

IRS provides guidance on coronavirus-related distributions from retirement plans, Federal Tax Update (06/24/2020)

2020 COVID-19 News

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Notice 2020-50, 2020-28 IRB , IR 2020-124 (6/19/2020)

In a Notice, the IRS has provided guidance relating to CARES Act Sec. 2202 coronavirus-related distributions. The guidance applies to qualified individuals, employers, and eligible retirement plans. Among other things, the Notice expands the definition of who is a qualified individual that can take a coronavirus-related distribution.

Background-CARES Act favorable retirement plan distribution rules. In response to the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, PL 116-136) provides for special tax treatment for a "coronavirus-related distribution" from a retirement plan.

Act Sec. 2202(a) provides an exception to the 10% additional tax under **Code Sec. 72(t)** (and the 25% additional tax under **Code Sec. 72(t)(6)** for certain distributions from SIMPLE IRAs) for early distributions from qualified retirement plans made to qualified individuals; allows the early distribution to be included in income ratably over 3 years; and provides that the distribution is treated as though it were paid in a direct rollover to an eligible retirement plan if the distribution is eligible for tax-free rollover treatment and is recontributed to an eligible retirement plan within the 3-year period beginning on the day after the date on which the distribution was received.

Background-qualified individual. Under Act Sec. 2202(a)(4)(A)(ii), a qualified individual is an individual:

- who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (referred to collectively in this notice 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);
- whose spouse or dependent (as defined in **Code Sec. 152**) is 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
- who experiences adverse financial consequences as a result of: the individual being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19; the individual being unable

to work due to lack of childcare due to COVID-19; or the closing or reducing hours of a business owned or operated by the individual due to COVID-19.

Background-coronavirus-related distribution. Act Sec. 2202(a)(4)(A) defines a coronavirus-related distribution as any distribution from an eligible retirement plan made on or after January 1, 2020, and before December 31, 2020, to a qualified individual.

Act Sec. 2202(a)(2) limits the amount of aggregate distributions from all eligible retirement plans that can be treated as coronavirus-related distributions to no more than \$100,000.

In general, a qualified individual is permitted to designate a distribution as a coronavirus-related distribution. This designation is permitted to be made with respect to any distribution to a qualified individual that would meet the requirements of a coronavirus-related distribution without regard to whether the plan treated the distribution as a coronavirus-related distribution. (Act Sec. 2202(a)(5))

Background-coronavirus-related distributions permitted to be recontributed to plan. Only a coronavirus-related distribution that is eligible for tax-free rollover treatment under [Code Sec. 402\(c\)](#) , [Code Sec. 403\(a\)\(4\)](#) , [Code Sec. 403\(b\)\(8\)](#) , [Code Sec. 408\(d\)\(3\)](#) , or [Code Sec. 457\(e\)\(16\)](#) is permitted to be recontributed to an eligible retirement plan, and that recontribution will be treated as having been made in a trustee-to-trustee transfer to that eligible retirement plan. (Act Sec. 2202(a)(3))

Any coronavirus-related distribution (whether from an employer retirement plan or an IRA) paid to a qualified individual as a beneficiary of an employee or IRA owner (other than the surviving spouse of the employee or IRA owner) cannot be recontributed. (Act Sec. 2202(a)(3)(C))

Background-application of Act Sec. 2202 to plan loans. Special rules apply to a loan made from a qualified employer plan (as defined in [Reg. § 1.72\(p\)-1](#) , Q&A-2) to a qualified individual on or after March 27, 2020 (the date of enactment of the CARES Act) and before September 23, 2020. (Act Sec. 2202(b)(1))

For these loans, Act Sec. 2202(b)(1) changes the limits under [Code Sec. 72\(p\)\(2\)\(A\)](#) . In applying [Code Sec. 72\(p\)](#) to a plan loan, the \$50,000 aggregate limit in [Code Sec. 72\(p\)\(2\)\(A\)\(i\)](#) is increased to \$100,000, and the rule in [Code Sec. 72\(p\)\(2\)\(A\)\(ii\)](#) limiting the aggregate amount of loans to 50% of the employee's vested accrued benefit is increased to 100% of the employee's vested accrued benefit.

Suspension of payments and extension of term of loan. A special rule applies if a qualified individual has an outstanding loan from a qualified employer plan on or after March 27, 2020. Act Sec. 2202(b)(2) provides that, for purposes of [Code Sec. 72\(p\)](#) , in the case of a qualified individual with a loan from a qualified employer plan outstanding on or after March 27, 2020, if the due date pursuant to [Code Sec. 72\(p\)\(2\)\(B\)](#) or [Code Sec. 72\(p\)\(2\)\(C\)](#) for any repayment with respect to the loan occurs during the period beginning on March 27, 2020, and ending on December 31, 2020, the due date is delayed for 1 year.

Background-permitted cancellation of deferral election under nonqualified deferred

compensation plan. Under [Reg. § 1.409A-3\(j\)\(4\)\(viii\)](#) , a nonqualified deferred compensation plan subject to [Code Sec. 409A](#) may provide for a cancellation of a service provider's deferral election, or such a cancellation may be made, due to an unforeseeable emergency or a hardship distribution pursuant to [Reg. § 1.401\(k\)-1\(d\)\(3\)](#) .

Additional qualified individuals. Pursuant to the authority of the IRS to issue guidance to provide for other factors granted by Act Sec. 2202(a)(4)(A)(ii)(III), the Notice provides that a qualified individual for purposes of the Notice also includes an individual who experiences adverse financial consequences as a result of:

- the individual 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;
- the individual's spouse or a member of the individual's household (as defined below) being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare 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 or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

For purposes of applying these additional factors, a member of the individual's household is someone who shares the individual's principal residence. (Notice 2020-50, Sec. 1B)

Guidance for employers. The Notice points out that Act Sec. 2202 does not change the rules for when plan distributions are permitted to be made from employer retirement plans.

Thus, e.g., a qualified plan that is a pension plan (such as a money purchase pension plan) is not permitted to make a distribution before an otherwise permitted distributable event merely because the distribution, if made, would qualify as a coronavirus-related distribution. Further, a pension plan is not permitted to make a distribution under a distribution form that is not a qualified joint and survivor annuity without spousal consent merely because the distribution, if made, could be treated as a coronavirus-related distribution. (Notice 2020-50, Sec. 2A)

Eligible rollover distribution rules not applicable. If a distribution is treated as a coronavirus-related distribution by an employer retirement plan, the rules for eligible rollover distributions under [Code Sec. 401\(a\)\(31\)](#) , [Code Sec. 402\(f\)](#) , and [Code Sec. 3405](#) are not applicable to the distribution.

Thus, the plan is not required to offer the qualified individual a direct rollover with respect to the distribution. The plan administrator is not required to provide a [Code Sec. 402\(f\)](#) notice.

Withholding rules. The plan administrator or payor of the coronavirus-related distribution is not required to withhold an amount equal to 20% of the distribution, as is usually required under [Code Sec. 3405\(c\)\(1\)](#) .

However, a coronavirus-related distribution is subject to the voluntary withholding requirements of **Code Sec. 3405(b)** and **Reg. §35.3405-1T** . (Notice 2020-50, Sec. 2B)

Treatment of distribution as coronavirus-related distribution. An employer is permitted to choose whether, and to what extent, to treat distributions under its plans as coronavirus-related distributions (as well as whether, and to what extent, to apply coronavirus-related plan loan rules in Sec. 5 of the Notice, discussed below).

Thus, e.g., an employer may choose to provide for coronavirus-related distributions but choose not to change its plan loan provisions or loan repayment schedules.

The employer (or plan administrator) is permitted to develop any reasonable procedures for identifying which distributions are treated as coronavirus-related distributions under its retirement plans. However, if, under an employer retirement plan, any distribution of an amount subject to **Code Sec. 401(k)(2)(B)(i)** , **Code Sec. 403(b)(7)(A)(i)** , **Code Sec. 403(b)(11)** or **Code Sec. 457(d)(1)(A)** is treated as a coronavirus-related distribution, the plan must be consistent in its treatment of similar distributions.

The amount of the distribution must be taken into account in determining the \$100,000 limit on coronavirus-related distributions made under all the retirement plans maintained by the employer.

Even if, under a plan, a distribution is not treated as coronavirus-related, a qualified individual may treat a distribution that meets the coronavirus-related distributions requirements as a coronavirus-related distribution on the individual's federal income tax return. (Notice 2020-50, Sec. 2C)

Distribution limits. Under CARES Act Sec. 2202(a)(2)(A), the total amount of distributions treated by an employer as coronavirus-related distributions under all its retirement plans with respect to a qualified individual is not permitted to exceed \$100,000.

For purposes of this rule, the term "employer" means the employer maintaining the plan and those employers required to be aggregated with the employer under **Code Sec. 414(b)** , **Code Sec. 414(c)** , **Code Sec. 414(m)** , or **Code Sec 414(o)** .

A plan will not fail to satisfy any requirement under the Code merely because a qualified individual's total coronavirus-related distributions exceed \$100,000 taking into account distributions from IRAs or other eligible retirement plans maintained by unrelated employers. (Notice 2020-50, Sec. 2D)

Individual certification. 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 in determining whether a distribution is a coronavirus-related distribution, unless the administrator has actual knowledge to the contrary.

The requirement that an administrator not have "actual knowledge" that is contrary to an individual's certification does not mean that the administrator has an obligation to inquire into whether an individual

has satisfied the conditions to be a qualified individual. Rather, this requirement is limited to situations in which the administrator already possesses sufficiently accurate information to determine the veracity of a certification.

The Notice provides an example of an acceptable certification.

Although an administrator may rely on an individual's certification in making and reporting a distribution, the individual is entitled to treat the distribution as a coronavirus-related distribution for purposes of the individual's federal income tax return only if the individual actually meets the eligibility requirements for that treatment. (Notice 2020-50, Sec. 2E)

Operating in accordance with its terms. An employer retirement plan will not be treated as failing to operate in accordance with its terms merely because the plan implements the provisions of Act Sec. 2202, if the employer amends its plan to reflect the CARES Act by the following dates:

- For employer retirement plans other than governmental plans under **Code Sec. 414(d)** : the last day of the first plan year beginning on or after January 1, 2022.
- For governmental plans under **Code Sec. 414(d)** : the last day of the first plan year beginning on or after January 1, 2024.

Pursuant to the authority of the Secretary under Act Sec. 2202(c)(2), these dates may be extended in future guidance. (Notice 2020-50, Sec. 2F)

Guidance for eligible retirement plans . The Notice provides the following guidance for eligible retirement plans (i.e., employer retirement plans and IRAs) making, or accepting recontribution of, coronavirus-related distributions:

Tax reporting of coronavirus-related distribution. An eligible retirement plan must report the payment of a coronavirus-related distribution to a qualified individual on Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

This reporting is required even if the qualified individual recontributes the coronavirus-related distribution to the same eligible retirement plan in the same year.

If a payor is treating the payment as a coronavirus-related distribution and 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. (Notice 2020-50, Sec. 3A)

Accepting recontributions of coronavirus-related distributions. In general, a qualified individual who receives a coronavirus-related distribution that is eligible for tax-free rollover treatment is permitted to recontribute, at any time in a 3-year period, any portion of the distribution to an eligible retirement plan that is permitted to accept eligible rollover contributions.

Reg. § 1.401(a)(31)-1, Q&A 14 , provides that, for purposes of applying the qualification requirements to the receiving plan, if a plan accepts an invalid rollover contribution, then the contribution will be treated as if it were a valid rollover contribution if two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is a valid rollover contribution. Second, if the plan administrator later determines that the rollover contribution was an invalid rollover contribution, any amount attributable to the invalid rollover contribution (including earnings) must be distributed to the employee within a reasonable amount of time after the determination.

The relief in Q&A-14 of **Reg. § 1.401(a)(31)-1** applies to an employer retirement plan accepting recontributions of coronavirus-related distributions.

In order to obtain the relief described in Q&A-14 of **Reg. § 1.401(a)(31)-1** with respect to a coronavirus-related distribution, a plan administrator accepting the recontribution of a coronavirus-related distribution must reasonably conclude that the recontribution is eligible for direct rollover treatment under Act Sec. 2202(a)(3) and that the recontribution is made in accordance with the rules in Sec. 4C of the Notice (discussed below).

In making this determination, 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 in determining whether a distribution is a coronavirus-related distribution, unless the administrator has actual knowledge to the contrary.

In general, it is anticipated that eligible retirement plans will accept recontributions of coronavirus-related distributions, which are to be treated as rollover contributions. However, eligible retirement plans generally are not required to accept rollover contributions. For example, if a plan does not accept any rollover contributions, the plan is not required to change its terms or procedures to accept recontributions of coronavirus-related distributions. (Notice 2020-50, Sec. 3B)

Guidance for individuals. The Notice provides the following guidance for individuals receiving a coronavirus-related distribution:

Reduction of plan loan amount. The reduction of a qualified individual's account balance, in order to repay a plan loan as described in Q&A-9(b) of **Reg. § 1.402(c)-2** , including a qualified plan loan offset, is permitted to be treated as a coronavirus-related distribution. (Notice 2020-50, Sec. 1C)

However, any amount described in Q&A-4 of **Reg. § 1.402(c)-2** is not permitted to be treated as a coronavirus-related distribution. Thus, the following amounts are not coronavirus-related distributions: corrective distributions of elective deferrals and employee contributions that are returned to the employee (together with the income allocable thereto) in order to comply with **Code Sec. 415** limitations; excess elective deferrals under **Code Sec. 402(g)** , excess contributions under **Code Sec. 401(k)** , excess aggregate contributions under **Code Sec. 401(m)** ; loans that are treated as deemed distributions pursuant to **Code Sec. 72(p)** ; dividends paid on applicable employer securities under

Code Sec. 404(k) ; the costs of current life insurance protection; prohibited allocations that are treated as deemed distributions pursuant to **Code Sec. 409(p)** ; distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of **Code Sec. 414(w)** ; and distributions of premiums for accident or health insurance under **Reg. § 1.402(a)-1(e)(1)(i)** . (Notice 2020-50, Sec. 2C)

Election to designate a distribution as a coronavirus-related distribution. A qualified individual is permitted to designate no more than \$100,000 of eligible retirement plan distributions as a coronavirus-related distribution. (Notice 2020-50, Sec. 4A)

Income inclusion for coronavirus-related distributions. There are two methods for a qualified individual to include the taxable portion of a coronavirus-related distribution in income.

A qualified individual who receives a coronavirus-related distribution is permitted to elect to include the taxable portion of the distribution in income ratably over a 3-year period that begins in the year of the distribution.

Alternatively, a qualified individual is permitted to elect out of the 3-year ratable income inclusion and include the entire amount of the taxable portion of the distribution in income in the year of the distribution.

This election cannot be made or changed after the timely filing of the individual's federal income tax return (including extensions) for the year of the distribution.

All coronavirus-related distributions received in a taxable year must be treated consistently (either all distributions must be included in income over a 3-year period or all distributions must be included in income in the current year). (Notice 2020-50, Sec. 4B)

Tax treatment of recontributions of coronavirus-related distributions. If a coronavirus-related distribution is eligible for tax-free rollover treatment, a qualified individual is permitted, at any time in the 3-year period beginning the day after the date of a coronavirus-related distribution, to recontribute any portion of the distribution, but not an amount in excess of the amount of the distribution, to an eligible retirement plan.

A recontribution of a coronavirus-related distribution will not be treated as a rollover contribution for purposes of the one-rollover-per-year limitation under **Code Sec. 408(d)(3)(B)** . (Notice 2020-50, Sec. 4C)

Tax treatment of recontributions of a coronavirus-related distribution made to a taxpayer who uses the 1-year income inclusion method. If a qualified individual elects to include all coronavirus-related distributions received in a year in gross income for that year and recontributes any portion of the coronavirus-related distributions to an eligible retirement plan at any time during the 3-year recontribution period, then the amount of the recontribution will reduce the amount of the coronavirus-related distribution included in gross income for the year of the distribution.

The qualified individual reports the amount of the recontribution on Form 8915-E, which is filed with the individual's federal income tax return. The Notice says Form 8915-E will be named and released by the end of 2020. (Notice 2020-50, Sec. 4D)

Tax treatment for year of recontribution of a coronavirus-related distribution made to a taxpayer who uses the 3-year ratable income inclusion method. If a qualified individual includes a coronavirus-related distribution ratably over a 3-year period and the individual recontributes any portion of the coronavirus-related distribution to an eligible retirement plan at any date before the timely filing of the individual's federal income tax return (i.e., by the due date, including extensions) for a tax year in the 3-year period, the amount of the recontribution will reduce the ratable portion of the coronavirus-related distribution that is includible in gross income for that tax year. See Sec. 4F of the Notice (discussed below) for recontributions that affect income inclusion in other tax years. (Notice 2020-50, Sec. 4E)

Recontributions of a coronavirus-related distribution may be carried back or forward when using the 3-year ratable income inclusion. If a qualified individual using the 3-year ratable income inclusion method recontributes an amount of a coronavirus-related distribution for a tax year in the 3-year period that exceeds the amount that is otherwise includible in gross income for that tax year, as described in Sec. 4E of the Notice, then the excess amount of the recontribution is permitted to be carried forward to reduce the amount of the coronavirus-related distribution that is includible in gross income in the next tax year in the 3-year period.

Alternatively, the qualified individual is permitted to carry back the excess amount of the recontribution to a prior taxable year or years in which the individual included income attributable to a coronavirus-related distribution. The individual will need to file an amended federal income tax return for the prior taxable year or years to report the amount of the recontribution on Form 8915-E and reduce his or her gross income by the excess amount of the recontribution. (Notice 2020-50, Sec. 4F)

Special rule for 3-year ratable income inclusion method for coronavirus-related distributions. If a qualified individual dies before the full taxable amount of the coronavirus-related distribution has been included in gross income, then the remainder must be included in gross income for the taxable year that includes the individual's death. (Notice 2020-50, Sec. 4G)

Coronavirus-related distributions will not be treated as a change in substantially equal periodic payments. In the case of an individual receiving substantially equal periodic payments from an eligible retirement plan, the receipt of a coronavirus-related distribution from that plan will not be treated as a change in substantially equal payments (as described in [Code Sec. 72\(t\)\(4\)](#)) merely because of the coronavirus-related distribution. (Notice 2020-50, Sec. 4H)

Safe harbor to satisfy Act. Sec. 2202(b)(2) and Sec. 72(p). The Notice provides a safe harbor for satisfying section 2202(b)(2) of the CARES Act.

Under this safe harbor, a qualified employer plan will be treated as satisfying the requirements of [Code Sec. 72\(p\)](#) pursuant to Act Sec. 2202(b)(2) if a qualified individual's obligation to repay a plan loan is

suspended under the plan for any period beginning not earlier than March 27, 2020, and ending not later than December 31, 2020 (suspension period).

The loan repayments must resume after the end of the suspension period, and the term of the loan may be extended by up to 1 year from the date the loan was originally due to be repaid.

If a qualified employer plan suspends loan repayments during the suspension period, the suspension will not cause the loan to be deemed distributed even if, due solely to the suspension, the term of the loan is extended beyond 5 years.

Interest accruing during the suspension period must be added to the remaining principal of the loan.

A plan satisfies these rules if the loan is reamortized and repaid in substantially level installments over the remaining period of the loan (i.e., 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). If an employer, under its plan, chooses to permit a suspension period that is less than the maximum suspension period described above, the employer is permitted to extend the suspension period subsequently, but not beyond December 31, 2020. (Notice 2020-50, Sec. 5B)

Reliance on certifications. The administrator of a qualified employer plan may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual, and therefore qualifies for the special treatment for loans under Act Sec. 2202(b), unless the administrator has actual knowledge to the contrary under the standard described in Sec. 2E of the Notice. (Notice 2020-50, Sec. 5C)

Permitted cancellation of deferral election under nonqualified deferred compensation plan. If a service provider receives a distribution from an eligible retirement plan that constitutes a coronavirus-related distribution, that distribution will be considered a hardship distribution pursuant to [Reg. § 1.401\(k\)-1\(d\)\(3\)](#) for purposes of [Reg. § 1.409A-3\(j\)\(4\)\(viii\)](#) .

As a result, a nonqualified deferred compensation plan may provide for a cancellation of the service provider's deferral election, or such a cancellation may be made, due to a coronavirus-related distribution. The deferral election must be canceled, not merely postponed or otherwise delayed. ([Notice 2020-50, Sec. 6](#))

References: For coronavirus-related distributions, see [FTC 2d/FIN ¶H-11119](#) ; [United States Tax Reporter ¶ 724.235](#) .