

Employee Benefits Alert

IRS Issues Guidance for Employers and Plan Administrators on Coronavirus-Related Distributions from Retirement Plans and the Coronavirus-Related Plan Loan Rules

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The IRS has provided much needed guidance in Notice 2020-50 to assist employers and plan administrators in applying the coronavirus-related distribution provisions and plan loan modification rules of the CARES Act to tax-qualified retirement plans. The CARES Act, which was originally enacted in March 2020, generally allows early distributions of up to \$100,000 to be taken from retirement plans between January 1, 2020 and December 31, 2020 without paying the 10% early withdrawal tax and the option to pay the income tax on the distribution ratably over a 3-year period or repay all or a portion of the distribution to the plan within 3 years. In addition, the CARES Act increases retirement plan loan limits for loans made on or after March 27, 2020 and before September 23, 2020 and allows for a one-year deferral of any loan payment that is due between March 27, 2020 and December 31, 2020. The following is a summary of the new IRS guidance as it relates to employers and plan administrators.

Coronavirus-Related Distributions

- Employers can choose whether and to what extent a distribution is coronavirus distribution and develop reasonable procedures for identifying such distributions; however, employers must be consistent in characterizing similar distributions.
- Coronavirus distributions may include required minimum distributions, periodic payments and distributions to beneficiaries, or a reduction or offset of an account balance to repay a plan loan; however, certain types of distributions, such as corrective distributions and returns of excess contributions required by law cannot be treated as coronavirus distributions.
- Plans may allow coronavirus distributions without adopting the CARES Act loan provisions.
- A plan will not be disqualified if an individual's total coronavirus distributions exceed \$100,000 due to distributions from IRAs or plans of unrelated employers; the limit applies on an employer-by-employer basis (other than for employers in a controlled or affiliated service group).
- Plan administrators may rely on an individual's certification that he or she satisfies the conditions for a coronavirus distribution, unless the administrator has actual knowledge to the contrary; there is no obligation to inquire unless the administrator already has sufficiently accurate information to determine whether the certification is correct.
- Pension plans cannot make a distribution before a permitted distribution event occurs merely because the distribution would qualify as a coronavirus distribution.
- Spousal consent is still required for coronavirus distributions from pension plans that are made in a form other than a qualified joint and survivor annuity.
- Plans are not required to offer a direct rollover with respect to coronavirus distributions, provide a 402(f) rollover notice, or withhold federal income taxes (but taxes may voluntarily be withheld).
- Coronavirus distributions are reported on Form 1099-R, even if recontributed in the same year, using distribution code 2 (early distribution, exception applies) in box 7 if no other appropriate code applies; distribution code 1 (early distribution, no known exception) can also be used.

- Plan administrators accepting a recontribution of the coronavirus distribution must reasonably conclude it is eligible for direct rollover treatment, in accordance with the CARES Act, and it is treated as a trustee-to-trustee transfer; distributions to beneficiaries (other than the employee's surviving spouse) cannot be recontributed but hardship distributions can be recontributed.
- For plans that do not accept any rollover contributions, there is no requirement to change their terms or procedures to accept recontributions of coronavirus distributions.
- The receipt of a coronavirus distribution from a plan will not be treated as a change in substantially equal payments.
- Coronavirus distributions are considered hardship distributions for purposes of the provisions of Code Section 409A that allow a service provider to cancel his or her deferral election under a nonqualified deferred compensation plan; however, a postponement or delay of the deferral election is not allowed.
- CARES Act amendments must be made by the last day of the first plan year beginning on or after January 1, 2022 (the last day of the first plan year beginning on or after January 1, 2024 for governmental plans).

Coronavirus Loan Modifications

- Employers can choose whether and to what extent to apply the coronavirus-related plan loan rules, regardless of how coronavirus distributions are treated.
- Employers may rely on the safe harbor provided in Notice 2020-50 to satisfy the general plan loan requirements while applying the coronavirus loan suspension provisions; to satisfy the safe harbor:
 - Loan repayments must resume after the end of the suspension period that begins on March 27, 2020 and ends on December 31, 2020;
 - The loan term may be extended by up to 1 year from the date the loan was originally due to be repaid;
 - Interest accruing during the suspension period must be added to the remaining principal of the loan; and
 - The loan must be reamortized and repaid in substantially level installments over the remaining period of the loan (5 years from the date of the loan, assuming that the loan is not a principal residence loan, plus up to 1 year from the date the loan was originally due to be repaid).
 - For employers that initially choose a suspension period shorter than March 27, 2020 through December 31, 2020, it can be extended, but not beyond December 31, 2020 under the safe harbor.
- The IRS recognizes that there may be other reasonable (and more complex) ways to administer the coronavirus loan suspension provisions outside of the safe harbor and an example is provided.
- Plan administrators may rely on an individual's certification that he or she is a "qualified individual" for purposes of the coronavirus-related plan loan rules, unless the administrator has actual knowledge to the contrary.