

Latest IRS Guidance on CARES Act Retirement Plan Provisions

June 4, 2020

On May 4, 2020, the IRS published "Coronavirus-Related Relief for Retirement Plans and IRAs Questions and Answers," providing interpretive guidance for plan administrators, employers, and plan participants on the retirement plan provisions of the Coronavirus Aid, Relief, and Economic Security Act. Lathrop GPM's summary of CARES Act retirement plan provisions is available [here](#). Key takeaways from the IRS Q&A are summarized below.

Formal Guidance Announced

As predicted, the IRS is preparing formal guidance on CARES Act retirement plan provisions. To the extent CARES Act retirement plan provisions are substantially similar to sections 101 and 103 of the Katrina Emergency Tax Relief Act of 2005 (KETRA), the forthcoming guidance will mirror relevant sections of Notice 2005-92. In addition to announcing formal guidance, the Q&A references various sections and examples from Notice 2005-92 when addressing CARES Act retirement plan provisions.

Additional Factors May Expand Definition of "Qualified Individual"

Through December 31, 2020, "qualified individuals" may receive distributions and in-service withdrawals, termed "coronavirus-related distributions" of up to \$100,000, in the aggregate, from all plans and IRAs without incurring the 10% early withdrawal penalty that would normally be applicable. A coronavirus-related distribution, which also provides other tax benefits such as income averaging over three years, must be paid to a qualified individual on or after January 1, 2020 and before December 30, 2020. Currently, qualified individuals are individuals who: (i) have been diagnosed with the SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention (the CDC); (ii) have a spouse or dependent who has been diagnosed with the SARS-CoV-2 or with COVID-19 by a test approved by the CDC; or (iii) have experienced adverse financial consequences as a result of being quarantined, furloughed or laid off, having work hours reduced, being unable to work due to lack of child care, or closing or reducing the hours of business owned or operated by the participant.

Although many plan participants may be experiencing a financial hardship due to the pandemic, they may not necessarily meet the current qualified individual definition. For example, do participants qualify if they



take a mandatory or voluntary pay cut but do not reduce their working hours? Similarly, do participants qualify if they voluntarily reduce their working hours?

In light of the expanding group of financially-distressed plan participants, the Treasury Department and IRS have received and are reviewing comments from the public requesting expansion of the list of factors considered to determine whether a plan participant is a qualified individual.

Plan Administrator Reliance on Individual Self-Certification

Generally, administrators of eligible retirement plans may rely on an individual's certification that he or she is a qualified individual unless administrators have actual knowledge that an individual is ineligible. An administrator may rely on an individual's certification in making and reporting a distribution, but individuals must meet the eligibility requirements to treat the distribution as a coronavirus-related distribution on their tax returns. It remains unclear how individuals should substantiate their eligibility.

Reporting Coronavirus-Related Distributions

Eligible retirement plans must report coronavirus-related distributions to qualified individuals on Form 1099-R even if the qualified individual repays the distribution in the same year. The IRS will publish more information on how plans should report these distributions for 2020.

Repaying Coronavirus-Related Distributions

If qualified individuals repay their coronavirus-related distributions to an eligible retirement plan within three years of receiving the distribution, the distribution is not included in gross income because the repayment will be treated as a direct rollover. Even if a plan does not normally accept rollover contributions, the plan does not have to change its terms or procedures to accept these repayments.

Additionally, individuals who repay their distributions may file amended federal income tax returns to claim any available refund attributable to the amount of the distribution they previously included in gross income. Individuals should file forthcoming Form 8915-E to report repayment of a coronavirus-related distribution and to determine the amount of any coronavirus-related distribution includible in income for the year. The IRS anticipates publishing Form 8915-E by the end of 2020.

The Q&A references examples from Notice 2005-92 that permit individuals to claim income tax refunds even if they elect out of the three-year ratable income inclusion method for including their coronavirus-related distributions in gross income or obtain extensions to file their tax returns.

Employers May Increase Plan Loans and Suspend Repayments



Qualified individuals may take out plan loans at an increased amount made between March 27, 2020 and September 22, 2020. The loan limit may be increased to the lesser of \$100,000 (reduced by any outstanding loans) or the individual's vested benefit under the plan.

Similarly, if a plan loan is outstanding on or after March 27, 2020, all regularly scheduled loan repayments due between March 27, 2020 through December 31, 2020 may be delayed under the plan for up to one year. Any payments due after the suspension period will be adjusted to reflect the delay and any interest accruing during the delay.

Under the CARES Act, employers do not have to treat distributions as coronavirus-related distributions, increase the maximum amount of plan loans, or change plan loan repayment schedules. However, qualified individuals may still treat eligible distributions, such as hardship distributions or distributions on termination of employment, as coronavirus-related distributions on their federal income tax returns even if their employers do not change their plans. Only the portion of the distribution that does not exceed the \$100,000 limit is eligible for the gross income exclusion described above. An example from Section 4.A of Notice 2005-92 suggests that any distribution above the \$100,000 limit must be included in the individual's gross income, is subject to the 10% early withdrawal penalty (unless another exception to the penalty applies), and is ineligible for re-contribution to an eligible retirement plan within 3 years.

Some Limits on Plan Distributions Still Apply

Just as the retirement plan provisions of the CARES Act are optional for employers to adopt, the CARES Act does not otherwise modify limits on when certain other plan distributions are permitted from employer-sponsored retirement plans. For example, defined benefit pension plans and money purchase pension plans may not make distributions prior to an otherwise permitted distributable event merely because the distribution would qualify as a coronavirus-related distribution. Likewise, defined benefit pension plans and money purchase pension plans may not make distributions under a distribution form that is not a qualified joint and survivor annuity without spousal consent just because the distributions would otherwise be treated as a coronavirus-related distribution.

If you have any questions about any of these CARES Act retirement plan provisions or the implementation options offered by the plan recordkeeper, please contact Greg Kuhn, John Nichols, Virginia Schubert, Business Transaction Practice Group Chair Mark Williamson or your regular Lathrop GPM contact.