

Annotated guidance on IRS Q&A regarding coronavirus related relief for plans and IRAs

May 6, 2020

On May 4, 2020, the Internal Revenue Service (“IRS”) issued the following [Questions and Answers](#) in advance of formal published guidance, which contains items impacting retirement plans and IRAs. We have provided the Q&A, along with takeaways for you as a plan sponsor. For more information, please contact Nicole Pond, npond@tpgrp.com or Kent Smothers, ksmothers@tpgrp.com.

<p>Q1. What are the special rules for retirement plans and IRAs in section 2202 of the CARES Act?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: The CARES Act made changes to allow a new type of distribution, the coronavirus related distribution, as well as changes to the maximum participant loan and loan repayment requirements.</p>
<p>Q2. Does the IRS intend to issue guidance on section 2202 of the CARES Act?</p>	<p>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, 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.</p> <p>Plan Sponsor Takeaway: The IRS will be issuing additional guidance in the near future, and they anticipate that principles similar to principles used in 2005 for relief provided as a result of Hurricane Katrina will be used to develop further guidance.</p>
<p>Q3. Am I a qualified individual for purposes of section 2202 of the CARES Act?</p>	<p>You are a qualified individual if:</p> <ul style="list-style-type: none"> • 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



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	<ul style="list-style-type: none"> 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. <p>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.</p> <p>Plan Sponsor Takeaway: This Q&A confirms that diagnosis of SARS-CoV-2 or COVID-19 can apply to the participant, spouse, or dependent; however, adverse financial consequences are applied only to the participant. The Q&A also indicates that the Treasury Department and the IRS are reviewing comments from the public concerning expansion of the qualifying events.</p>
<p>Q4. What is a coronavirus related distribution?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A reiterates that there is an aggregate limitation at the individual participant level of \$100,000 for all coronavirus related distributions for all qualified plans and IRAs. Plans are not required to allow coronavirus related distributions.</p>
<p>Q5. Do I have to pay the 10% additional tax on a coronavirus related distribution from my retirement plan or IRA?</p>	<p>No, the 10% additional tax on early distributions does not apply to any coronavirus related distribution.</p> <p>Plan Sponsor Takeaway: This Q&A reiterates that coronavirus related distributions are exempt from the 10% additional tax for such distributions occurring before age 59½.</p>
<p>Q6. When do I have to pay taxes on coronavirus related distributions?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A provides an example of how the participant's taxes are spread across three years unless the participant elects to pay all the taxes in 2020.</p>
<p>Q7. May I repay a coronavirus related distribution?</p>	<p>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.</p> <p>If, for example, you receive a coronavirus related distribution in 2020, you choose to include the distribution amount in income over a three-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</p>



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	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A reiterates that coronavirus related distributions can be repaid within three years of the distribution. Any taxes previously paid on such coronavirus related distributions may be recovered by filing an amended return for 2020 and possibly 2021.</p>
<p>Q8. What plan loan relief is provided under section 2202 of the CARES Act?</p>	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>Plan Sponsor Takeaway: The IRS confirmed in this Q&A that loan repayments between March 27, 2020 and December 31, 2020, can be delayed for up to one year (and subsequent payments would also be delayed). Secondly, the loan limitations are increased for loans between March 27, 2020, and September 22, 2020. It is crucial to note that these provisions only apply for individuals that meet the qualification requirements (see Q&A 3).</p>
<p>Q9. Is it optional for employers to adopt the distribution and loan rules of section 2202 of the CARES Act?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: There are a couple of major takeaways from this Q&A. First, it reiterates that the coronavirus related distribution provisions and loan provisions are optional. The Q&A also confirms that employers are not required to allow coronavirus related distributions; however, the participant may elect such treatment on their tax return (in such case, the participant must meet the plan's normal distribution requirements).</p>



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<p>Q10. Does section 2202 of the CARES Act provide additional distribution rights to participants or otherwise change the rules applicable to plan distributions?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A provides that coronavirus related distributions will be treated as satisfying the restrictions related to 401(k) plans, 403(b) plans and governmental 457(b) plans. The coronavirus related distribution does not override the restrictions for pension plans (money purchase, target benefit, and defined benefit plans) before an otherwise distributable event.¹ Spousal consent will be required for coronavirus related distributions from plans requiring such consent.</p>
<p>Q11. May an administrator rely on an individual's certification that the individual is eligible to receive a coronavirus related distribution?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A reiterates that a plan can rely on self-certification for coronavirus related distributions. The Q&A places an actual knowledge standard for the IRS to overcome the plan's reliance on the self-certification, meaning that the plan administrator must actually know that the certification is not valid. Relying solely on self-certification is a safe technique for the plan since the plan administrator would never obtain "actual knowledge" when doing so. The Q&A also makes it clear that participants still must satisfy the burden of proof, if the IRS audits the individual participant.</p>
<p>Q12. Is an eligible retirement plan required to accept repayment of a participant's coronavirus related distribution?</p>	<p>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</p>

¹ The Setting Every Community Up for Retirement Enhancement ("SECURE") Act provided an opportunity for in-service distributions in pension plans after age 59½.



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	<p>contributions, the plan is not required to change its terms or procedures to accept repayments.</p> <p>Plan Sponsor Takeaway: This Q&A provides that even though a participant is allowed to rollover a coronavirus related distribution, the plan is not required to accept such rollovers or any other type of rollover.</p>
<p>Q13. How do qualified individuals report coronavirus related distributions?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A allows a participant to report a distribution as a coronavirus related distribution no matter how the plan reports the distribution on the Form 1099-R. Because the employer may not know how the participant is choosing to treat the tax on his or her individual return, a plan sponsor can avoid tax reporting penalties by not reporting the distribution as a coronavirus related distribution, knowing that the participant has the right to take advantage of the favorable treatment allowed for coronavirus related distributions.</p>
<p>Q14. How do plans and IRAs report coronavirus related distributions?</p>	<p>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.</p> <p>Plan Sponsor Takeaway: This Q&A provides that additional guidance will be needed regarding how to report coronavirus related distributions.</p>

