**IRS Coronavirus Guidance**

The IRS has released three notices, Notices 2020-50, -51, and -52, with important guidance related to the CARES Act and the impact of COVID-19 on retirement plans. This memo summarizes that guidance and the resources Relius has made available to practitioners. These resources are all on the [Relius.net Pension Other Resources](https://www.relius.net/News/OtherResources.aspx?T=P) page. Practitioners should check that page frequently for updates.

**Qualified Individuals (QIs)**

CARES authorized the IRS to expand the categories of Qualified Individuals (QIs), persons who can avail themselves of three primary items of CARES Act relief:

* Coronavirus-related distributions (CRDs)
* Doubled loan limits
* Extended loan repayments

In short, you are a QI if you, your spouse, or one of your dependents has been diagnosed with COVID-19 by an FDA-approved test, or you’ve experienced adverse financial consequences because you, your spouse, or a member of your household (someone who shares your principal residence), because of COVID-19, have been quarantined, furloughed, laid off, had work hours reduced, were unable to work due to lack of childcare, owned or operated a business that was closed or had reduced hours, or had a reduction in pay or had a job offer rescinded or delayed.

The IRS also provided a model form an individual can use to certify his or her status as a QI. That model is the basis of an updated [COVID-19 Certification](https://www.relius.net/News/Docs/COVID%2019%20Certification.docx) we released July 20. Plan administrators can rely on that certification in the absence of actual knowledge to the contrary and have no duty to investigate or inquire whether the certification is accurate. Reliance is available for QIs who are employees, former employees, beneficiaries, or alternate payees, and applies to all CARES relief.

**Coronavirus-Related Distributions (CRDs)**

Much of Notice 2020-50 focuses on the tax treatment of CRDs for the participant, which is beyond the scope of this update. However, it also provided important information for plan administrators, including the following:

* Distributions to QIs made no later than December 30, 2020 can be CRDs, including hardship distributions, plan loan offsets, in-service distributions, RMDs, and distributions on severance or plan termination.
* By contrast, several types of distributions are not CRDs, including corrective distributions, deemed distributions, and permissible withdrawals.
* 401(k), 403(b), and governmental 457(b) plans can make in-service CRDs before a participant reaches age 59 ½. However, pension plans, (including defined benefit and money purchase pension plans) cannot distribute CRDs before 59 ½ or separation from service. CRDs are subject to QJSA rules if those rules apply to the plan.
* Plans may develop reasonable procedures for determining if a distribution is a CRD.
* Plans report CRDs on form 1099-R (even if they are later recontributed). If the participant is under age 59 ½, the plan can use Code 1 or Code 2 to report the distribution.
* CRDs are not subject to 20% mandatory withholding. They are subject to voluntary withholding under Code §3405. A plan need not provide a special tax notice under Code §402(f) when it makes a CRD.

**Recontribution of CRDs**

A participant can recontribute a CRD within 3 years of receiving it. The recontribution can be made to the plan that distributed it, to another plan, or to an IRA. The plan can rely on the participant’s certificate that the recontribution is proper, unless the plan administrator has actual contrary knowledge. We have provided a [Participation Recontribution Certification](https://www.relius.net/News/Docs/COVID-19%20Recontribution%20Certification.docx) for that purpose.

**Participant Loans**

Plans can make participant loans to QIs with up to double the normal loan limits (i.e., the lesser of $100,000 or 100% of the vested account balance), so long as the loans are made by September 22, 2020. The DOL has announced that these loans will not be prohibited transactions, even though they may violate the “reasonably available” and “adequate security” requirements which normally apply.

Some of the most important questions about CARES center on the provision allowing plans to suspend loan repayments and extend the term of loans for QIs. The IRS made important clarification of key points:

* A plan is not required to suspend repayments or extend loan terms. It is not required to provide the maximum relief allowed by statute. Moreover, if a participant does not repay the loan pursuant to its terms, as modified by the plan, the participant will suffer a deemed distribution.
* Any repayment suspension can begin no sooner than March 27, 2020 and can end no later than December 31, 2020. This means for most loans, repayment must resume (or begin) in January 2021.
* The plan can extend the loan repayment period for a QI by up to one year, regardless of the length of the suspension.
* The IRS provided a “safe harbor” application of the rules. Under the safe harbor, repayments would resume in January and would be reamortized at that point over the remaining loan term. The new amortization schedule would take into account the interest which accrued during the suspension period and any extension of the repayment period. The IRS acknowledged that other approaches to the statute were available.

The IRS provided the following example of the safe harbor:

On April 1, 2020, a participant with a nonforfeitable account balance of $40,000 borrowed $20,000 to be repaid in level monthly installments of $368.33 each over 5 years, with the repayments to be made by payroll withholding. The participant makes payments for 3 months through June 30, 2020. The participant is a qualified individual. The participant’s employer takes action to suspend payroll withholding repayments, for the period from July 1, 2020, through December 31, 2020, for loans to qualified individuals that are outstanding on or after March 27, 2020. Because the participant is a qualified individual, no further repayments are made on the participant’s loan until January 1, 2021 (when the balance is $19,477). At that time, repayments on the loan resume, with the amount of each monthly installment reamortized to be $343.27 in order for the loan to be repaid by March 31, 2026 (which is the date the loan originally would have been fully repaid, plus 1 year)

**Required Minimum Distributions (RMDs)**

The CARES Act eliminated the requirement to take 2020 RMDs from qualified defined contribution plans, 403(b) plans, governmental 457(b) plans, or IRAs. Earlier, the SECURE Act delayed the required beginning date for persons born after June 30, 1949 from being based on age 70½ to age 72.

The combination of these two changes, coming late in 2019 or in March of 2020, meant that several people received RMDs which they were not required to receive. Since those amounts are not RMDs under the law, they are eligible rollover distributions, but the normal rollover period is only 60 days. The IRS extended the rollover deadline for those distributions to August 31, 2020 (or, if later, 60 days after receipt of the distribution). Repayments of these amounts are not subject to the “one rollover per year” IRA rollover limit.

The IRS model offers two approaches. One approach distributes 2020 RMDs unless the participant declines. The second does not distribute 2020 RMDs unless the participant requests distribution. Either way, the ultimate decision rests with the participant, with the plan simply selecting the default.

As an alternative, the employer can decline to amend to reflect the CARES Act RMD holiday. If the plan spells out the RMD rules in detail, the choice not to amend will mean that the plan will distribute RMDs automatically. If the plan incorporates the RMD rules by reference (such as the Relius 403(b) document), the plan will not distribute 2020 RMDs. The IRS observes that CARES RMD amendments which do not provide participant elections likely violate the anti-cutback rules.

Note that if a plan makes a distribution in 2020 that would have been an RMD if Congress had not passed CARES, the distribution is subject to voluntary withholding, rather than mandatory 20% withholding.

**CARES Amendment**

The deadline for most employers to adopt a CARES amendment is the last day of the 2022 plan year. Governmental employers can wait until 2024. Terminating plans should sign the amendment prior to, or in connection with, plan termination. Plans do not need to adopt a CARES amendment if they will not be implementing CARES provisions.

The IRS provided model amendments a plan can use to implement the 2020 CARES RMD holiday. We have modified our [CARES Act Employer Amendment](https://www.relius.net/News/Docs/CARES%20Act%20Amendment%20Employer.docx) to reflect the IRS model, as well as to provide additional options related to loan suspension and extension and the revised definition of QI. We will provide an updated document sponsor amendment later, after we receive clarification about document sponsor amendments related to RMDs. Employers who adopted the version of the CARES amendment we released in May do not need to adopt the new amendment unless they wish to use some of the new optional provisions.

The IRS noted that the effective date of the CARES amendment is important, particularly with regard to the RMD distributions. Distributions before the effective date should comply with the document as written. Distributions after the effective date should comply with terms of the amendment. Of course, the amendment can be adopted with a retroactive effective date.

**Safe Harbor 401(k) Plans**

Many employers are suspending or reducing employer contributions to safe harbor 401(k) plans. (We will refer to both suspensions and reductions of safe harbor contributions by the word “reduction.”) The IRS provided important guidance about reductions.

To understand the guidance, it is important first to understand the rules which govern reductions.

1. The employer can adopt the reduction only if the employer **qualifies** to do so. The employer qualifies to adopt a reduction only if the employer provided the “maybe not” notice as part of the safe harbor notice, or the employer is operating at an economic loss for the plan year.
2. If the employer qualifies for the reduction, then the employer can adopt the reduction subject to the following **requirements**:
   * Participants must receive a supplemental notice at least 30 days before the reduction is effective.
   * Participants must be able to change their deferral elections.
   * The employer must adopt the reduction before it takes effect (and it cannot take effect sooner than 30 days after the supplemental notice was given).
   * The plan must pass ADP/ACP for the full year using current year testing.

For reductions adopted between March 13 and August 31, 2020, the employer need not qualify (as described in item 1 above). There is no need to be operating at an economic loss. However, this does not change the requirements in item 2. Most importantly, a plan **will** lose safe harbor status for 2020 if the employer adopts a reduction.

For plans providing a safe harbor nonelective contribution, the supplemental notice need not be provided 30 days in advance, so long as the employer provides the notice no later than August 31, 2020. (This relief does not apply to safe harbor matching contribution plans, although the employer can adopt a reduction for such a plan with the appropriate 30-day advance notice).

On April 9 we released to our [Pension Other Resources page](https://www.relius.net/News/OtherResources.aspx?T=P) sample Reduction amendments and supplemental notices. Employer can still use these documents for safe harbor reductions.

The IRS clarified that not all contributions to a safe harbor 401(k) plan are “safe harbor contributions” subject to the rules on reductions. For example, a discretionary matching contribution is not a safe harbor contribution, whether or not the discretionary matching contribution qualifies for the ACP safe harbor. Only safe harbor contributions to NHCEs are technically safe harbor contributions for purposes of the reduction rules.

As a result, an employer can prospectively amend a plan to reduce or suspend contributions for HCEs without triggering the reduction rules. So long as contributions to NHCEs remain untouched, the plan will not lose safe harbor status. However, pursuant to Notice 2016-16, the IRS will need to provide notice of the change to the affected HCEs and give them an opportunity to change their deferral elections.

**August 31 deadlines**

August 31 is an important deadline for three issues:

* The deadline to roll over RMDs made between January 1 and July 4 (other than RMDs from defined benefit plans or tax-exempt 457(b) plans for individuals born before July 1, 1949).
* The deadline to adopt a safe harbor 401(k) reduction if the employer did not give a maybe notice and is not operating at an economic loss.
* The deadline to provide a supplemental notice for a safe harbor nonelective plan.

It is also the deadline for individually designed cash balance and other “statutory hybrid” defined benefit plans to apply for a determination letter pursuant to Rev. Proc. 2019-20.

**Cafeteria Plan Amendment**

We have released an updated optional [amendment for Cafeteria Plans](https://www.relius.net/News/Docs/CARES%20Act%20Amendment%20Employer.docx). This allows employers to update plans to comply with the CARES Act provisions concerning reimbursement of over-the-counter (OTC) drugs, menstrual products, and telehealth; the temporary change in status provisions under IRS Notice 2020-29; the DOL/IRS updates to the claims procedures and COBRA timelines (IRS Notice 2020-23 and EBSA Disaster Relief Notice 2020-01), and the new cost of living adjustment for the carryover provisions under IRS Notice 2020-33.

**More to Come**

We continue to prepare amendments and information related to CARES and SECURE and will release them in the coming months. Check our [Pension Other Resources page](https://www.relius.net/News/OtherResources.aspx?T=P) frequently to find the latest revisions and newly posted materials.