

LEGAL UPDATES

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# IRS Releases FAQs: Coronavirus-related Relief for Retirement Plans and IRAs

On May 4, 2020, the Internal Revenue Service (IRS) issued 14 FAQs on Section 2202 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). As noted in a prior post, Section 2202 of the CARES Act generally provides for the following:

Expanded distribution options and favorable tax treatment for up to \$100,000 of coronavirus-related distributions from eligible retirement plans;

Special rollover rules with respect to coronavirus-related distributions;

Increased limit on the loan amount a qualified individual may receive from an eligible retirement plan (not including an IRA); and

An additional year to make certain repayments of plan loans.

FAQ 2 says that the IRS and Treasury anticipate issuing guidance on Section 2202 of the CARES Act in the near future. In the meantime, the IRS and Treasury stated that they expect to follow the principles set forth in IRS Notice 2005-92 issued in the wake of Hurricane Katrina.

Here are some highlights from the FAQs:

The coronavirus-related distribution and loan rules generally apply only to qualified individuals.

Generally, an administrator may rely on an individual’s certification as to his or her status as a qualified individual. See here for the definition of “qualified

individual.” However, the certification may not be relied on if the administrator has actual knowledge to the contrary.

The IRS and Treasury have received and are reviewing comments requesting an expansion of the definition of “qualified individual.”

#### Coronavirus-related Distributions:

A qualified individual may choose to repay all or part of the amount of a coronavirus-related distribution within three years of the date of the distribution, provided that a plan will accept such repayment. If the qualified individual does so, he or she may claim a refund of the tax attributable to the amount of the coronavirus-related distribution that he or she included in income prior to the repayment date. Although repayments of coronavirus-related distributions are treated as rollover contributions, the FAQs clarify that a plan is not required to change its terms or procedures to accept repayments if the plan does not accept rollover contributions.

Even if a qualified individual repays a coronavirus-related distribution in the same year, the coronavirus-related distribution must be reported by the plan on Form 1099-R. The IRS expects to provide more information on how to report these distributions later this year.

An employer is not required to adopt coronavirus-related distribution rules that satisfy the provisions of Section 2202 of the CARES Act. If a plan does not treat a distribution as coronavirus-related, a qualified individual who receives a distribution for any other reason (e.g., termination of employment or financial hardship) may treat the distribution as a coronavirus-related distribution on the individual’s federal income tax return.

#### Loans:

The CARES Act states that, in the case of a qualified individual with an outstanding loan on or after March 27, 2020, if any date for repayment occurs between March 27, 2020 and December 31, 2020, the due date **shall be** delayed under the plan for up to one year, and any payments after the suspension period must be adjusted to reflect the delay and interest accruing during the delay.

However, the FAQs provide a different approach. First, the FAQs provide that the repayment delay is **not mandatory**, and that a plan does not need to provide for a delayed repayment of plan loans.

Second, FAQ 8 does not appear to limit the relief on loan repayments only to qualified individuals. Therefore, unless clarified in future guidance, any outstanding loan may be suspended for up to one year.

IRS Notice 2005-92 provided a safe harbor for delayed repayments. As applied to the CARES Act loan repayment delay, a loan with delayed repayments would be required to resume loan repayments in January 2021, with a revised amortization schedule to reflect the missed payments and accrued interest. The term of the loan may be extended to reflect the 8-plus month period (i.e., March 27, 2020 to December 31, 2020) during which payments were delayed.

Employers are not required to make changes to plan loan limits or loan repayment schedules that satisfy the provisions of Section 2202 of the CARES Act.

### **Contact Us**

If you have further questions or require more information regarding this update, please contact Alan Kandel, Myriem Bennani or your Husch Blackwell attorney.

### **Comprehensive CARES Act and COVID-19 Guidance**

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.