

Look: IRS Answers Frequently Asked Questions on CARES Act Retirement Provisions

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Plan sponsors, service providers and plan participants have been eagerly awaiting guidance on the new Coronavirus Relief Distribution (CRD) and loan provisions that were added by Section 2202 of the CARES Act. **Limited guidance** was provided on the IRS website yesterday.

As we expected, the guidance provides assurance that the principles of IRS Notice 2005-92, which was issued for the Katrina hurricane relief, should be applied. Therefore, the new CRD and loan provisions, including the three-year repayment right to the plan, are all optional provisions that the plan sponsor can elect to offer (or not). Even if the plan sponsor does not elect some or all of the provisions, a participant that receives a 2020 distribution by December 30, 2020 can take advantage of favorable tax treatment (no 10% early withdrawal tax, three-year spread of taxation) on his Form 8915-E (which is pending development).

Regarding who is a qualifying individual for the CRDs and loans, the IRS reiterates the existing factors, but notes that they are considering other factors to justify eligibility, presumably including a spouse who loses employment. Further, although the FAQs reiterate that administrators can rely on an employee certification for making the CRD or permitting the more favorable loan terms, that reliance is not permitted if the administrator has actual knowledge to the contrary (such limitation was not in the statute, but was included in Notice 2005-92).

Following Notice 2005-92, the IRS confirmed that participants in a money purchase pension plan must have a distributable event in order to take a CRD, and refers to Form 1099-R reporting guidance in such Notice (and indicates further guidance is coming later in the year).

Notably, regarding loans, FAQ Q&A-8 confirms our understanding that the new loan \$100,000/100% account balance limit is available through September 22 (not the 23rd), and refers back to Notice 2005-92 for the loan reamortization process (without much more guidance).

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We will all stay tuned for additional guidance, which hopefully will include details (and relief) on the 2020 MRD waiver as well.

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

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