



IRS Issues Further Guidance on CARES Act Distribution and Loan Rules

The passage of the Coronavirus Aid, Relief and Economic Security (CARES) Act left the retirement plan industry with open questions on how to administer the new rules relating to participant coronavirus related distributions (CRDs) and loans. On June 19, 2020, the IRS released Notice 2020-50 (the Notice) to address some of these open questions. The following is a brief description of the Notice's key provisions and expanded definitions.

Coronavirus-Related Distributions (CRDs)

Expanded Eligibility to Receive a CRD

The Notice expands the current list of "eligible participants" who may request a CRD to include those:

- Who experience adverse financial consequences as a result of:
 - A reduction in pay (or self-employment income) due to COVID-19.
 - Having a job offer rescinded or start date for a new job delayed due to COVID-19.
 - Experiencing a closure or reduced hours of a business owned or operated by the individual's spouse or a member of the household due to COVID-19.
- Whose spouse or other member of his or her household has experienced an adverse financial consequence as a result of quarantine, furlough, lay-off, reduction in work hours/pay, lack of childcare, or having a job offer rescinded or start date delayed due to COVID-19.

A member of an eligible participant's household is defined as an individual who shares the participant's principal residence. The individual need not be a relative, so this definition could include a roommate, housemate or other unrelated individual.

The Notice confirms that a plan administrator may rely on the participant's self-certification absent actual knowledge to the contrary. There is no duty to inquire into whether a participant has satisfied the conditions or if the amount of the CRD requested is equal to a participant's actual financial need. The IRS provided sample certification language.

Expanded Definition of CRD

The Notice also clarifies that an eligible participant may treat certain types of in-service withdrawals as a CRD during the period beginning January 1, 2020 and ending December 31, 2020. The eligible participant may make this determination regardless of whether the plan treats these distributions as CRDs.

By treating these distributions as CRDs, the participant is able to take advantage of the ability to withdraw up to \$100,000 of their vested account balance without incurring a 10% early withdrawal penalty, include such amounts in income ratably over a three year period, and recontribute the withdrawal to a qualified plan or IRA as a rollover within the three year period measured from the distribution date.

Eligible participants may treat the following types of distributions as a CRD:

- Periodic payments and distributions that would have been required minimum distributions (RMDs), but for the CARES Act waiver of RMDs for 2020.
- Distributions to a beneficiary.
- A reduction or offset to repay a plan loan (but not a deemed distribution).
- A hardship withdrawal.

By contrast, the following types of distributions may not be treated as a CRD by an eligible participant:

- Corrective distributions of elective deferrals and employer contributions that are returned to the employee.
- Excess elective deferrals, excess contributions, and excess aggregate contributions.
- Loans that are treated as deemed distributions.
- Dividends on employer securities.
- Cost of current life insurance protection.
- Prohibited allocations that are treated as deemed distributions.
- Permissible withdrawals from an EACA.
- Distributions of premiums for accident or health insurance.

Recontributing CRDs to an Eligible Plan

Although most CRDs (or a distribution that a participant has determined may be treated as a CRD, even if not classified as such by the plan) are eligible for recontribution to an employer plan or IRA, amounts distributed to a non-spousal beneficiary may not be recontributed to a plan or IRA. If the distribution is eligible for recontribution, the participant may, at any time (and in any amount) begin recontributing to the plan as of the date of the initial distribution through the end of the three-year period. As noted in previous IRS guidance, if a plan does not permit incoming rollovers, it is not required to change its rules to permit recontribution of CRDs.

Income Inclusion

Amounts that meet the criteria of a CRD must be included in income by an eligible participant either in the year of distribution, or ratably over a three-year period. However, if the eligible participant dies prior to the full amount being included in income, the remainder must be included in income for the year of death.

Certification

Plan Sponsors may rely on an individual's certification, (unless the employer has actual knowledge to the contrary) that they satisfy the conditions to recontribute amounts to the plan. Participants need not specify which of the permissible conditions they satisfy, and the Notice provides model language for self-certification. For clients that are utilizing Transamerica's CARES Act forms, Transamerica will be modifying those forms to incorporate the model language.

Tax Reporting on CRDs

CRDs must be reported on Form 1099-R. Where no other appropriate box applies, the preparer should utilize distribution codes 1 or 2 in box 7. Reporting is required on all CRDs, even in instances where the eligible participant recontributes the entire amount of the distribution in 2020.

Participant Loans

Safe Harbor for Reinstatement of Suspended Loan Repayments

In response to industry questions, the Notice provides a safe harbor for the reinstatement of suspended loan repayments. For loans where repayments were suspended for any period between March 27, 2020 and December 31, 2020, a plan will satisfy the safe harbor if loan repayments recommence as of January, 2021, interest accrued during the period of the suspension is added to the remaining principal of the loan, and the term of the loan is extended by a period of not more than one year beyond the date the loan was originally scheduled to be paid off (without regard to the actual length of the suspension, and even if doing so extends the total loan term beyond five years).

The IRS provided several examples of how a plan could satisfy the safe harbor provisions, and notes that there may be other reasonable (but more complex) ways to administer these rules.

Reliance on Certifications

As with CRDs, plan sponsors may rely on an individual's certification, (unless the employer has actual knowledge to the contrary) that they satisfy the conditions to receive special loan treatment.

Cancellation of Deferral Elections

If a participant receives a CRD from a qualified plan, that distribution will be considered a hardship distribution for purposes of Section 409A only, which would allow a non-qualified deferred compensation plan to provide for the cancellation of a participant's deferral election for 2020. Note that, under this rule, the deferral election must be cancelled, as opposed to postponed or otherwise delayed.

Required Minimum Distributions

Please note that this Notice does not address the CARES Act waiver of RMDs; the RMD waiver is addressed in Notice 2020-51, released by the IRS on June 23, 2020. We will provide a separate Breaking News on Notice 2020-51.

Further updates will be provided as they become available. Please contact your Transamerica representative if you have any questions about this topic.

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