plans between Jan. 1 and Dec. 30, 2020. Such distributions are not subject to the 10 percent additional tax that otherwise generally applies to distributions made before an individual reaches age 59½.

These coronavirus-related distributions may be included in a participant's income in equal installments over a three-year period and may be recontributed over a three-year period to a plan or IRA to "undo" the tax consequences of the distribution.

Special plan loan provisions are also provided under the CARES Act for qualified individuals. These plan provisions may suspend loan repayments that are due through Dec. 31, 2020, and the dollar limit on loans made through Sept. 22, 2020 is raised from \$50,000 to \$100,000 (or up to 100 percent of vested account balance).

## **Who is a Qualified Individual?**

Only participants who certify that they are qualified individuals may receive coronavirus-related distributions or take advantage of the participant loan relief provided under the CARES Act.

Under the CARES Act, a qualified individual is anyone who:

1. Is diagnosed, or whose spouse or dependent is diagnosed, with the virus SARS-CoV-2 or 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)
2. 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 child care 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
  - Having a job offer rescinded or start date for a job delayed due to COVID-19

Notice 2020-50 expands the definition of qualified individual i) by

expanding the definition of adverse financial consequences to include factors such as reductions in pay, rescissions of job offers, and delayed start dates and ii) to include a participant's spouse or household member who experiences adverse financial consequences.

Plan administrators may rely on an individual's certification that the individual is a qualified individual, absent actual knowledge to the contrary. A model certification is provided in the notice. Regardless of the certification, an individual must actually be a qualified individual in order to obtain favorable tax treatment.

## **Are the Distribution and Loan Provisions in the CARES Act Required Changes?**

Notice 2020-50 clarifies that the provisions in the CARES Act which provide for coronavirus-related distributions and temporary changes to the participant loan rules are optional. A plan sponsor may decide the extent to which such provisions are adopted.

## **Are There Special Rules Related to the Suspension of Loan Repayments?**

Notice 2020-50 provides a safe harbor procedure for implementing the suspension of loan repayments otherwise due through the end of 2020. However, plan sponsors are not required to follow the safe harbor, as the notice acknowledges that other reasonable ways to administer the loan repayment rules are permissible.

Under the safe harbor, a qualified individual's obligation to repay a plan loan may be suspended for any period beginning on or after March 27, 2020, and ending not later than Dec. 31, 2020 (referred to as the suspension period). Loan repayments must resume after the end of the suspension period, and the term of the loan may be extended by up to one year from the date the loan was originally due to be repaid.

The suspension will not cause the loan to be deemed distributed even if, because of the suspension, the term of the loan exceeds five years. Interest accruing during the suspension period must be added to the remaining principal of the loan. The loan must be reamortized and repaid in substantially level installments over the remaining period of the loan (i.e., five years from the date of the loan, assuming that the loan is not a principal residence loan, plus up to one year from the date the loan was originally due to be repaid). An employer may choose to permit a suspension period that is less than the maximum suspension period and may subsequently choose to extend the suspension period, but not beyond Dec. 31, 2020.

## **What Must a Plan Sponsor Do to Provide for Coronavirus-Related Distributions and Recontributions?**

A plan sponsor may expand the distribution options under its plan to permit elective, qualified nonelective, qualified matching, or safe harbor contributions to be distributed as a coronavirus-related distribution, even though it is distributed before an otherwise permitted distributable event, such as severance from employment, disability, or attainment of age 59½.

Otherwise, the rules for when plan distributions are permitted to be made from employer retirement plans have generally not changed.

For example, a pension plan is not permitted to make a distribution:

- Before an otherwise permitted distributable event even though the distribution, if made, would qualify as a coronavirus-related distribution
- Under a distribution form that is not a qualified joint and survivor annuity without spousal consent even though the distribution, if made, could be treated as a coronavirus-related distribution

An employer is permitted to choose whether, and to what extent, to treat distributions under its plans as coronavirus-related distributions. A plan administrator is permitted to develop any reasonable procedures for identifying which distributions are treated as coronavirus-related distributions under its retirement plans. Even if a distribution is not treated as coronavirus-related by the plan sponsor, a qualified individual may treat a distribution that meets the requirements of a coronavirus-related distribution as such on the individual's federal income tax return.

A qualified individual need not be offered a direct rollover for a coronavirus-related distribution, and the plan administrator is not required to provide a Section 402(f) notice (despite the possibility of being recontributed). A plan administrator or payer of the coronavirus-related distribution is not required to withhold 20 percent of the distribution, but voluntary withholding applies.

It is anticipated that eligible retirement plans will accept recontributions of coronavirus-related distributions, which are to be treated as rollover contributions. However, a plan is not required to accept recontributed coronavirus-related distributions if it does not accept rollover contributions.

The notice also provides guidance on how qualified individuals will reflect the tax treatment of coronavirus-related distributions (and recontributions) on their federal income tax filings.

## **Do These Changes Impact Nonqualified Deferred Compensation Plans?**

A nonqualified deferred compensation plan subject to Section 409A may provide for cancellation of a service provider's deferral election, or such a cancellation may be made, due to an unforeseeable emergency or a hardship distribution. For this purpose, a coronavirus-related distribution is considered a hardship distribution. Accordingly, a nonqualified deferred compensation plan may provide for a cancellation of the service provider's deferral election, or such a cancellation may be made, due to a coronavirus-related distribution. The deferral election must be canceled, not merely postponed or delayed.

## **Action Steps for Plan Sponsors**

During these continuing uncertain times, plan sponsors should consider

the following best practices:

- Work with service providers to implement desired plan changes
- Ensure that service providers are communicating with impacted participants regarding revised loan repayment schedules
- Ensure that service providers are using the “updated” definition of qualified individual for purposes of certification (follow model provided by IRS)
- Communicate with participants regarding retirement plan changes
- Consider the impact of coronavirus-related distributions on deferral elections made under nonqualified deferred compensation plans
- Encourage participants to consult with their tax advisers regarding the tax treatment of coronavirus-related distributions and recontributions
- Work with employee benefits counsel to amend plans timely and provide updated summary plan descriptions or summaries of material modifications

For more information, please contact the Barnes & Thornburg attorney with whom you work, or Lori Shannon at 312-214-5664 or [lori.shannon@btlaw.com](mailto:lori.shannon@btlaw.com), or Michael Paton at 317-231-7201 or [michael.paton@btlaw.com](mailto:michael.paton@btlaw.com).

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