

QUALIFIED PLAN ADVOCATE NEWSLETTER

July: IRS Provides Much Needed CARES Act and COVID-19 Guidance and Flexibility

Following the enactment of the CARES Act, plan sponsors have worked through a series of stages. First, what do we do? Second, how do we communicate that to employees? And now, third, how does all of this work? In a series of recent Notices, the IRS has attempted to answer that question. In light of many companies' current financial challenges, it also relaxed rules relating to the mid-year modification of a safe harbor plan.

Coronavirus-Related Distributions (CRDs) and Loans Under the CARES Act. In [Notice 2020-50](#), the IRS acknowledged some of the thornier details implicated by a plan sponsor's decision to permit the CARES Act's CRD and/or loan provisions. As is customary with an IRS Notice, much of it recites the CARES Act statutory language. But it also provides practical help, such as:

- **Confirming that a CRD is not subject to the rules typically applicable to eligible rollover distributions.** This means the plan is not required to offer a direct rollover or to provide the special tax notice otherwise required under Tax Code section 402(f). It also means that a CRD is subject to 10% (but not mandatory 20%) federal income tax withholding, unless the participant elects otherwise under the voluntary withholding procedures.
- **Confirming that the plan administrator may rely on the individual's self-certification unless it has "actual knowledge" to the contrary.** This means that unless the administrator has such actual knowledge to the contrary, it does not have an obligation to inquire into whether the individual meets the "qualified individual" requirement.
- **Providing safe harbor self-certification language** that permits an individual to simply certify that he or she meets "at least one of" the conditions listed in the certification (and not specify which condition he or she meets).
- **Expanding the definition of a "qualified individual"** to take into account situations when the individual's spouse or a member of the individual's household experienced the employment change (e.g., furlough, lay off, reduced hours) due to COVID-19. This means, for example, that a participant may qualify for the CARES Act CRD or loan provisions if the participant's spouse is laid off, even if the participant has not experienced any change in employment.
- **Confirming a high degree of flexibility regarding loan re-amortization.** In the event a participant elects to suspend loan repayments for the remainder of 2020, the Notice recognizes that there are various ways to re-amortize the missed payments and to begin the pattern of larger repayments. It provides a safe harbor that permits a plan to commence



re-amortized repayments on January 1, 2021, and to extend the loan term by one year from its initial due date. It also recognizes there are permissible - but more complex - options, such as waiting until the one-year mark from the initial 2020 repayment suspension to begin re-amortized repayments in 2021, even though earlier 2021 repayments must be made (in the originally scheduled amount).

2020 Required Minimum Distributions (RMDs) Waiver. In [Notice 2020-51](#), the IRS addressed practical questions relating to the CARES Act waiver of 2020 RMDs. Most significantly, it answered these questions:

- **"To what distributions does the waiver apply?"** First, it applies to defined contribution plans and IRAs, but not defined benefit plans. Second, it applies to any RMDs scheduled to be made during 2020. This includes both ongoing RMD payments, as well as any initial RMD corresponding to 2019 but permitted to be made prior to April 1, 2020. Third, it applies to any initial RMD corresponding to 2020 but permitted to be made in 2021 prior to April 1.
- **"What do we do if we already made RMDs and treated them like RMDs - not eligible rollover distributions?"** Rest easy. The IRS confirms that the plan will not be considered as having failed to satisfy Tax Code requirements relating to offering a rollover option, providing a section 402(f) special tax notice, or the application of mandatory withholding.
- **"But if we did that, can the participant still use the out-of-the-plan 60-day rollover rule to roll the distribution to a plan or IRA?"** Yes. That period is extended to August 31, 2020.
- **"Will the IRS provide model amendment language?"** Yes. The Notice includes model language flexible enough to accommodate the various optional aspects of the waiver.

COVID-19 Relief for Mid-Year Reduction or Suspension of Safe Harbor Contributions. The CARES Act did not directly relax safe harbor plan requirements. But as the pandemic has continued to stretch companies' budgets, the IRS issued Notice 2020-52 with the goal of providing companies more flexibility to make immediate changes.

- **Unconditional Ability to Modify Safe Harbor Contributions.** As a general rule, an employer may reduce or suspend a safe harbor contribution mid-year only if it meets one of two requirements: (1) operating at an economic loss; or (2) has included in the plan's safe harbor notice the statement that the plan may be amended during the plan year to reduce or suspend the safe harbor contributions. Many employers found themselves unable or hesitant to modify the safe harbor contributions because they were not yet confident they could meet the meaning of "operating at an economic loss" and did not include the "maybe" language in the notice distributed before the current plan year began. The Notice removes those requirements for any plan amendment that reduces or suspends safe harbor contributions (whether matching or nonelective) anytime between March 13, 2020, and August 31, 2020.



- **Time Flexibility to Provide Notice of Reduction or Suspension of Safe Harbor Nonelective Contribution.** In the case of safe harbor nonelective contributions reduced or suspended between March 13, 2020, and August 31, 2020, eligible employees need not receive a supplemental notice at least 30 days before the effective date of the reduction or suspension, provided that (i) they receive the notice no later than August 31, and (ii) the plan amendment is adopted no later than the effective date of the reduction or suspension. Note that the typical 30-day advance notice requirement continues to apply to reductions or suspensions of a safe harbor matching contribution.

Closing Thoughts. There's a lot here. Many of these issues will require additional exploration of the facts you're facing in a particular scenario. And, in the interests of focusing on what is important now, we didn't even allocate any space to the CRD repayment guidance, which might become relevant in upcoming months. As always, please reach out with your specific questions and we can explore the manner in which the IRS may have provided some guidance to make your life easier.



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