As we have reported previously, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act” or the “Act”) was signed into law on March 27, 2020. Generally, under the CARES Act, a “qualified individual” can withdraw up to $100,000 from that individual’s 401(k) or another qualified plan or IRA in a “coronavirus-related distribution” (“CRD”) that qualifies for favorable tax and rollover treatment. The CARES Act also doubles the normal limits on loans from qualified retirement plans to qualified individuals issued from March 27, 2020, through September 22, 2020. In addition, the CARES Act allows plans to permit qualified individuals to delay plan loan repayments due on or after March 27, 2020, and on or before December 31, 2020, for one year, with a corresponding extension in the maximum permissible loan term.

On June 19, 2020, the Internal Revenue Service (IRS), through IRS Notice 2020-50, provided additional guidance and instruction with respect to the application of the Act’s provisions to retirement plans and plan participants. Specifically, IRS Notice 2020-50 expands the definition of a “qualified individual,” provides a model certification participants can use to certify that they meet at least one of the listed qualifications to be a qualified individual, clarifies which distributions can be a CRD, provides additional details about recontributing a CRD to a plan and offers plans a safe harbor for calculating loan repayments after the suspension period ends. What follows are answers to some of the questions that our clients have been asking us directly with respect to how their retirement plan operations are changed by the recent IRS guidance.

You should use this as a general guide while navigating the recent legislative changes and their impact on your plan administration. Your and your employees’ individual circumstances may be different. If you have questions related to a specific situation or plan provision, please contact your local Mutual of America office for assistance.

This is being provided for informational purposes only and should not be construed as legal or tax advice. These answers relate only to products and services offered by Mutual of America Financial Group and may not be applicable to similar products or services offered in the marketplace.

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Qualified Individual

Q: Who is a qualified individual?

A: Under the CARES Act, a “qualified individual” is an individual who:

1. has been diagnosed with COVID-19; or
2. has a spouse or dependent who was diagnosed with the virus; or
3. experienced various adverse financial consequences as a result of:
   a. the individual being laid off, being furloughed or having work hours reduced due to COVID-19;
   b. the individual being unable to work due to lack of childcare due to COVID-19; or
   c. the closing or reduced hours of a business owned or operated by the individual due to COVID-19.

IRS Notice 2020-50 expanded the definition of “qualified individual” to include individuals who suffer adverse financial consequences as a result of:

1. the individual having a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or the start date for a job delayed due to COVID-19;
2. the individual’s spouse or a member of the individual’s household (as defined below): a. being quarantined, furloughed or laid off; b. having work hours reduced due to COVID-19; c. being unable to work due to lack of childcare due to COVID-19; d. having a reduction in pay (or self-employment income) due to COVID-19; or e. having a job offer rescinded or the start date for a job delayed due to COVID-19; 3. closing or reducing hours of a business owned or operated by the individual’s spouse or a member of the individual’s household.

For the purpose of the definition of “qualified individual,” a member of an individual’s household is anyone who shares the individual’s principal residence.

Q: What is the qualified individual self-certification?

A: IRS Notice 2020-50 confirms that plan administrators are permitted to rely on a participant’s representation that he or she is a “qualified individual” unless the plan administrator has actual knowledge to the contrary. Notice 2020-50 provides a model certification, which simply requires the individual to certify that he or she meets “at least one” of the listed qualifications.

*The IRS notes that 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 [definition of qualified individual]. Rather, this requirement is limited to situations in which the administrator already possesses sufficiently accurate information to determine the veracity of the certification.”*
Definition of CRDs

Q: How has the definition of CRD changed?

A: The CARES Act permits participants who are “qualified individuals” to take up to $100,000 of their vested account balance as a CRD. The CRD can be any distribution from the plan made from January 1, 2020, to December 31, 2020, and can be made without regard to the participant’s age or status as actively employed. In addition, the normal 20% mandatory income tax withholding does not apply to CRDs, the 10% excise tax on early distributions is waived, and the normal notice (402(f) Notice) that accompanies distributions from qualified plans does not need to be provided.

The participant will pay regular income tax on CRDs (to the extent not from designated Roth accounts), but unless they elect otherwise when they file their individual income tax return, the income will be spread ratably over three years.

IRS Notice 2020-50 clarifies that, while most distributions from plans or IRAs that meet the CARES Act requirements can be classified as CRDs, there are some exceptions to that general rule. For instance, distributions to correct excess annual additions, excess elective deferrals or ADP/ACP failures cannot be designated as CRDs. In addition, deemed distributions as a result of a loan default and withdrawals made upon request by a participant within 90 days of being automatically enrolled in an Eligible Automatic Contribution Arrangement (EACA) cannot be designated as CRDs. Before taking a distribution, participants would be well advised to discuss their specific situation with their own tax adviser.

Q: Does IRS Notice 2020-50 change how a CRD can be used once received by the individual?

A: No. Notice 2020-50 clarifies that a CRD does not have to be used for any specific purpose. That is, as noted by the IRS, CRDs “are permitted without regard to the qualified individual’s need for funds, and the amount of the distribution is not required to correspond to the extent of the adverse financial consequences experienced by the qualified individual.” In contrast, a typical hardship distribution generally may be provided only for specific reasons and only after the individual has demonstrated that the funds will be used to address an immediate and heavy financial need.

Q: Does IRS Notice 2020-50 impose additional obligations on plan sponsors with respect to monitoring CRDs?

A: Yes. The CARES Act does not require a plan sponsor to permit CRDs, and Notice 2020-50 confirms this. However, Notice 2020-50 does require that plan sponsors who permit CRDs monitor their plan (and any other plan they maintain) to ensure that no more than $100,000 is distributed as a CRD to a qualified individual. Plan sponsors are not required to monitor distributions that the qualified individual may take from an IRA or unrelated plan.

Q: Will receipt of a CRD disrupt substantially equal periodic payments?

A: No. IRS Notice 2020-50 confirms that receipt of a CRD by an individual already receiving substantially equal periodic payments from an eligible retirement plan will not be treated as a change to such substantially equal periodic payments.
Recontributing CRDs

Q: Does IRS Notice 2020-50 change the requirements for recontributing a CRD to a qualified plan?
A: Under the CARES Act, generally, a qualified individual can, at any time during the three-year period beginning on the day after the date the CRD was received, make to an eligible retirement plan (i.e., a qualified plan, 403(b) plan, governmental 457(b) plan, or IRA) one or more contributions, the total or aggregate amount of which cannot exceed the amount of the CRD. These contributions will be treated as rollover contributions (or transfers, if an IRA is the recipient of the contribution) for tax purposes. With that, any CRD paid to a qualified individual as a beneficiary of an employee or IRA owner (other than the surviving of the employee or IRA owner) cannot be recontributed because such distribution would not generally be able to be rolled into another plan or IRA.

Notice 2020-50 provides that a plan may treat the recontribution as an eligible rollover contribution and can rely on the individual’s self-certification that the recontribution is related to a CRD (unless the plan sponsor has actual knowledge to the contrary).

Q: Are plans required to accept recontributions?
A: No. IRS Notice 2020-50 states that plans do not have to permit CRD recontributions. The IRS notes that “it is anticipated” that plans will accept recontributions, but “if a plan does not accept any rollover contributions, the plan is not required to change its terms or procedures to accept recontributions of [CRDs].”

Q: How will Mutual of America report CRDs?
A: IRS Notice 2020-50 confirms that payments of CRDs must be reported by the payor on IRS Form 1099-R. This reporting is required even if the qualified individual recontributes the CRD to the same plan in the same year in which the CRD was received. Mutual of America has systems in place to meet this reporting obligation.

Q: Does the taxpayer have to use a special form when reporting recontributions to the IRS?
A: Yes. IRS Form 8915-E should be used when the qualified individual recontributes any portion of a CRD back into a qualified plan. Additionally, Notice 2020-50 states that taxpayers should use IRS Form 8915-E to claim an exemption of any excise tax penalty for early withdrawal and to elect to include income from the distribution in the current year or over a three-year period.

Q: How are recontributions that are made in years following the year in which the CRD is received reported?
A: IRS Notice 2020-50 provides that, if a qualified individual includes the full CRD in income in the year of the distribution and makes a recontribution of some or all of the amount after filing that year’s tax return, the individual will need to file an amended tax return for the year of the distribution as well as a revised Form 8915-E in order to receive a refund of the tax that was paid.

Q: How do recontributions affect ratable tax payments?
A: IRS Notice 2020-50 allows the amount of the recontribution to reduce the ratable portion of the CRD that is included in the individual’s gross income for that year.
Taxes and CRDs

Q: How does IRS Notice 2020-50 change the tax reporting of CRDs by individuals?

A: The CARES Act permits individuals taking CRDs to spread the income tax ratably over three years (unless they elect otherwise when they file their federal income tax return to pay the entire tax amount in the first year the tax is due) and to repay the distribution to the plan within three years. Notice 2020-50 clarifies that, if a distribution is not treated as a CRD under a plan (because either the plan does not permit CRDs or the plan sponsor otherwise denied the CRD request), a qualified individual may treat a distribution as a CRD on the individual’s federal income tax return.

Q: May qualified individuals carry forward or backward excess contributions for tax purposes?

A: Yes. IRS Notice 2020-50 clarifies that qualified individuals using the three-year ratable income inclusion method can carry forward or carry backward excess contributions to reduce their gross income for the preceding or next tax year within the three-year period beginning with the year of the distribution.
Loan Repayments and Suspensions

Q: Does IRS Notice 2020-50 change the method of calculating loan repayments following a CARES Act loan suspension?

A: No. The CARES Act created a new loan repayment suspension rule for “qualified individuals.” Those individuals can request a one-year delay in repaying participant loans. Interest continues to accrue, and when the one-year delay is over, the loan will be reamortized over the remaining loan term, plus one year, and repaid in substantially level installments during this repayment period. Notice 2020-50 confirms that this method of calculating repayments is a safe-harbor method.

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