



Employee Benefits News

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IRS Notice 2020-50: Guidance on Coronavirus-Related Distributions and Loans

The *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. 116-136 (the “**CARES Act**”) became law on March 27, 2020. For information about the CARES Act, please see our [summary](#). Among other things, Section 2202 of the CARES Act allows, for the remainder of 2020, eligible retirement plans to make tax-favorable “coronavirus-related distributions” and, with respect to plan participant loans, to increase the maximum loan limit, to suspend loan payments and to extend loan terms.

The Internal Revenue Service (“IRS”) recently released **Notice 2020-50** (“Notice”), which provides detailed guidance related to these coronavirus-related distributions and participant loan changes. Of particular note, the guidance:

- **Expands Eligibility.** The definition of a “qualified individual” is expanded to also include an individual who experiences adverse financial consequences as a result of:
 - A reduction in pay (or self-employment income) due to COVID-19;
 - A job offer being rescinded due to COVID-19;
 - The start date for a job being delayed due to COVID-19;
 - Spouse or household member being quarantined for COVID-19;
 - Spouse or household member, due to COVID-19, being furloughed or laid off; having work hours reduced; being unable to work due to lack of child care; or having a reduction in pay (or self-employment income), a job offer rescinded or the start date for a job delayed.

Brownstein Comment: Employers that have added coronavirus-related distributions or loan enhancements should notify employees about the expanded eligibility provisions.

- **Nonqualified Plan Elections.** The Notice indicates that receipt of a coronavirus-related distribution is a hardship distribution for purposes of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”). As a result, nonqualified deferred compensation (“NQDC”) plans may be amended to provide that receipt of a coronavirus-related distribution either:
 - Results in the automatic suspension of the qualified individual’s deferral elections for 2020 under the NQDC plan or
 - Allows qualified individuals to elect to cancel their deferral elections for 2020 under the NQDC plan.

Brownstein Comment: Employers with NQDC plans should consider whether to adopt an amendment to allow for deferral cancellations. If adopted, participants also should be notified.

The remainder of this Alert summarizes the other key provisions of the Notice.

Reliance on Participant Certifications

The administrator of an eligible retirement plan may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual for purposes of obtaining a coronavirus-related distribution, the suspension of loan payments and extension of loan terms. Certification also is relevant for accepting recontributions of coronavirus-related distribution amounts.

- Administrator can rely on the certification unless the administrator has actual knowledge to the contrary.
 - “Actual knowledge” means the administrator already possesses sufficiently accurate information to determine the veracity of a certification, but an administrator has no obligation to inquire into whether an individual has satisfied the conditions.
- A sample form of certification is provided in the Notice. **Brownstein Comment:** We recommend that plan counsel review the certification intended to be used to determine if any other statements should be included.

Coronavirus-Related Distributions

A coronavirus-related distribution (“CRD”) is one or more distributions to a “qualified individual” during calendar year 2020, up to an aggregate of \$100,000 from all eligible retirement plans in which the individual participates. A CRD is not subject to the 10% early distribution excise tax, the 25% additional tax applicable to certain distributions from SIMPLE IRAs, or mandatory federal income tax withholding. At the election of the individual, the CRD can be included in the individual's taxable income ratably over three years, beginning with the year of the CRD. The CRD is not subject to federal taxation to the extent it is recontributed to an eligible retirement plan within three years after the date of the CRD.

Brownstein Comment: Distributions from NQDC plans do not qualify for this preferential treatment.

The Notice provides the following additional guidance on CRDs:

- **Payments Can Be Coronavirus-Related Distributions, Even If Plan Is Not Amended**

The sponsor of an eligible retirement plan has the discretion to amend the plan to specifically allow for CRDs. Nevertheless, even if the plan is not so amended, a qualified individual who receives distributions from an eligible retirement plan in 2020 may elect to have up to \$100,000 of those distributions treated as CRDs, except as noted below. **Brownstein Comment:** Qualified individuals will reflect their tax position on their personal income tax return. See below for information about this reporting.

- As a result, a qualifying individual could designate any of the following plan payments received in 2020 treated as CRDs (up to \$100,000):
 - ✓ Periodic payments, such as installment or annuity payments.
 - ✓ Amounts that would have been required minimum distribution payments.
 - ✓ Amounts received by a beneficiary on account of a participant's death.
 - ✓ A reduction or offset of a qualified plan account balance in order to repay a plan loan.
- For clarity, the Notice identifies the following amounts as ineligible for treatment as CRDs:
 - ✓ Amounts distributed from the plan in order to comply with the annual additions limitations under Code § 415.
 - ✓ Excess deferrals returned in accordance with Code § 402(g).
 - ✓ Amounts refunded in order to allow the plan to pass the ADP and ACP tests.
 - ✓ Loan amounts treated as deemed distributions pursuant to Code § 72(p).
 - ✓ Dividends paid on applicable employer securities under Code § 404(k).
 - ✓ The costs of current life insurance protection.
 - ✓ Prohibited allocations treated as deemed distributions pursuant to Code § 409(p).

- ✓ Distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of Code § 414(w).
- ✓ Distributions of premiums for accident or health insurance under Treasury Regulation § 1.402(a)-1(e)(1)(i).

- **Amount of Coronavirus-Related Distributions**

- The amount of any CRD need not be limited to the amount needed to satisfy an adverse financial need arising from COVID-19. In other words, a qualified individual can take or characterize up to the full \$100,000 as a CRD even if the individual needs only a portion (or none) of the money to satisfy adverse financial consequences caused by a COVID-19-related event. **Brownstein Comment:** A qualified individual may wish to utilize the CRD rules as a means to transfer money from one eligible retirement plan to another, when such transfer is not otherwise available. For example, if a 401(k) plan allows CRDs, a participant who is a qualified individual may obtain a CRD from the 401(k) plan, then turn around and deposit those funds into an IRA.
- The aggregate \$100,000 limit is determined by taking into consideration the plan sponsor's controlled group and affiliated service groups. **Brownstein Comment:** Because the \$100,000 limit is applied per taxpayer, not per eligible retirement plan or employer controlled group, although a qualified individual could take up to \$100,000 from an employer's plan and up to \$100,000 from an IRA, only \$100,000 of those distributions would be subject to the favorable tax treatment permitted for CRDs under Section 2202 of the CARES Act.

- **Recontribution of Coronavirus-Related Distribution Amounts**

- Only the portion of a CRD that otherwise is eligible for tax-free rollover treatment may be repaid to the plan that made the distribution or another eligible retirement plan.
- Any CRD (whether from an employer retirement plan or an IRA) paid to a qualified individual who is a beneficiary of an employee or IRA owner (other than the surviving spouse of the employee or IRA owner) cannot be recontributed.

- **Funds Available for Coronavirus-Related Distributions**

- Amounts ordinarily subject to certain distribution restrictions are available for payment as part of a CRD.
 - ✓ This means that an employer may expand the distribution options under its 401(k), 403(b), governmental 457(d) plan or Thrift Savings Plan to allow amounts attributable to an elective, qualified nonelective, qualified matching, or safe harbor contributions under a qualified cash or deferred arrangement to be distributed as a CRD even though that amount is distributed before an otherwise permitted distributable event (e.g., severance from employment, disability, or attainment of age 59½).
- Amounts payable under pension plans (money purchase, defined benefit) remain subject to the spousal consent and otherwise applicable distribution timing rules.

- **Notices and Withholding Requirements Do Not Apply to Coronavirus-Related Distributions**

- The plan is not required to offer the qualified individual a direct rollover with respect to any CRD.
- The plan administrator is not required to provide the safe harbor rollover notice otherwise required under Code § 402(f).

- The plan administrator is not required to withhold an amount equal to 20% of the distribution, as is usually required under Code § 3405(c)(1) for a distribution that is eligible for direct rollover.
 - ✓ The participant must be provided an opportunity to elect voluntary withholding.

- **Plan Sponsor and Plan Administrator Discretion**

- The plan sponsor has complete discretion to determine whether and to what extent to implement the CRD provisions under Section 2202 of the CARES Act.
 - ✓ Even if a plan does not treat a distribution as a CRD, a qualified individual may treat a distribution that meets the applicable requirements as a CRD on the individual's federal income tax return.
- The plan administrator has discretion to develop any reasonable procedures for identifying which distributions are treated as CRDs.
 - ✓ Rules must be applied uniformly to all similar distributions.

- **Plan Amendment Deadline Reminders**

Plans that allow CRDs must be amended to add CRD-related provisions.

- The plan amendment deadline for employer retirement plans other than governmental plans under Code § 414(d), is the last day of the first plan year beginning on or after Jan. 1, 2022.
- Plan amendment deadline for governmental plans under Code § 414(d) is the last day of the first plan year beginning on or after Jan. 1, 2024.
- Deadlines may be extended in future guidance.

- **Tax Reporting of Coronavirus-Related Distributions**

- Eligible retirement plan must report the payment of a CRD to a qualified individual on Form 1099-R.
 - ✓ If no other appropriate code applies, the payor is permitted to use distribution code 2 (early distribution, exception applies) in box 7 of Form 1099-R.
 - ✓ However, a payor also is permitted to use distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

- **Accepting Recontributions of Coronavirus-Related Distributions**

- A plan administrator accepting retribution of a CRD must reasonably conclude that the retribution is eligible for direct rollover treatment under Section 2202(a)(3) of the CARES Act and that the retribution is made in accordance with the applicable rules.
 - ✓ The administrator may rely on the individual's certification that the rollover is related to a CRD (see above).

Brownstein Comment: Eligible retirement plans are not required to accept rollover contributions. In addition, a plan can limit the type of plan from which it will accept rollovers and/or the type of contributions or assets that it will accept as rollover contributions. Treasury Regulation § 1.401(a)(31)-1, Q&A-13. As a result, we believe that a plan could be amended to generally allow for rollover contributions but prohibit CRD rollovers.

Guidance for Qualified Individuals Receiving Coronavirus-Related Distributions

The Notice includes a variety of information as to how the qualified individual reports receipt of CRDs, the income inclusion choices available, and how recontributions and the timing of such recontributions affect income inclusion and tax reporting. **Brownstein Comment:** Individuals receiving CRDs should

be encouraged to read this section of the Notice, as well as Form 8915-E and its instructions. Of particular note:

- Qualified individuals will initially report CRDs, either in total or in part, on their federal income tax returns for 2020 and on Form 8915-E, Qualified 2020 Disaster Retirement Plan Distributions and Repayments (or, if there is no federal income tax return for 2020, by filing just Form 8915-E).
- Form 8915-E also will be used by a qualified individual to designate distributions received as CRDs and to report any recontribution for purposes of determining the amount of the CRD includible in income for the taxable year.
- A qualified individual can elect to either include (i) the taxable portion of the CRD in income ratably over the three-year period beginning in the year of the distribution or (ii) the entire amount of the taxable portion of the CRD in income in the year of the distribution. The election must be applied consistently to all CRDs received by the individual, and, once made when the federal income tax return for the year of distribution is timely filed (including extensions), the election is irrevocable.

Plan Loan Guidance

There are three aspects to the plan loan provisions under the CARES Act applicable to loans taken by qualified individuals on or after March 27, 2020, and before Sept. 23, 2020:

- The maximum amount available for loans can be increased to \$100,000 or 100% of vested account balance.
- Loan payments due between March 1, 2020, and Dec. 30, 2020, can be suspended for up to one year, provided subsequent repayments are adjusted to reflect the delay and interest accruing during the delay.
- The due date of the loan can be extended for up to one year, even if the extension takes the due date of the loan beyond five years from the original date of the loan.

The Notice confirms that the plan sponsor has complete discretion to determine whether and to what extent to implement the plan loan provisions under Section 2202 of the CARES Act. The Notice provides a safe harbor for administering these permissive suspensions and extensions, but recognizes that there are a variety of ways to administer plan loans in relation to the CARES Act provisions.

How We Can Help

Please contact one of us or your regular Brownstein attorney for answers to your questions about how this new guidance affects the administration of your company's 401(k) plan, other defined contribution plans and nonqualified deferred compensation plans, and for assistance in plan amendments and developing related communications to your employees.

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