LEGALcurrents®

June 22, 2020

Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

IRS NOTICE 2020-50 PROVIDES ADDITIONAL CARES ACT GUIDANCE FOR RETIREMENT PLANS

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. In the case of 401(k), 403(b) and 457(b) plans, the CARES Act waives the usual statutory restrictions on in-service distributions.

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.

This newsletter highlights key information from IRS Notice 2020-50 ("the Notice"), issued on June 19, 2020, to provide plan sponsors/administrators and qualified individuals with instructions on CRDs and CARES Act loan relief. More details about CRDs and CARES Act loan relief are available in our updated "COVID-19 CARES Act Provisions and Other Employee Benefits Developments" LEGALcurrents newsletter available here.

Qualifying for CRDs and Loan Relief

Under the CARES Act, a "qualified individual" is defined as:

- An individual who has been diagnosed with SARS-coV-2 or coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the CDC (including a test authorized under the Federal Food, Drug, and Cosmetic Act);
- An individual whose spouse or dependent has been diagnosed in such a manner with COVID-19; or
- An individual who experiences "adverse financial consequences" as a result of being quarantined, furloughed, laid off, having hours reduced, or being unable to work due to lack of child care due to COVID-19, or having to close or reduce the hours of a business the individual owns or operates due to COVID-19, or such other factors as determined by the Secretary of the Treasury or his delegate.

Notice 2020-50 expands the definition of "qualified individual" to also include any individual who experiences adverse financial consequences as a result of:

- The individual having a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;

Practice Group Leader
Paul W. Holloway

Health and Welfare
Thomas J. Hurley
John W. Brill

Counsel
Leslie E. DesMarteau
Lisa G. Pelta
Joseph E. Simpson

Associates
Amanda M. Karpovich
Paige N. Monachino
Crosby A. Sommers

Benefits Litigation Counsel
Megan K. Dorritie
Erika N. D. Stanat

Retirement
Mark R. Wilson

Executive Compensation
Christopher M. Potash

- 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, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or
- Closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

Plan administrators may rely on the employee's certification that the employee meets one of the above conditions in determining whether the employee is a qualified individual, in the absence of 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.

Sponsors of plans which are dual-qualified in Puerto Rico should bear in mind that the special distribution rules available in connection with the pandemic under Puerto Rico law overlap with but are not identical to U.S. law, and consult Puerto Rico counsel about the extent to which individuals covered by the newly approved qualified individual rules meet Puerto Rico requirements.

Distributions That Can Be CRDs

Generally, any distribution that meets the CARES Act requirements can be classified as a CRD. Notice 2020-50 confirms that this includes periodic payments, payments to beneficiaries of deceased participants and IRA owners, and loan offset amounts (i.e., the amount of a defaulted loan deducted from a participant's account balance). However, the "deemed distribution" of a defaulted loan CANNOT be treated as a CRD. Likewise, distributions or refunds of excess contributions, ESOP dividends paid in cash rather than being invested in the plan, automatic enrollment refunds under an EACA, the costs of current life insurance protection, prohibited allocations treated as deemed distributions under Section 409(p) of the Code and distributions for health and accident insurance premiums cannot be treated as CRDs.

Tax Reporting Instructions for CRDs

Notice 2020-50 provides additional details for qualified plans making and reporting payments, and for qualified individuals seeking to claim CRD tax benefits.

Recontribution of CRDs to Eligible Retirement Plans

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 one or more contributions in an aggregate amount not to exceed the amount of the distribution to an eligible retirement plan (i.e., a qualified plan, 403(b) plan, governmental 457(b) plan, or IRA). These contributions will be treated as rollover contributions (or direct trustee-to-trustee transfers, if an IRA is the recipient of the contribution) for tax purposes.

Notice 2020-50 provides more detail about the requirements a CRD must meet in order for recontribution rights to be available. The CRD must otherwise qualify as an "eligible rollover distribution." Helpfully, Notice 2020-50 provides that CRDs will not be considered to have been made on account of hardship for purposes of determining whether the hardship exclusion from "eligible rollover distribution" status

applies.[1] In contrast, Notice 2020-50 explains that payments made to beneficiaries (other than surviving spouses) of deceased plan participants and IRA owners cannot be recontributed.

The Notice also explains how qualified individuals who recontribute some or all of their payments can claim exclusion of the recontributed amount from income and/or seek refunds of previous years' taxes, by using Form 8915-E (and, when applicable, filing amended tax returns).

Loan Repayment Suspensions

For plans which allowed qualified individuals to suspend loan repayments, Notice 2020-50 provides a safe harbor method for calculating loan payments due when loan repayments resume in January 2021. Under the safe harbor method, the outstanding loan amount (taking into account the loan repayments not made during the suspension period and accrued interest) is reamortized across the remaining term of the loan plus up to one year, starting in January 2021. Use of the safe harbor method is not mandatory, however. Notice 2020-50 also allows plans to use other reasonable methods.

If you have any questions regarding this LEGALcurrents, please contact any member of the Employee Benefits and Executive Compensation group at 585.232.6500, 716.853.1616, or visit www.hselaw.com.

Attorney Advertising. Prior results do not guarantee a similar outcome. This publication is provided as a service to clients and friends of Harter Secrest & Emery LLP. It is intended for general information purposes only and should not be considered as legal advice. The contents are neither an exhaustive discussion nor do they purport to cover all developments in the area. The reader should consult with legal counsel to determine how applicable laws relate to specific situations. © 2020 Harter Secrest & Emery LLP

[1] In contrast, CRDs can be considered hardship withdrawals for purposes of determining whether a plan subject to Section 409A of the Internal Revenue Code can cancel (but not postpone or otherwise delay) a deferral election.