

IRS Guidance: CARES Act Section 2202

On May 5th, the IRS website posted guidance as it relates to Section 2202 of the CARES Act, which provides for special distribution options and rollover rules for retirement plans and IRAs, and expands permissible loans from certain retirement plans.

In part, the guidance, in the form of FAQs, makes clear that the new Coronavirus Relief Distribution (CRD) and loan provisions, are optional. A plan sponsor can elect to offer these provisions, and to what extent, or not at all. However, regardless of whether a plan is amended to allow CRDs, a individual who qualifies for a CRD may still claim the favorable tax treatment for any distribution that satisfies the CRD requirements and is received before December 31, 2020.

The IRS also anticipates that further guidance, expected “in the near future,” will apply the same principles as under the Katrina Emergency Tax Relief Act of 2005 (KETRA). KETRA provided loan and distribution relief that was similar to what is offered under the CARES Act.

The FAQs confirm that participants may self-certify when taking a CARES Act loan or distribution, but individuals who make misrepresentations can be subject to tax penalties.

Additionally, the IRS “anticipates” that plans will accept the repayment of CRDs, but the acceptance of repayments is not required. The new FAQs clarify that if a plan does not accept rollover contributions, the plan is not required to accept repayments of CRDs. However, the FAQs do not specify whether plans that accept rollover distributions may choose not to accept CRD repayments.

BELOW ARE THE COMPLETE FAQs FROM THE IRS:

Q: What are the special rules for retirement plans and IRAs in section 2202 of the CARES Act?

A: In general, section 2202 of the CARES Act provides for expanded distribution options and favorable tax treatment for up to \$100,000 of coronavirus-related distributions from eligible retirement plans (certain employer retirement plans, such as section 401(k) and 403(b) plans, and IRAs) to qualified individuals, as well as special rollover rules with respect to such distributions. It also increases the limit on the amount a qualified individual may borrow from an eligible retirement plan (not including an IRA) and permits a plan sponsor to provide qualified individuals up to an additional year to repay their plan loans. See the FAQs below for more details.

Q: Does the IRS intend to issue guidance on section 2202 of the CARES Act?

A: The Treasury Department and the IRS are formulating guidance on section 2202 of the CARES Act and anticipate releasing that guidance in the near future. IRS [Notice 2005-92 \(PDF\)](#), issued on November 30, 2005, provided guidance on the tax-favored treatment of distributions and plan loans under sections 101 and 103 of the Katrina Emergency Tax Relief Act of 2005 (KETRA) as those provisions applied to victims of Hurricane Katrina. The Treasury Department and the IRS anticipate that the guidance on the CARES Act will apply the principles of Notice 2005-92 to the extent the provisions of section 2202 of the CARES Act are substantially similar to the provisions of KETRA that are addressed in that notice.

Q: Am I a qualified individual for purposes of section 2202 of the CARES Act?

A: You are a qualified individual if:

- You are diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
- Your spouse or dependent is diagnosed with SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention;
- You experience adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to SARS-CoV-2 or COVID-19;
- You experience adverse financial consequences as a result of being unable to work due to lack of child care due to SARS-CoV-2 or COVID-19; or
- You experience adverse financial consequences as a result of closing or reducing hours of a business that you own or operate due to SARS-CoV-2 or COVID-19.

Under section 2202 of the CARES Act, the Treasury Department and the IRS may issue guidance that expands the list of factors taken into account to determine whether an individual is a qualified individual as a result of experiencing adverse financial consequences. The Treasury Department and the IRS have received and are reviewing comments from the public requesting that the list of factors be expanded.

Q: What is a coronavirus-related distribution?

A: A coronavirus-related distribution is a distribution that is made from an eligible retirement plan to a qualified individual from January 1, 2020, to December 30, 2020, up to an aggregate limit of \$100,000 from all plans and IRAs.

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Q: Do I have to pay the 10% additional tax on a coronavirus-related distribution from my retirement plan or IRA?

A: No, the 10% additional tax on early distributions does not apply to any coronavirus-related distribution.

Q: When do I have to pay taxes on coronavirus-related distributions?

A: The distributions generally are included in income ratably over a three-year period, starting with the year in which you receive your distribution. For example, if you receive a \$9,000 coronavirus-related distribution in 2020, you would report \$3,000 in income on your federal income tax return for each of 2020, 2021, and 2022. However, you have the option of including the entire distribution in your income for the year of the distribution.

Q: May I repay a coronavirus-related distribution?

A: In general, yes, you may repay all or part of the amount of a coronavirus-related distribution to an eligible retirement plan, provided that you complete the repayment within three years after the date that the distribution was received. If you repay a coronavirus-related distribution, the distribution will be treated as though it were repaid in a direct trustee-to-trustee transfer so that you do not owe federal income tax on the distribution.

If, for example, you receive a coronavirus-related distribution in 2020, you choose to include the distribution amount in income over a 3-year period (2020, 2021, and 2022), and you choose to repay the full amount to an eligible retirement plan in 2022, you may file amended federal income tax returns for 2020 and 2021 to claim a refund of the tax attributable to the amount of the distribution that you included in income for those years, and you will not be required to include any amount in income in 2022. See sections 4.D, 4.E, and 4.F of Notice 2005-92 for additional examples.

Q: What plan loan relief is provided under section 2202 of the CARES Act?

A: Section 2202 of the CARES Act permits an additional year for repayment of loans from eligible retirement plans (not including IRAs) and relaxes limits on loans.

Certain loan repayments may be delayed for one year: If a loan is outstanding on or after March 27, 2020, and any repayment on the loan is due from March 27, 2020, to December 31, 2020, that due date may be delayed under the plan for up to one year. Any payments after the suspension period will be adjusted to reflect the delay and any interest accruing during the delay. See section 5.B of Notice 2005-92.

Loan limit may be increased: The CARES Act also permits employers to increase the maximum loan amount available to qualified individuals. For plan loans made to a qualified individual from March 27, 2020, to September 22, 2020, the limit may be increased up to the lesser of: (1) \$100,000 (minus outstanding plan loans of the individual), or (2) the individual's vested benefit under the plan. See section 5.A of Notice 2005-92.

Q: Is it optional for employers to adopt the distribution and loan rules of section 2202 of the CARES Act?

A: It is optional for employers to adopt the distribution and loan rules of section 2202 of the CARES Act. An employer is permitted to choose whether, and to what extent, to amend its plan to provide for coronavirus-related distributions and/or loans that satisfy the provisions of section 2202 of the CARES Act. Thus, for example, an employer may choose to provide for coronavirus-related distributions but choose not to change its plan loan provisions or loan repayment schedules. Even if an employer does not treat a distribution as coronavirus-related, a qualified individual may treat a distribution that meets the requirements to be a coronavirus-related distribution as coronavirus-related on the individual's federal income tax return. See section 4.A of Notice 2005-92.

Q: Does section 2202 of the CARES Act provide additional distribution rights to participants or otherwise change the rules applicable to plan distributions?

A: Under section 2202 of the CARES Act, a coronavirus-related distribution is treated as meeting the distribution restrictions for a section 401(k) plan, section 403(b) plan, or governmental section 457(b) plan. For example, under section 2202 of the CARES Act, a section 401(k) plan may permit a coronavirus-related distribution, even if it would occur before an otherwise permitted distributable event (such as severance from employment, disability, or attainment of age 59½). However, the CARES Act does not otherwise change the limits on when plan distributions are permitted to be made from employer-sponsored retirement plans. For example, 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. See section 2.A of Notice 2005-92.

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Q: May an administrator rely on an individual's certification that the individual is eligible to receive a coronavirus-related distribution?

A: 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. 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.

Q: Is an eligible retirement plan required to accept repayment of a participant's coronavirus-related distribution?

A: In general, it is anticipated that eligible retirement plans will accept repayments 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 repayments.

Q: How do qualified individuals report coronavirus-related distributions?

A: If you are a qualified individual, you may designate any eligible distribution as a coronavirus-related distribution as long as the total amount that you designate as coronavirus-related distributions is not more than \$100,000. As noted earlier, a qualified individual may treat a distribution that meets the requirements to be a coronavirus-related distribution as such a distribution, regardless of whether the eligible retirement plan treats the distribution as a coronavirus-related distribution. A coronavirus-related distribution should be reported on your individual federal income tax return for 2020. You must include the taxable portion of the distribution in income ratably over the 3-year period – 2020, 2021, and 2022 – unless you elect to include the entire amount in income in 2020. Whether or not you are required to file a federal income tax return, you would use Form 8915-E (which is expected to be available before the end of 2020) to report any repayment of a coronavirus-related distribution and to determine the amount of any coronavirus-related distribution includible in income for a year. See generally section 4 of Notice 2005-92.

Q: How do plans and IRAs report coronavirus-related distributions?

A: The payment of a coronavirus-related distribution to a qualified individual must be reported by the eligible retirement plan 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 repays the coronavirus-related distribution in the same year. The IRS expects to provide more information on how to report these distributions later this year. See generally section 3 of Notice 2005-92.

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