

IRS Issues CARES Act Guidance: Retirement Plan Distribution and Loan Provisions

The Internal Revenue Service (IRS) recently issued [guidance](#) in the form of questions and answers (Q&As) regarding the retirement provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) set forth in Section 2202 of the CARES Act. While not addressing all open issues, the Q&As provide retirement plan sponsors with a number of helpful clarifications regarding the CARES Act retirement provisions that we previously summarized in an information memo that can be found [here](#).

As background, Section 2202 of the CARES Act introduced the following special rules for retirement plans:

- **Coronavirus-Related Distributions.** Qualified individuals may elect distributions from an eligible retirement plan (e.g., a 401(k) or 403(b) plan) of up to \$100,000 during the period from January 1, 2020 through December 31, 2020. These distributions are not subject to the normally applicable 10% tax for in-service withdrawals made prior to attaining age 59-1/2 and may be included ratably in income over a three-year period. Qualified individuals also may elect to repay the distributions to the plan over a three-year period.
- **Plan Loans.** The maximum loan amount available to qualified individuals was increased to the lesser of \$100,000 (minus the value of outstanding loans), or 100% of the participant's vested account balance under the plan, for plan loans made between March 27, 2020 and September 22, 2020. Further, if a loan is outstanding on March 27, 2020, the due date for any repayment due between March 27, 2020 and December 31, 2020 may be delayed for up to one year, subject to an interest adjustment to reflect the delay in repayment.

Some of the more important issues addressed in the Q&As are summarized below.

Distribution and Loan Provisions Are Optional. The Q&As clarified that adding coronavirus-related distributions and the new plan loan provisions is an optional decision for plan sponsors. This Q&A is notable because the statute appeared to indicate that the loan delay provisions are mandatory. The guidance makes it clear that an employer may choose to elect any of the distribution or loan rules independently. For example, a plan sponsor could elect to adopt the delayed loan repayment provision, but not increase the maximum loan amount under a plan or add coronavirus-related distributions.

The Q&As also provide that if a plan sponsor does not adopt coronavirus-related distributions, a qualified individual may treat a distribution that meets the requirements to be a coronavirus-related distribution as a coronavirus-related distribution on the individual's federal income tax return (e.g., such an individual would be exempt from the 10% early distribution tax and could spread the tax impact ratably over a three-year period).

Qualified Individuals. The Q&As reiterate the eligibility requirements to be considered a qualified individual that are set forth in the statute. Those requirements generally provide that an individual is an eligible individual if the person, or his or her spouse or dependent, is diagnosed with COVID-19 by an approved test, or if the individual experiences adverse financial consequences as a result of certain work-related events (e.g., being quarantined or furloughed) or lack of childcare. Notably, the Q&As did not expand the definition of qualified individual to include an individual whose spouse or dependent has experienced an adverse financial consequence due to COVID-19. However, the guidance indicated that the Treasury Department and the IRS have received and are reviewing comments from the public, and it is possible that the IRS will expand on the definition of a qualified individual in future guidance to include individuals whose spouses or dependents have been adversely impacted by COVID-19.

In an effort to make coronavirus-related distributions accessible to participants, the CARES Act allows participants to self-certify that they have been impacted by COVID-19 and meet the criteria to be a qualified individual. The Q&As provide that a plan administrator may rely on an individual's certification that the individual satisfies the conditions to be considered a qualified individual, unless the plan administrator has actual knowledge to the contrary.

Distribution Rights. For 401(k) plans, 403(b) plans and governmental 457(b) plans, the CARES Act modified the otherwise applicable distribution rules to allow coronavirus-related distributions. For example, a coronavirus-related distribution is permitted even if it occurs prior to a permissible distribution event (e.g., severance from employment or attainment of age 59-1/2).

The Q&As caution that the CARES Act otherwise does not otherwise change the rules regarding when plan distributions are permitted to be made from other employer-sponsored plans. As examples, the guidance notes that money purchase plans and defined benefit pension plans are not permitted to make distributions prior to an otherwise permitted distributable event (e.g., an in-service distribution upon attaining age 59-1/2), and such plans may not make a distribution in a form that is not a qualified joint and survivor annuity without spousal consent, merely because such distributions may otherwise satisfy the requirements to be treated as a coronavirus-related distribution.

Following enactment, some commentators interpreted the statute as allowing in-service coronavirus-related distributions from pension plans and money purchase plans at any time. The Q&A clarifies that the otherwise applicable distribution requirements continue to apply with respect to such plans.

Taxation and Reporting of Coronavirus-Related Distributions. The Q&As provide that coronavirus-related distributions are generally included in income over a three-year period, commencing in the year in which the distribution occurred. For example, a \$9,000 distribution would result in reported income on the individual's federal income tax return of \$3,000 in 2020, 2021 and 2022. Alternatively, an eligible individual has the option of including the entire distribution in income in the year of the distribution. Reporting will be made on Form 8915-E (which is expected to be available before the end of 2020).

Interpretation and Future Guidance. The Q&As indicate that the IRS is formulating additional guidance that will be issued in the near future. The Treasury Department and IRS anticipate that future guidance will follow the rules set forth in IRS Notice 2005-92, which provided guidance regarding substantially similar distribution and plan loan provisions under the Katrina Emergency Tax Relief Act of 2005.

Bond continues to monitor the impact of COVID-19 and will be providing weekly updates regarding the latest federal and state guidance impacting employers and businesses. You can register for the complimentary webinar [here](#).

If you have any questions about this Information Memo, please contact [John Godsoe](#), any attorney in our [Employee Benefits and Executive Compensation Practice](#) or the attorney at the firm with whom you are regularly in contact.



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