
Employee Benefits Update

July 7, 2020

COVID-19 and Benefit Plans: Part 7

IRS Issues Guidance on CARES Act Provisions Impacting Retirement Plans and Provides Transition Relief for Safe Harbor Contributions

Executive Summary

The IRS recently released a flurry of guidance impacting retirement plans in the form of [Notice 2020-50](#), [Notice 2020-51](#), and [Notice 2020-52](#):

- Notice 2020-50 provides additional clarification about the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) retirement plan changes. Notably, it expands the definition of “qualified individuals” eligible for coronavirus-related distributions from retirement plans, and clarifies increased loan limits and loan suspension periods under the CARES Act, as described in our previous [Employee Benefits Update](#).
- Notice 2020-51 announces additional guidance and relief relating to the CARES Act waiver of 2020 required minimum distributions (“RMDs”) from defined contribution plans.
- Notice 2020-52 provides temporary transition relief for plan sponsors who wish to reduce or suspend their safe harbor contributions under their 401(k) or 403(b) plans.



Notice 2020-50: Expands Definition of “Qualified Individual” for CARES Act Distributions and Enhanced Plan Loan Programs; Establishes Plan Loan Safe Harbor for Extended Loan Repayment Periods; Permits Deferral Cancellations Under Nonqualified Deferred Compensation Plans

Background. As previously described in our [Employee Benefits Update](#), the CARES Act, which was enacted at the end of March 2020, provides certain tax-favored distributions and enhanced plan loan programs to participants who are considered “qualified individuals”. As originally enacted, the CARES Act defined a “qualified individual” to include:

- An individual diagnosed with COVID-19 by a CDC-approved test;
- An individual whose spouse or dependent has been diagnosed in such a manner with COVID-19; or

- An individual who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or having hours reduced; being unable to work due to lack of childcare due to COVID-19; or having to close or reduce the hours of a business the individual owns or operates due to COVID-19.

Expanded Definition of “Qualified Individual”. Under Notice 2020-50, the definition of “qualified individual” has been expanded to conform to how many plan sponsors had been interpreting the law. Specifically, this guidance from the IRS expands the group of participants who can be considered “qualified individuals” to those who experience adverse financial consequences due to COVID-19 as a result of:

- A reduction in pay (or self-employment income); having a job offer rescinded; or having a start date for a job delayed;
- A spouse or a member of the individual’s household being quarantined, furloughed, laid off, or having work hours reduced; being unable to work due to lack of childcare; having a reduction in pay; having a job offer rescinded; or experiencing a delay in the start date for a job; or
- The closing or reduction in hours of a business owned or operated by the individual’s spouse or a member of the individual’s household.

Reliance on Employee Certifications. Notice 2020-50 clarifies that plan administrators may rely on an individual’s certification that he/she is a qualified individual, so long as they do not have actual knowledge to the contrary. The Notice also provides a sample certification that can be used, which can be found here: [Notice 2020-50](#).

Guidance on Tax Issues. Notice 2020-50 provides guidance on various questions pertaining to the tax treatment of coronavirus-related distributions. In particular, the Notice:

- Permits a qualified individual to designate certain payments received from a retirement plan in 2020 as coronavirus-related distributions in order to receive the favorable tax treatment for those distributions, even if the retirement plan’s provisions are not changed or formally adopted by the plan’s sponsor.
- Confirms that direct rollover, Section 402(f) tax notice, and 20% withholding requirements do not apply to coronavirus-related distributions.
- Allows coronavirus-related distributions to be recontributed to a plan, within three years, provided that the plan otherwise accepts rollovers. Any invalid retribution will not disqualify the plan provided that (1) the plan administrator reasonably concludes that the retribution is eligible for direct rollover treatment, and (2) any amounts, with earnings, that are later determined to be invalid, are distributed.

Plan Loan Safe Harbor for Extended Payment Period. Notice 2020-50 provides a safe harbor under which plan loan repayments may be suspended through December 31, 2020. After the loan suspension period ends, payments must resume, with the remaining balance of the loan (plus interest that accrued while loan payments were suspended in 2020) being re-amortized over the original loan period plus one year. This approach will not cause the loan to be treated as a deemed distribution even if the re-amortized loan period extends beyond the five-year term that usually applies to regular plan loans.

Deferral Cancellations under Nonqualified Deferred Compensation Plans. Lastly, Notice 2020-50 provides that plan sponsors are permitted, but not required, to treat coronavirus-related distributions from 401(k) plans as hardship distributions to determine whether individuals may cancel (not just delay or postpone) their existing deferral elections under a nonqualified deferred compensation plan that is subject to section 409A of the Internal Revenue Code.

It remains in a plan sponsor's discretion to adopt any coronavirus-related distribution, loan relief, or deferral cancellation provisions. Plan sponsors should determine whether any of the expanded provisions will be adopted, work with their providers or consultants to update their plan documents appropriately, and timely communicate any changes to employees as necessary.

Notice 2020-51: Extends Rollover Period for Required Minimum Distributions (“RMDs”)

By the time the CARES Act suspended the RMD requirement for 2020, some taxpayers already had taken an RMD earlier in 2020. Notice 2020-51 provides that any RMDs already taken this year from a defined contribution plan such as a 401(k) plan, 403(b) plan or IRA can be rolled back into a retirement account, as long as that action is taken before August 31, 2020. In addition, an IRA owner or beneficiary who received a distribution from an IRA that would have been an RMD in 2020 can repay the distribution to the IRA by August 31, 2020. This repayment is not subject to the one rollover per 12-month period limitation and the restriction on rollovers for inherited IRAs.

[Notice 2020-51](#) also provides a sample plan amendment for defined contribution plans to implement the temporary waiver of RMDs.

Notice 2020-52: Provides Temporary Relief for Suspension of Safe Harbor Contributions

Generally, in order to reduce or suspend safe harbor matching or nonelective contributions under safe harbor 401(k) or 403(b) plans mid-year, an employer must either (1) be operating at an economic loss for the plan year, or (2) have included in the plan's annual safe harbor notice a statement that the plan may be amended during the plan year to reduce or suspend safe harbor contributions. In addition, the plan must meet other requirements, such as providing 30 days' advance notice to employees before the reduction or suspension takes effect and performing ADP/ACP nondiscrimination testing for the entire plan year, using the current year method.

[Notice 2020-52](#) provides temporary transitional relief from these requirements to plan sponsors who amend their safe harbor plans between March 13, 2020 and August 31, 2020 in order to reduce or suspend their safe harbor contributions, even if the plan's 2020 safe harbor notice did not have the requisite language reserving the right to reduce or suspend safe harbor contributions, or if the business is not operating at an economic loss. However, to utilize this transition relief, plan sponsors must still

provide supplemental notices to their participants: for a plan with safe harbor matching contributions, the notice must still be provided at least 30 days' in advance, while a plan with safe harbor nonelective contributions has a bit more flexibility and only needs to provide a supplemental notice before August 31, 2020.



To discuss how the new IRS guidance may impact your retirement plans, please contact any member of our Employee Benefits and Executive Compensation Group below.

IslerDare PC
Your workplace, our insight

1945 Old Gallows Road
Suite 650
Vienna, VA 22182
(703) 748-2690

411 East Franklin Street
Suite 203
Richmond, VA
(804) 489-5507

Andrea I. O'Brien
aobrien@islerdare.com

Vi D. Nguyen
vnguyen@islerdare.com

Jeanne Floyd
jfloyd@islerdare.com

Ashley Hedge
ahedge@islerdare.com