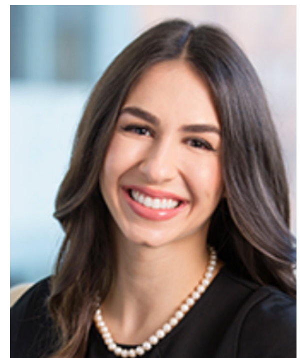
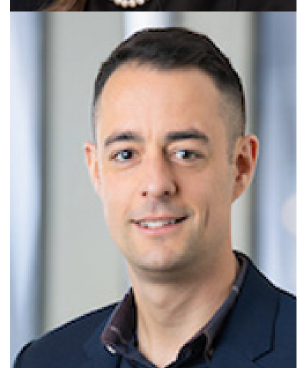
IRS Issues Coronavirus-Related FAQs for Retirement Plans and IRAs





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On May 4, 2020, the Internal Revenue Service (IRS) issued a limited set of FAQs providing administrative guidance addressing the special "coronavirus-related distribution" (CRD) and plan loan provisions under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). As anticipated, the guidance draws heavily from IRS Notice 2005-92, which provided administrative clarifications for the Katrina Emergency Tax Relief Act of 2005 (KETRA), a law that provided for relief similar to the CARES Act in the wake of Hurricane Katrina.

Background

The CARES Act provides that plan sponsors may allow qualified individuals who are participants in eligible defined contribution retirement plans, such as 401(k), 403(b), governmental 457(b) plans and individual retirement plans (IRAs), to request CRDs up to an aggregate limit of $100,000 during the 2020 calendar year. A qualified individual is a participant who:

1. is diagnosed with SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC),
2. has a spouse or dependent who is diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC, or
3. experiences adverse financial consequences due to SARS-CoV-2 or COVID-19 as a result of being quarantined; being furloughed, laid off or having work hours reduced; being unable to work due to lack of child care; having to close or reduce hours of a business

owned or operated by the individual; or as a result of other factors as determined by the Secretary of the Treasury (or the Secretary's delegate).

An individual who takes a CRD from their retirement plan account will not be subject to the 10% early distribution penalty tax that would otherwise generally apply to distributions made prior to attaining age 59½. The CARES Act also allows participants to repay the CRD amount they received to an eligible retirement plan or eligible retirement account within three years from the distribution date.

Additionally, for plan loans made between March 27, 2020 and September 22, 2020, the CARES Act increases the maximum loan amount qualified individuals may borrow from eligible retirement plans (not including IRAs) to the lesser of 1) $100,000 (minus the amount of the qualified individual's outstanding plan loans), or 2) the individual's vested benefit under the plan. The CARES Act also permits plan sponsors to give qualified individuals up to an additional year to repay certain loans. If a plan loan is outstanding on or after March 27, 2020, and any repayment on the loan is due between March 27, 2020 and December 31, 2020, that repayment due date may be delayed for up to one year, and any payments after the suspension period must be adjusted to reflect the delay and any interest accruing during the delay.

FAQs

The CARES Act FAQs provide the following administrative clarifications with respect to CRDs:

- Plan sponsors have a choice whether, and to what extent, to provide for CRDs and/or enhanced CARES Act loan provisions. As an example, this means that a plan sponsor may choose whether to permit CRDs and, separately, decide whether to permit repayment of CRDs to the plan.
- A plan administrator may rely on an individual's certification that he or she satisfies the conditions to be a qualified individual in determining whether a distribution is a CRD, unless the administrator has actual knowledge to the contrary.
- The CARES Act CRD provisions permitting in-service withdrawals are limited to defined contribution 401(k), 403(b) and governmental 457(b) plans. Importantly, this means that CRDs are generally not available from a money purchase pension plan, unless the qualified individual otherwise has a distributable event.
- Regardless of whether a plan sponsor treats a distribution as a CRD, a qualified individual who receives a 2020 distribution by December 30, 2020 may still treat a distribution that meets the requirements to be a CRD as coronavirus-related on his or her federal income tax return.
- CRDs should be reported on the qualified individual's federal income tax return. The taxable portion of the distribution must be reported as income ratably over the 3-year period (2020, 2021, and 2022), unless the qualified individual chooses to include the entire amount as income in 2020.

- Qualified individuals who receive CRDs must use the Form 8915-E (which is expected to be available before the end of 2020) to report any repayment of a CRD and to determine the amount of any CRD includible in income for the year, regardless of whether such individual is required to file a federal income tax return.
- The payment of a CRD must be reported by the plan on the Form 1099-R even if the qualified individual repays the CRD in the same year. The FAQs do not describe how he CRDs should be reported, but the IRS expects to provide more information on that later this year.
- The IRS and the Treasury Department are formulating additional guidance which they intend to release in the near future and which will likely further apply the principles of its guidance set forth in IRS Notice 2005-92 under KETRA. Additional guidance may also be issued to expand the list of factors taken into account to determine whether an individual is a qualified individual as a result of experiencing adverse financial consequences.

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