



COVID-19 Latest Insights

Updated June 23, 2020

[Text in red below are updates reflecting IRS Notices 2020-50 and -51]

CARES Act Legislation Summary

On March 27, 2020, the Coronavirus, Aid, Relief, and Economic Security (CARES) Act (the “Act”) was signed into law. A portion of the Act is intended to loosen access to retirement plan funds and provide relief for individuals impacted by the COVID-19 pandemic. The following is a summary of the retirement-related provisions of the Act:

- **Coronavirus-related distribution (CRD)**

- Waiver of 10% penalty on early withdrawals for amounts up to \$100,000 from a retirement plan or IRA taken between January 1, 2020 and December 31, 2020 (so can be retroactively applied to distributions taken prior to enactment of the Act)
- CRDs are only available to a *qualified individual* (see “qualified individual” below)
- Individuals may elect to pay the tax on a CRD ratably over a three year period (permitted to elect to include entire CRD in income in year of distribution); if elects to include entire CRD in year of distribution and later recontributes any amount the individual must use Form 8915-E and file an amended return; and
- Individuals may elect to repay the CRD back to the plan, tax-free, over the three years from the date of the withdrawal (not limited by plan limits). May be repaid back into the plan allowing the withdrawal, another qualified plan or an IRA that accepts rollovers. CRD will be treated as though repaid in a direct rollover. Repayment does not count towards the single rollover per year limitation. If plan does not allow for rollovers it is not required to accept recontribution. Plan administrator permitted to

rely on qualified individual's certification (see "qualified individual" below) as whether recontribution meets CARES Act rules for CRD unless possesses actual knowledge to contrary.

- Plan sponsor has discretion whether to offer this design, with modifications (if so desired and their service provider can accommodate), in their qualified plan
- Act does not limit a CRD to active employees (should check with service provider if they will allow CRDs to terminated participants)
- Distributions that would have been required minimum distributions ("RMD") in 2020 but for the CARES Act's suspension of RMDs can be treated as CRD
- Distributions received by a beneficiary that is a qualified individual may be treated as CRD for taxation purposes, but cannot be recontributed
- Reduction or offset of a qualified individual's account balance to repay a loan is permitted to be treated as CRD
- Hardship distributions made during the effective time period that meet the requirements under the CARES Act may be recharacterized as CRD for all intents and purposes
- Can include amount attributable to elective deferrals, qualified nonelective contributions, qualified matching contributions, or safe harbor contributions
- Plan is not required to provide 402(f) notice or to withhold 20% of distribution on CRD

- **Plan loans**

- For participant loans taken from plans between enactment of the Act and September 23, 2020, loan limits may be increased for qualified individuals (see "qualified individual" below) to the lesser of:
 - \$100,000; or
 - 100% of their vested account balance.
 - Plan sponsors may elect to set a lower limit, but cannot allow for loans that exceed these limits

- Qualified individuals (see “qualified individual” below) with existing outstanding loans with a repayment due from the date of enactment of the Act through December 31, 2020 may delay each of those loan repayments for up to one year. **Scheduled** loan repayments will resume with the first repayment due on or after January 1, 2021. Interest will accrue on the delayed payments. The plan can choose to extend the term of the loan for the period of delay (equal to the first payment delayed through December 31, 2020) as well. Doing so would allow participants to avoid a financial hardship when they do resume repayment by keeping their repayment amount close to the same amount (adjusted within the reamortization for interest accrued) as prior to the suspension of the repayment.
- Plan sponsor has discretion whether to implement these design elements, with modifications (if so desired and their service provider can accommodate), in their qualified plan

- **Qualified individual**

- Eligibility for the CRD and the adjustment to the loan limits is conditioned upon a participant meeting one of the following criteria:
 - Is diagnosed with COVID-19;
 - Whose spouse, or dependent (as defined by the Internal Revenue Code) is diagnosed with COVID-19;
 - Who experiences, **or whose spouse or member of the individual’s household experiences**, adverse financial consequences due to furlough, quarantine, layoff, reduction in hours, inability to work due to lack of child care 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 closing of business/reduction of hours by individual due to COVID-19; or**
 - **For these purposes, a “member of the individual’s household” is someone who shares the individual’s principal residence.**
 - Factors determined by the Secretary of the Treasury

- Importantly, the Act does not require the plan sponsor to verify whether an individual qualifies for the COVID-19 adjusted loan limits or the CRD. The plan sponsor may rely upon a participant's certification for eligibility, unless plan sponsor has actual knowledge to the contrary. [See sample certification at the end of document]

Required minimum distributions

- The Act waives RMD payments for 2020.
 - Includes RMD attributable to 2019 which was not paid by January 1, 2020;
 - Includes RMD if made prior to enactment of the Act in 2020; but
 - Does *not* include RMD distributions that were made in 2019.
- For RMDs that were made prior to enactment of the Act in 2020 the participant may defer taxes and roll it back to the plan from which it was made or roll it to another qualified plan or IRA which accepts rollovers. ~~Additional guidance regarding any potential impact to the 60 day rollover period is expected from the IRS.~~ Participants who already received distributions in 2020 have an extension of the 60 day period for rollovers to August 31, 2020.
- Taxpayers receiving certain distributions that would be treated as part of a series of substantially equal periodic payments that may have been, in whole or in part, RMDs may be rolled over.
- Notice 2020-51 provides a sample plan amendment that allows participants a choice between receiving and not receiving distributions.
 - Employers must select one of the following default options:
 - First option includes default in absence of participant/beneficiary election to pay out distributions that include 2020 RMDs; or
 - Second option includes default in absence of participant/beneficiary election to suspend RMDs for 2020.

- Employers must select one of the following rollover options:
 - Availability of direct rollover of only 2020 RMDs;
 - Availability of direct rollover of 2020 RMDs and “extended 2020 RMDs,” or
 - Availability of a direct rollover of entire amount of a distribution but only if the distribution consists of part or all of a 2020 RMD and additional amounts are eligible rollover distributions.

- **Defined benefit plans**

- The Act allows these plans to delay any contributions due in calendar year 2020 (including all quarterly contributions) until January 1, 2021. The new January 1, 2021 due date applies for all quarterly contributions (they would no longer be separately due).
- Leveraging the delayed due date would subject the employer to interest on the delayed contributions from the original due date(s) at the effective rate for the plan year that includes the date of payment.
- Plan sponsors should expect leveraging delay should lead to higher contributions in 2021.

- **Reporting and notices**

- The Act empowers the Department of Labor to extend certain deadlines for notices – more information expected in the coming weeks.
- Plans must report CRDs on Form 1099-R
 - Even if qualified individual recontributes CRD to same plan in same year
 - Payor is permitted to use distribution codes 2 or 1 in box 7 of Form 1099-R
- Qualified individuals report CRD on their 2020 federal income tax return and on Form 8915-E, Qualified 2020 Disaster Retirement Plan Distributions and Repayments. Individuals will use Form 8915-E to report recontributions made during taxable year and determine the amount of the CRD includible in income for the taxable year.

- In the event a qualified individual recontributes an amount that exceeds the amount of a CRD that would be includible in income the individual may carry forward or carry back the excess to reduce the amount of the CRD that is includible in income. In carry back scenarios an amended income tax return and a Form 8915-E would be required.
- If qualified individual dies before full amount of CRD is taken into account for taxation the remainder must be included in taxable year that includes individual's death.

Plans can adopt the new rules immediately. The plan will eventually need to be amended on or before the last day of the first plan year beginning on or after January 1, 2022, or later if prescribed by the Secretary of the Treasury.

Sample Qualified Individual Certification:

Name: _____ (and other identifying information requested by the employer for administrative purposes).

I certify that I meet at least one of the following conditions: (1) I was diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (referred to collectively as 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) my spouse or my dependent was diagnosed with 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); or (3) I have experienced adverse financial consequences because: (i) I, my spouse, or a member of my household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19; (ii) I, my spouse, or a member of my household was unable to work due to lack of childcare due to COVID-19; (iii) a business owned or operated by me, my spouse, or a member of my household closed or reduced hours due to COVID-19; or (iv) I, my spouse, or a member of my household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19.

Signature: _____

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Source: https://www.napa-net.org/sites/napa-net.org/files/CAREs%20Act%20revised_032220.pdf

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