

[NOTE: The following Q&As reflect guidance as of 6/24/2020 and will not be updated for subsequent developments.]

Questions – We Cares – Now We Know – 6/24/2020

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**Coordination of Limits - [Top](#)**

**Q.** Can a participant take a CRD & a COVID Related loan each for \$100,000?

Yes. They are two separate limits

**Q.** Could a QI take both a \$100K loan from their 401k plan account and a \$100K distribution from their personal IRA?

Yes. Loans and distributions are limited separately. The person could not take a \$100K distribution from the 401(k) and \$100,000 from an IRA and claim both as CRDs.

**Q.** If I am a QI and my spouse and I both have retirement plans, can we each request \$100k from our respective plans?

Yes.

**Q.** The \$100,000 limit isn't a per taxpayer limit like 402(g)? It's per employer?

If it both a per taxpayer limit and a per employer limit, as is 402(g). [CARES Act 2202(a)(2)(A) and (B); Compare Code §401(a)(30)] The per employer limited is applied on a related employer basis.

**Q.** If you have an outstanding loan and are terminated, can you take the CRD, payoff the loan, and then take another CRD?

If the loan offset is less than the \$100K limit, you can get the balance as a CRD if the plan so allows.

### **Coronavirus-Related Distribution - In General - [Top](#)**

**Q.** Is there any requirement that the amount of a CRD be limited to the amount of the financial loss suffered by a QI due to the virus?

No. Notice 2020-50 is clear that there need not be a correlation between the amount of the distribution and the financial impact of COVID on the participant.

**Q.** The statement that CRD is not limited to the amount of the need: is it only about the plan (no need to confirm/research) OR is it also OK for Participant to take the whole \$100K even if the need was less (during the IRS audit) as long as QI?

A QI can take anything up to his/her full account or \$100K, without showing any correlation between the distribution and the amount of financial hardship. If the "need" is \$5,000 and the participant takes \$100,000, an auditor will smile and pat the participant on the head and say "good taxpayer."

**Q.** May a prior hardship withdrawal be treated as CRD, despite not being an eligible rollover distribution?

If a qualified individual took it during the appropriate timeframe, yes. And it can be recontributed as well.

**Q.** What % of employers are you finding are adopting the \$100k CARES distribution portion?

No idea. My impression is that it varies greatly from company to company and TPA to TPA.

**Q.** Participant takes a distribution less 20% January. In June is deemed to be a QI. Does this payment qualify as CRD?

Yes. The cash and withholding are a CRD.

**Q.** What if it wasn't a CRD when taken but the participant becomes a QI later, can the participant still treat it as a CRD?

Yes.

**Q.** If I had a Roth IRA for less than 5 years and took a distribution in 2020 and as a Qualified Individual, is that taxable earnings considered part of a Coronavirus Distribution? If so, could it be paid back to the IRA?

Yes.

## **Coronavirus-Related Distribution - Recontributions/Tax Payments - [Top](#)**

**Q.** If the COVID distribution is with Roth contributions - and the account is not yet qualified (not in effect for 5 years) how will this be taxed?

It will be subject to the same tax rules that would apply in a non-CARES distribution. Suppose the plan distributes \$30,000 with a \$24,000 basis. \$6,000 is taxable, and the participant can include all \$6,000 in 2020 or \$2,000 each in 2020, 2021, and 2022.

**Q.** Does the reporting need to be equal? Can you report 20K, 20K, and 5K?

If you are using the 3-year tax rule, it must be ratable (i.e. equal) over the 3 years.

**Q.** Can a plan restrict the ability to accept a CRD back into the plan as a rollover, even if the plan accepts rollovers? For example, the money is not coming from an IRA or another plan and the receiving plan doesn't want to determine that it was actually a CRD.

Yes, although the ability to rely on the participant's representations alleviates the risk.

**Q.** Also, are re-contributions to be placed into a rollover money source when redeposited?

Yes. Treat them as you would any other rollover.

**Q.** If a 401(k) accepts rollovers, can it prohibit re-contributions of corona-virus related distributions that were distributed from a prior employer plan?

A plan administrator can choose to accept only those rollovers it finds acceptable unless the plan provides otherwise, or the limitation is discriminatory.

**Q.** How does a plan sponsor verify (for acceptance purposes) that a re-contribution amount is actually from a CRD unless it was initially distributed from their plan?

You take the participant's word for it. I would have them certify when they return the money. And if you find out they lied, you give them their money back and the plan is no worse off. That's the whole idea of the 401(a)(31) relief we spoke of, to make plans willing to accept rollovers.

**Q.** Participant of DB Plan dies June 17, 2020. Beneficiary is a QI (in her own right). How long does the beneficiary have to pay back as CRD?

3 years from the date of receipt.

**Q.** If a plan offers a coronavirus related distribution, is the plan REQUIRED to accept repayments if the plan otherwise accepts rollovers?

We don't think so. But it cannot be discriminatory.

**Q.** If a DB RMD is possible to be considered as a CRD, can it actually be re-contributed? I can see that it might get the 3 year treatment for counting in income tax, but can it really be rolled over?

The DB RMD cannot be rolled over, even though it can qualify for 3-year income inclusion.

**Q.** In Angela's example when she recontributes 18,000 and has \$12,000 remaining, can she break that 12,000 into 3 years of taxes or is it 10,000 in 2021 and 2000 in 2022?

The timing on reporting is dictated by the facts. She has the choice we indicated. Since the money was paid in 2021, after filing the 2020 return, it wipes out her 2021 income and leaves \$8,000 to be carried back or forward.

**Q.** Our plans only permit DIRECT rollovers from an IRA, another qualified plan, etc. I trust the participant who takes a CRD can only rollover that amount back to the same ER plan must first deposit it in an IRA, correct?

Technically, the law regards the rollover as a direct plan-to-plan transfer. So, you would not need to. But beyond that, it is a matter of interpreting the plan's procedures.

**Q.** Did I miss if the recontributed amount has to be funded into a ROTH source? If so, what if the plan does not have ROTH?

Then the plan cannot accept the rollover.

**Q.** If plan has pre-tax and Roth and accepts rollovers of pre-tax and Roth, can it limit acceptance of CRD repayments to pre-tax amounts only?

The plan can follow its rollover policies.

**Q.** Can contributions made into a plan prior to the QI taking the CRD be counted as recontributed on the 8915-E? For example, contributions were made from 1/1/20 - 5/1/20 and distribution was taken in June of 2020?

I think the recontribution would have to follow the distribution. And deferrals, properly elected and withheld as such, couldn't be recharacterized as recontributions, regardless of the time frame.

**Q.** If a participant takes a CARES Act distribution, not a loan, are they allowed to pay it back into the Plan by personal check every pay period or every month or so? Or can they only make repayments once a year?

The plan policies may limit the ability to make rollover contributions in the way you describe. But the law does not impose such a limitation. So, a plan could permit periodic recontributions. And I could envision many recordkeepers very unhappy with such a choice.

**Q.** Can repayment come from pay like a loan payment?

Why not?

## **Coronavirus-Related Distribution - Withholding & Reporting - [Top](#)**

**Q.** Are we allowed to say if the 10% withholding election form is not returned by a certain date then the 10% will apply?

Yes. The participant may waive out of the withholding requirement. If he/she does not, the withholding applies. For more on the withholding requirement, please see Treas. Reg. §35.3405-1T, section d.

**Q.** If a distribution was taken earlier in the year and the record-keeper withheld 20% federal tax. Does the participant have to wait to file their 2020 taxes to get the refund?

Yes.

**Q.** Does a CRD have to be taken as cash? We had someone try to do it as a rollover.

You mean a direct plan-to-plan rollover? The plan does not have to accommodate this, but they could if they wanted to. Incidentally, you've hit on the "leakage" reason some employers don't want to implement CRDs.

**Q.** If in-service withdrawal done with 20% federal withholding, can participant still claim as CRD and prorate taxable distribution over 3 years?

Yes. To be specific, suppose the withdrawal was \$30,000 and the employer withheld \$6,000 (either because the plan did not realize it was a CRD, or because the participant chose to have 20% withheld). The participant can report \$10,000 in each of 2020, 2021, and 2022. The participant would claim the credit for the \$6,000 withholding on the 2020 return.

**Q.** So, for plan perspective, CRD is not eligible rollover distribution (page 21 of slide), but they can cooperate with direct rollover request, if they want to? And, if they want to cooperate with the direct rollover, do they have to provide the 402(f) notice first?

Yes, they can cooperate. No, 402(f) notice is not required.

**Q.** Would the 8915-E be used for RMD's that are recontributed?

The 8915-E would be used for CRDs that are recontributed. RMDs that are not CRDs that are recontributed, pursuant to Notice 2020-51, are not reported on Form 8915-E.

**Q.** If we get CRD paperwork completed with the certification as to a qualified individual, would you use code 2 to aid participant in avoiding issues related to code 1?

I would, but I'm nice that way. 😊

**Q.** Does the participant have to complete an IRS form to track the 3 year period, either filed with the taxes or kept in personal tax records?

The Form 8915-E is how this is reported.

**Q.** Who tracks the repayment of a CRD?

The participant does on Form 8915-E.

**Q.** What was his last comment about a \$100 per day penalty? Just before he said we need to subscribe to ERISApedia?

Code §6652(h), as amended by SECURE imposes a penalty of \$100/form (\$50,000 maximum) for failure to provide a notice and election as required by Code §3405 for distributions not subject to mandatory 20% withholding.

**Q.** CRD - voluntary 10% federal tax. Can the participant elect a higher amount for federal tax withholding?

Voluntary withholding allows a higher percentage. The 10% is the default for a nonperiodic distribution.

#### **Coronavirus-Related Distribution - Effect on Top-Heavy - [Top](#)**

**Q.** Any special guidance regarding CRDs as they relate to the top heavy test? That is, if a CRD is taken by an active EE, do we treat them as an in-service distribution?

There are no special top heavy rules. An CRD is added back into top heavy for 5 years unless it follows death, disability, or termination of employment. Code §416(g)(3)(B).

**Q.** How does the direct rollover affect the top heavy test if rolled into the same plan?

It is a related rollover because it came from a plan maintained by the same employer. [Treas. Reg. §1.416-1, T-32.]

#### **Coronavirus-Related Distribution - Defined Benefit - [Top](#)**

**Q.** Can a retiree in pay status under a defined benefit pension plan receiving monthly annuity payments treat the annuity payments he receives in 2020 as Coronavirus related distributions?

Yes, if the retiree is a qualified individual.

**Q.** Is it possible to Husband and wife business owners take CRDs to turn around and fund the plan for DB minimum funding by new deadline since COVID19 caused business not to have income to make contribution required to meet the minimum. That is, amend the plan immediately to allow for an ERD since both are 59 1/2?

The restrictions on DB distributions to HCEs would apply to CRDs, including the various funding restrictions and the nondiscrimination rules.

**Q.** Can a 2020 RMD from a DB plan be recontributed to the DB if the participant is a QI?

No. An RMD is not an eligible rollover distribution and is not eligible for recontribution. However, an amount distributed from a DC plan that would have been an RMD in the absence of CARES can be recontributed.

### **Coronavirus-Related Distribution - Plan Amendments - [Top](#)**

**Q.** I had a client that wanted to add CRD's as an option, but didn't want to amend their plan. Their counsel told them the hardship w/d provision in the plan, which allowed participants in a Federal Disaster Area, covered the individual for this type of withdrawal. Would like your thoughts.

The hardship rules only apply if the area is a declared federal disaster area AND the area has been designated as eligible for individual assistance. If your area fits the bill, you could do that. However, as most plans to date have not necessarily been updated as to the new hardship rules, an amendment may be needed, anyhow. Also, hardship distributions are limited to the amount of the hardship, which needs to be substantiated. So, the paperwork burden is higher and the participant may not be able to take out as much as is really needed.

**Q.** With the expansion of the criteria for a QI, can an employer now decide that they no longer want to permit a CRD - e.g. sign a new election form removing that option?

Suppose they amended the plan to permit CRDs. The amendment doubtless said they would be available through the rest of the year. Suppose the employer want to issue a new amendment taking them away. That would violate the anti-cutback rule, as it applies to existing account balances.

**Q.** Can a plan limit in its amendment to distributions in a shorter time frame (say until 9/30/20)? A plan sponsor is concerned distribution will be used to fund holiday shopping in December.

Yes, if the plan is documented that way.

**Q.** Re slide 24: Is this saying the plan can treat a distribution as a CRD, and not withhold 20%, even if the plan sponsor does NOT adopt this provision & does NOT intend to amend the plan? If so, why would a plan sponsor choose to amend the plan to adopt this, especially if there is an amendment fee?

The main reason for the employer to adopt the amendment is to permit distributions that would otherwise be unavailable. Without an amendment, you are limited to the distribution events specified in the document.

**Q.** Does plan amendment deadline of 12/31/2022 for Cares act related provisions apply to prototype, volume submitter etc. plans or only individually designed plans?

It applies to individually designed and preapproved plans.

**Q.** On the IRS Model amendment slide, you mention that the employer may "select what distributions mandate plan provide direct rollover option". Can you explain that?

Yes. Come to the July 8 Fireside Chat (or listen to the recording). It's a lengthy issue.

**Q.** I know you can pick and choose between CRD and / or loan when amending for CARES, is that the same with RMD? Based on what you said re: "needs to be signed by sponsor" makes it independent from the other CARES aspects.

It does indeed. A plan can choose not to amend for any aspect of CARES.

### **Coronavirus-Related Loans - In General - [Top](#)**

**Q.** Any thoughts on why there is a cutoff for loan payments starting March, even though distributions for QIs is back to January even before they may have been a QI? I've seen a lot of folks whose loan payment due dates and determination for default straddle that date. Missed a couple payments before, suspended subsequent payments after the date, but it becomes unclear as to whether they should be defaulted.

Congress does what it does. Those folks have the benefit of the plan's cure period, augmented by the Notice 2020-23 relief which extends deadline to July 15. After that, you're looking at a deemed distribution or at EPCRS.

**Q.** What if the Employee is still employed but over the age of 59 1/2 and allowed by the plan. Would a loan offset be allowed?

Yes if plan terms and loan policy permits.

**Q.** Deemed distribution-does the loan still exist and does it continue to accrue interest?

Yes. Yes.

**Q.** The CARES Act loan extension is only allowed if someone is a QI right? So they have to certify they are eligible for the extension so the Cares Act loan extension is determined by participant. This is not an employer decision right?

The law technically does not require employee certification. It permits an employer to rely on employee certification. If an employer furloughed employees, and therefore knows the status, the employer presumably could act independently.

**Q.** Can an active participant that is a QI have their loan offset today, since the CRD is a distributable event for them...i.e. it is not a loan default. They just have the loan offset now and stop the loan repayments. There is no need to take the CRD first and repay the loan second.

An active participant is still employed. A default today creates a deemed distribution which cannot be a CRD. A former participant, on the other hand, could have a plan loan offset which would be a CRD.

**Q.** If the plan doesn't currently allow loans, can it be amended to allow loans only for COVID, but otherwise, no loans?



Yes. Loans can be limited to qualified individuals, thanks to the DOL's statement that they won't treat loans that would otherwise violate the "reasonably equivalent basis" requirement as a prohibited transaction.

**Q.** On the Doubling of the loans - She just said "minus the current loan". I thought it was minus the highest loan balance past 12 months.

The \$100,000 (normally \$50,000) limit is reduced by the amount by which the highest loan balance in the last 12 months exceeds the current balance. However, the loan you can make today (whether based on the dollar limit or the account balance limit) is reduced by outstanding loans.

### **Coronavirus-Related Loans - Suspensions - [Top](#)**

**Q.** What if there are no "regular" payments (all payments left on the loan were suspended during 2020) to resume on January 1? Can I have no loan payments until the first suspended payment has been suspended for 1 year? Or would that violate substantially level installments over the remaining period of the loan, so my 8 suspended payments have to be paid in 12 installments starting January 2021?

Suppose the due date of the loan was September 30, 2020, and the loan was suspended June 1, 2020 (with 4 months left to go). Logically, you could wait until June of 2021 to resume repayments. You could make the repayments over 4 months or extend them a year if you wanted. While this is outside the safe harbor, I believe it is consistent with the statute and the discussion at the top of page 18 of Notice 2020-50

**Q.** Can an employer automatically suspend loan payments for all participants, without certification that they are QIs? For example, employee is working 32 hours a week (not 40), but the employer suspends, even if the participant does not want to.

If the employer knows the participant is a qualified individual, the employer can suspend. The participant can always prepay.

**Q.** This slide should say Suspension begins April, 2020, right? Difference between deemed distribution & Plan loan offset

Yes, as I said in the presentation.

**Q.** May a QI take a CARES loan today with a 6 year term and first payment in 1/21, or does we have to prepare the loan with a 5 year term, then suspend payments and them re-amortize?

I think you can prepare the loan today with a due date 6 years from today and the first payment in January.

**Q.** Does a plan need to decide which of the loan "restart" methods will be used? I.e. can one participant use the safe harbor and another elect to just restart their January 2021 payments and wait until the 1st anniversary of their first suspended payment to re-amortize or make up the suspended payment?

I suppose the plan loan policy could give the participant the choice. I'd prefer not to administer the plan.

**Q.** Does the loan that is deferred have to be extended for 1 year, or can it be extended by the "suspension period"? So if they stopped payments for 2 months, could loan be extended for only 2 months?

The employer can choose to be less generous than the statute allows.

**Q.** If a participant suspends their loan and proactively begins repayments before January 1, 2021 after only a 5 month suspension, do we still add 1 year to the amortization?

You can.

**Q.** For loan suspensions, does the employer/plan determine the suspension period, or does the participant?

The employer, subject to the limitations of the law.

**Q.** Is there an option to extend the loan for less than 1 year?

Yes.

**Q.** On the loan suspension where payments are delayed one year. I have a client who wants to restart loan payments when the employees are back to work is that ok? Or do the loan payments have to be delayed one year?

The suspension ends no later than December 31 but can be sooner. So loan repayment can resume when employees return to work. The reference to one year is to the maximum extension of the loan term.

**Q.** Can there be different non-discriminatory suspension and start dates for different employees? Or must the plan use a standard policy for all loans?

The policy should be nondiscriminatory, which suggests that it isn't being set at whim for each employee. But you could base it on date of reemployment. You could say "Repayments will be in January, unless you the participant want to start them sooner."

**Q.** Does the loan suspension one year extension apply to principal residence loans?

As I interpret it, yes.

### **Coronavirus-Related Loans - Documentation - [Top](#)**

**Q.** We have participants sign modified loan agreements when we re-amortize loans. Can we re-amortize suspended loans January 1st (due to coronavirus) and avoid getting participant consent to the new payroll withholding amount?

That's a matter of the loan terms, but it makes sense to me that you could.

**Q.** To suspend loan payments, we need a signed form from the participant that they certify they are a qualified individual, correct? So the employer cannot just choose to suspend payments on behalf of participants, correct?

Correct, outside of the Notice 2020-23 grace, which applies to everyone.

**Q.** So wouldn't the loan policy then have to allow for partial pre-payments? We generally only provide pre-payment in full

The loan policy says what it says. I can tell you what you can do. The plan may do something less.

**Q.** What is the recommended process employers should use to document their suspension rules? Is their election required in the formal Loan Policy?

Consistent with the DOL prohibited transaction rules, I think that is the way to do it.

**Q.** Do participants have to complete a new irrevocable pledge or promissory note for the loan that was suspended and re-amortized come 1/1/21?

I wouldn't think so.

### **Coronavirus-Related Loans - Refinance/Reamortization - [Top](#)**

**Q.** If the loan is extended by one year and payments resume in Jan 2021 can a participant just make the same payments as before and end up paying the loan a little earlier than the 1 year extension.

Prepayments are always allowed. They assume that you can make it work with payroll and plan vendors.

**Q.** How about a plan that only allows 1 outstanding loan at a time, and does not allow for 2nd loan. Only 1 year remains on loan. Does not allow a Covid related loan. Can the participant refinance the loan and pay off the balance on the first loan within the year, and take out a 5 year loan?

That's a matter of plan policies, but watch out for the refinance rule in Treas. Reg. §1.72(p)-1, Q&A 20.

**Q.** When you re-amortize your loan on 1/1/2021, I assume you are using the initial loan's interest rate?

Yes.

**Q.** What about the fee for refinance? Is that waivable?

That's a matter of plan policies.

### **Deadline Extensions - [Top](#)**

**Q.** Any idea if filing deadline for 2019 5500SF will be extended?

Reply hazy. Try again.

#### **Partial Plan Terminations - [Top](#)**

**Q.** Anything new on partial plan termination due to Covid?

No.

#### **Participant Notices - [Top](#)**

**Q.** If your firm denied a COVID-19 distribution request earlier this year because the individual didn't qualify under the rules at the time, is there any obligation to let the individual know they qualify now?

The law doesn't mandate it. Humanity and decency does.

**Q.** Do I, as Plan Sponsor, have a duty to notify all participants of the changes to the CARES Act re Qualified Individuals?

Yes. This is not a specific requirement, but the feature is not considered to have been offered to the employees if they don't know about it. If anyone who is an HCE takes advantage and the NHCEs were not informed, that's discriminatory.

**Q.** If the employer does not offer CRDs from its plan, does it take on extra liability if the employer notifies participants about the tax relief available to them under CARES? Employer wants participants to know about it so they can pursue it when they file their personal returns if they choose to, even though it's not related to the plan. Does the Employer need to be careful how they notify them so they aren't taking on additional liability?

Of course, anytime someone gives advice, there is a risk that someone will hold them liable for something. But, a carefully worded notice that says, "Although we are not amending our plan to provide for special distributions, if you do take a distribution in 2020, you should talk to your tax advisor about COVID-related tax provisions that may apply to you and reduce the amount you need to pay to the IRS" ... or similar language.

**Q.** If Plan Administrator makes decision not to adopt optional CARES provisions, I assume that no participant notice is necessary...correct? (Provided of course that the plan was operated consistently according to this decision).

True.

#### **Qualified Individual/Certification - [Top](#)**

**Q.** Individual is qualified individual from 3/19/20 until 6/21/20 (my hair dresser) because the shop was shut down by NJ. Can that individual take a CRD on 6/24?

It appears that, once a QI, always a QI. She is a qualified individual today by virtue of having a COVID closure at some point.

**Q.** Related to the job offer delayed, I had a question from an employee who was let go because an office closed (not necessarily Covid related), but now cannot find a new job because her industry isn't hiring due to Covid. QI?

If the employee was not furloughed, fired, etc. due to COVID, I don't think he/she is a QI.

**Q.** Doctor is 100% owner of practice. Prior indication was that spouse was not considered owner. No attribution rules. Are you saying that now the non-owner spouse could be a QI under attribution rule?

This has nothing to do with attribution rules. The doctor can be a QI because the spouse lost a job. The spouse could be a QI because the doctor's revenues are down because of COVID.

**Q.** Would an owner-employee who has had a "reduction in pay" due to lower income for their business, be a "qualified individual"? How about a partner in a CPA firm that took a 20% reduction in compensation?

Under the new rules, yes.

**Q.** Is my nanny a QI?

If you are asking if your nanny is a member of your household (i.e., a live-in nanny), potentially. But there's something you need to understand. The full statement is that you suffer financial loss because a member of your household had COVID difficult. If your nanny is not personally contributing to the household income, it is hard to see how that affects you. On the other hand, suppose the nanny comes down with COVID-19 and as a result you or your spouse need to stay home from work because of loss of childcare. Now you're affected.

**Q.** Are the QI reasons all or nothing or can you pick and choose to make a custom definition of a QI? In other words if you adopted the CARES Act previously with the prior QI definition does your plan have to adopt the new QI definition as well? Can you adopt now with some combination of the current and prior QI definition?

For purposes of the plan (not necessarily the individual), you can limit CRDs to people who are QIs for specific reasons. (Not sure why you would want to ...) Of course, ultimate documentation needs to match and it cannot be discriminatory.

**Q.** With the expanded definition for a QI, when is the effective date for this? Retroactive to 1/1/2020?

Yes.

**Q.** Should we ask the employers to go back and get the model certification signed by those employees who have already taken a coronavirus distribution?

No, if you had a certification before, just keep that.

**Q.** So if someone had reduced hours in working in say Feb. but now is back to work at normal full hours. He / She got behind in bills can he/she take a CRD currently even if back to work?

Yes. There is no indication that someone who is a QI at one point loses that status if he/she is rehired.

**Q.** What happens if somebody took a distribution in Jan. 2020, tax was withheld, and they subsequently become a QI, you cannot go back and refund the tax withheld and paid to the IRS at that point. I hope IRS has a lie item for this on the 2020 1040 form. They do not now have any allowance for this.

There is no adjustment for this. You can claim a credit for the tax paid. This is no different from receiving a cash distribution (less 20%) and deciding 50 days later you want to roll it over.

**Q.** If a participant is actively employed, but is a QI and takes a CRD, can they take from restricted accounts if they're under age 59 1/2 (i.e. Safe Harbor)?

Yes.

**Q.** Has there been any guidance on what "adversely affected" entails? For example, I work from home, but am paying for more electricity as I have set up my office in the dining room, and paying the heat the house now that I'm home.

There's two elements. One is that you're adversely affected financially. The other is that you've lost revenue or been quarantined or laid off or some other item on the list. If your financial sufferings from COVID-19 are limited to the electric bill, you aren't going to get a lot of sympathy for stretching the definition.

### **Required Minimum Distribution Relief - [Top](#)**

**Q.** Does Notice 2020-51 also apply to beneficiaries regarding the August 31 extension for rolling over RMDs

Yes.

**Q.** Burning Question from Client - Section C III (Notice 2020-51) gives an example of someone who took a distribution that was part rollover part MRD January 2020 that the MRD portion can now be rolled back by 8/31 What about, where the ENTIRETY of the January distribution was an MRD – was the notice intending to restrict to those only who took multipurpose distributions? Client RMD'd in January, wants to roll back to plan - can he now do so? Thanks for any help : - )

In my opinion, the Notice was demonstrating that, if part of the distribution is an RMD and part is not, only the RMD is rolloverable by 8/31 ... the other part could have been and should have been rolled over within 60 days of receipt. To your point, suppose I (not a qualified individual) received a \$10K distribution in January, and every dime was an RMD. I can roll it over until August 31.

**Q.** Think Ilene said can only recontribute a CRD from an IRA to an IRA. CARES Act seems to say can go to an eligible retirement plan. Did I understand Ilene's comment correctly? Thanks!

This isn't a CARES Act qualified individual issue. This is a Notice 2020-51 relief issue for someone who isn't a qualified individual, or who receives a distribution that would have been an RMD but for the SECURE Act changing required beginning dates. The IRS gave an August 31 deadline to recontribute those amounts. And for that special relief provision, IRA amounts have to go back to the original IRA.

**Q.** If a plan document requires a terminated participant to take a lump sum distribution except for RMDs, if the person requests an "RMD" for 2020, do they have to take a lump sum of the full amount in the account, or can they still take the RMD amount without violating the plan document?

You are left with interpreting the document. If you don't like the answer the document gives, then structure your CARES amendment to deal with the issue. For example, the CARES amendment could include a clause which says words to the effect: "A Participant or Beneficiary receiving payment of 2020 RMDs or 2020 Extended RMDs may receive them in any method (including installments or partial distributions) which would have been permitted under the terms of the Plan if the amounts would have been RMDs but for the enactment of Code §401(a)(9)(I)."

**Q.** Under the new RMD IRA rule if an individual was taking monthly payments under the RMD payout rules 1/1/2020 and thereafter but stopped payments after CARES waived RMDs, can they roll over the total of the monthly distributions back into the IRA by the 8/31/2020 deadline?

Yes. That's the great thing about waiving the one-rollover-per-year rule.

### **Spousal Consent - [Top](#)**

**Q.** Does a plan with J&S plan have to require J&S for a COVID-19 distribution?

Yes.

**Q.** Does the 7 day waiting period apply to CRDs on plans that require J&S?

There's nothing about CRDs that changes the J&S rules for distributions.

**Q.** If spouse with COVID 19 is in hospital or nursing home which does not allow visitors, how do I get spousal consent to CRD? Can I sign for spouse with power of attorney (POA), or if no POA do I have to get Court approval?

You may need to use the electronic consent procedures from Notice 2020-42.

### **Miscellaneous - [Top](#)**

**Q.** Do you have to take a CRD from 409A in order to stop deferrals?

You cannot take a CRD from a 409A plan. A hardship distribution from a 401(k) or 403(b) plan can allow you to stop deferrals in a 409A plan. Thanks to Notice 2020-50, a CRD can take the place of a 401(k) or 403(b) hardship distribution in stopping 409A deferrals.

**Q.** Should deferral contributions be withheld from "Covid" pay that is a credit on the payroll taxes?

Yes, unless the plan or the salary reduction agreement has a clause leading you to conclude it isn't deferrable compensation.