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## IRS Releases Anticipated Expanded Guidance on Retirement Plan Provisions of the CARES Act

The CARES Act, passed just under three months ago, contained various provisions designed to offer certain relief to retirement plan sponsors and participants (including through enhanced access to plan distributions and plan loans) reflecting the pandemic environment. While some of those provisions are tools from prior disasters (financial or natural) that Congress resurrected here, other provisions are more novel or nuanced, leaving open questions and being drafted perhaps more narrowly than needed.

To answer some of the lingering questions and expand the application of various CARES Act retirement plan relief provisions, on Friday, the Internal Revenue Service released Notice 2020-50 (PDF).

As predicted, this notice includes expanding the categories of individuals eligible to access the enhanced CARES Act distributions and loans (referred to as "qualified individuals"). The expansion is welcome given the lack of practicality around the statutory definition which, for example, only recognized the financial consequences incurred based on the individual participant's work (rather than recognizing the reality that many homes are at least dual income, and that a financial adversity faced based on the change in work circumstances of another household member could cause the same need to access retirement plan funds through the CARES Act loan or distribution provisions). The CARES Act list of qualified individuals similarly did not address how delays in start dates, rescissions of job offers in the uncertain environment and/or reductions in wages would be treated.

Now, as expanded under Notice 2020-50, a qualified individual includes anyone who:

- is diagnosed, or whose spouse or dependent is diagnosed, with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the CDC (including a test

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authorized under the Federal Food, Drug, and Cosmetic Act); or

- experiences adverse financial consequences as a result of the **individual, the individual's spouse, or a member of the individual's household** (i.e., someone who shares the individual's principal residence):
  - being quarantined, being furloughed or laid off,
  - having work hours reduced due to COVID-19;
  - being unable to work due to lack of childcare due to COVID-19;
  - closing or reducing hours of a business that they own or operate due to COVID-19;
  - having pay (or self-employment income) reduced due to COVID-19; or
  - having a job offer rescinded or start date for a job delayed due to COVID-19.

This expanded list of individuals whose circumstances can qualify them for access to CARES Act enhanced distributions and loans correlates more closely with how many participants may have already been assuming the rules worked. Given that plan administrators can rely on an individual's certification that the individual is a qualified individual (and the IRS has now made available a sample certification in Notice 2020-50), this expanded list of qualified individuals will help align the law with practical expectations.

Plans that have adopted the CARES Act expanded loans and/or in-service distributions, should coordinate with their 401(k) providers to ensure that this expanded list is appropriately communicated to eligible participants and tracked in any loan policies and plan amendments adopted by the plan. As a reminder, the CARES Act provisions do need to be tracked in the plan document, but a plan amendment for a calendar plan year is not required under the end of 2022.

Plans that have NOT adopted the CARES Act expanded loans and/or in-service distributions may still choose to do so. If, for example, a return to work strategy has changed or other workforce conditions have evolved since decisions were first made about making these provisions available to plan participants, a fresh look at if/how to make retirement funds available to qualified individuals based on the CARES Act provisions may be worthwhile.

On a related note, the CARES Act also provided for suspension of certain plan loan repayments (through the end of 2020) for qualified individuals. Notice 2020-50 sets forth a safe harbor procedure for implementing the suspension of loan repayments otherwise due through the end of 2020, but notes that there may be other reasonable ways to administer these rules. Plan administrators should coordinate with their 401(k) providers on these rules.

Beyond the scope of this update, the Notice also provides certain other nuanced guidance and examples on how qualified individuals will reflect the tax treatment of these distributions and loans on their federal income tax filings.

For example, to the extent a distribution is treated as a coronavirus-related distribution (as defined under the CARES Act), the rules for eligible rollover distributions are not applicable to the distribution. This

means that 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 § 402(f) notice, and the plan administrator (or other payor of the coronavirus-related distribution is not required to withhold an amount equal to 20 percent of the distribution, as is usually required). Generally speaking, a qualified individual who receives a coronavirus-related distribution is permitted to recontribute, at any time in a three-year period, any portion of the distribution to an eligible retirement plan that is permitted to accept eligible rollover contributions.

In accepting the recontribution (which are to be treated as a rollover), 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. While most plans allow/accept rollover contributions, plans generally are not required to do so (and they can be accepted only for active participants). If a plan does not accept rollover contributions, the plan is not required to change its terms or procedures to accept recontributions of coronavirus-related distributions. Note that a recontribution of a coronavirus-related distribution will not be treated as a rollover contribution for purposes of the one-rollover-per-year limitation generally applicable for IRAs.

Payroll departments should look to Notice 2020-50 for instructions on particular scenarios on tax treatment and filings/reporting.

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