



We CARES: Now We Know! SPECIAL EDITION

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Your Co-Hosts

▶ Joanne Pecina



▶ Maureen Pesek



▶ Tim McCutcheon



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Ilene Ferenczy
S. Derrin Watson

Your Presenters Today

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Day	Date	Topic	Presenters
Wednesday	July 8	Fireside Chat	Watson
Tuesday	July 14	Get Your Hands Off My Money!	Cohen, Moore, Starr

UPCOMING WEBINARS

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NOTICE 2020-50! NOTICE 2020-51!

31 pages of CARES Act guidance

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Notice 2020-50

- ▶ Follows closely KETRA guidance (Notice 2005-92)
- ▶ Addresses:
 - ▶ Qualified Individual; reliance
 - ▶ CRDs
 - ▶ What they are
 - ▶ Significance for plan
 - ▶ Significance for recipient
 - ▶ Recontribution
 - ▶ Double loan limit
 - ▶ Payment suspension
 - ▶ Safe harbor
- ▶ Doesn't address CARES RMD holiday

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Notice 2020-51



- ▶ Like WRERA RMD holiday guidance (Notice 2009-82)
- ▶ Addresses some SECURE Act RMD issues
- ▶ Answers CARES RMD questions
- ▶ Authorizes some rollovers
- ▶ Gives model amendments
- ▶ Coming in July 8 Fireside Chat

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QUALIFIED INDIVIDUAL (QI)



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CARES Definition



▶ A QI is someone:

1. Who is diagnosed with COVID19 by CDC recognized test,
 2. Whose spouse or dependent is diagnosed with COVID19, or
 3. Who experiences adverse financial consequences as a result of
 - ▶ being quarantined,
 - ▶ being furloughed or laid off,
 - ▶ having work hours reduced,
 - ▶ being unable to work due to lack of childcare as a result of COVID19, or
 - ▶ the closing or reduction of hours of a business owned or operated by the individual due COVID19
- ▶ IRS could add to the list

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More Adverse Consequences for QI



▶ QI had adverse financial consequences from COVID-19 because

- ▶ QI had a reduction in pay
- ▶ QI had reduction in self-employment income
- ▶ QI had a job offer rescinded
- ▶ QI had start date for a job delayed due;

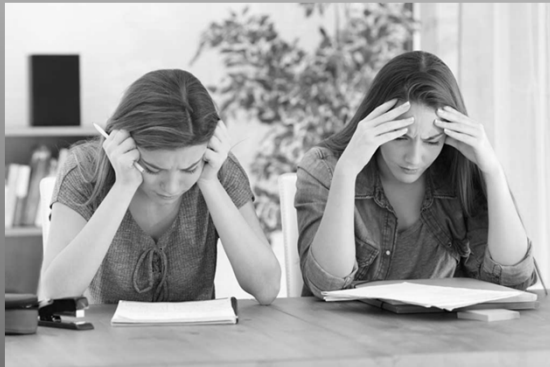
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More People Impact QI



- ▶ QI experienced adverse financial consequences because spouse or a member of QI's household as a result of COVID-19:
 - ▶ being quarantined, furloughed or laid off,
 - ▶ having work hours reduced,
 - ▶ being unable to work due to lack of childcare,
 - ▶ having a reduction in pay (or self-employment income),
 - ▶ having a job offer rescinded or start date for a job delayed, or
 - ▶ Suffering closure or reduction of hours of a business owned or operated by the QI's spouse or member of household

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- ▶ "Someone who shares the individual's principal residence"
- ▶ Children; other family
- ▶ Lover
- ▶ Roommate
- ▶ Boarder

MEMBER OF
HOUSEHOLD

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Put it All Together



Event	QI	Spouse	Dependent	Household
Diagnosed by approved test	X	X	X	
Quarantined	X	X		X
Furloughed, laid off, hours cut	X	X		X
Can't work because of childcare	X	X		X
Close or reduce hours of business	X	X		X
Reduction in pay	X	X		X
Reduction in self-employment income	X	X		X
Job off rescinded or start date delayed	X	X		X

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Employer Can Rely on QI Certification



- ▶ Plan administrator can rely unless administrator has actual knowledge to the contrary
 - ▶ No obligation to inquire or investigate
 - ▶ Limited to situations administrator already knows enough
 - ▶ Almost never happens with employee
- ▶ Applies for all recipients
 - ▶ Employees
 - ▶ Former employees
 - ▶ Alternate payees
 - ▶ Beneficiaries of deceased participants
- ▶ Applies for all CARES relief, including recontributions

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Model Certification



I certify that I meet at least one of the following conditions:

- (1) I was diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (referred to collectively as COVID-19) by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act);
- (2) my spouse or my dependent was diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or
- (3) I have experienced adverse financial consequences because:
 - (i) I, my spouse, or a member of my household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19;
 - (ii) I, my spouse, or a member of my household was unable to work due to lack of childcare due to COVID-19;
 - (iii) a business owned or operated by me, my spouse, or a member of my household closed or reduced hours due to COVID-19; or
 - (iv) I, my spouse, or a member of my household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19.

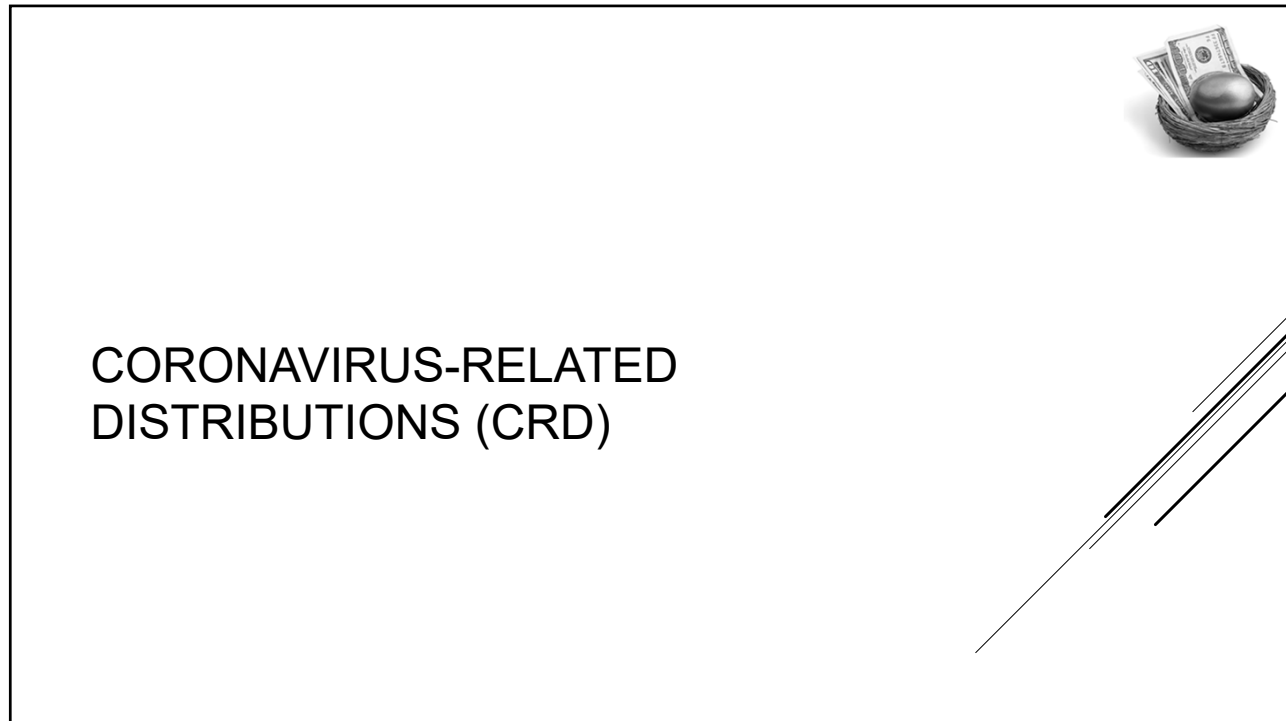
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IRS Doesn't Have to Take QI's Word

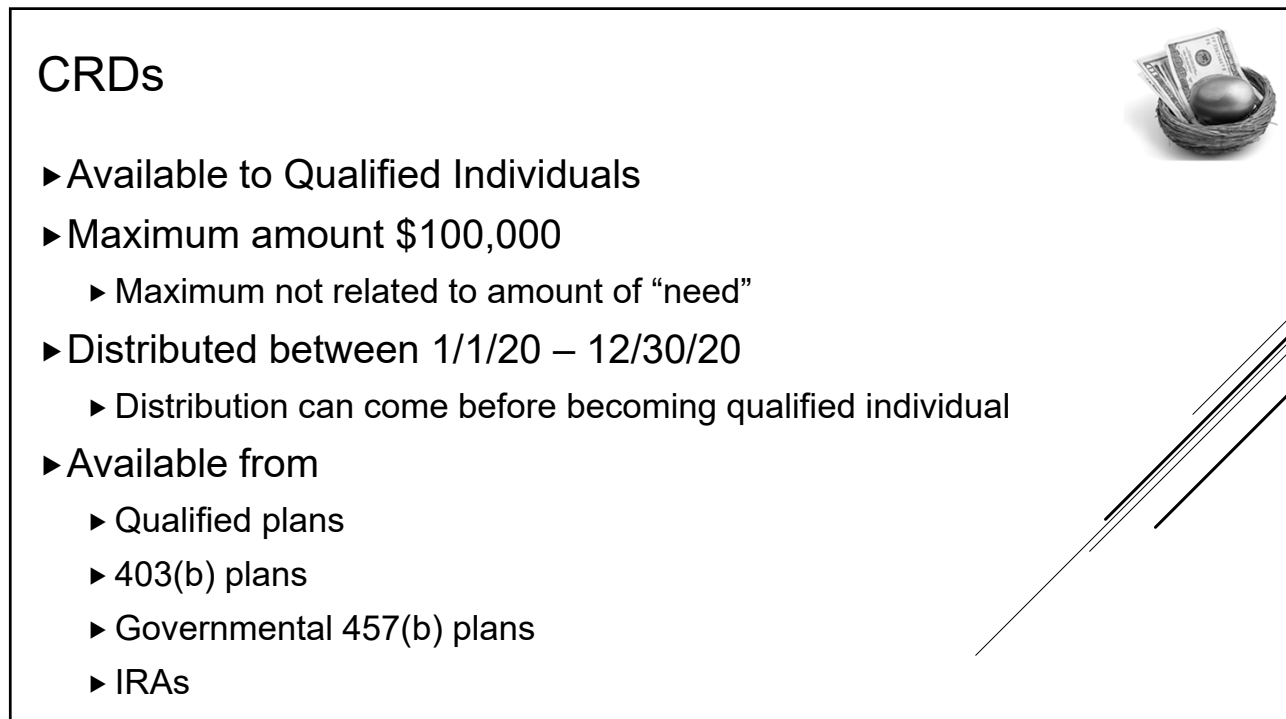
- ▶ Yes, the administrator can rely
 - ▶ Plan is still qualified
- ▶ But QI is entitled to favorable tax treatment only if certification is true



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Two Perspectives

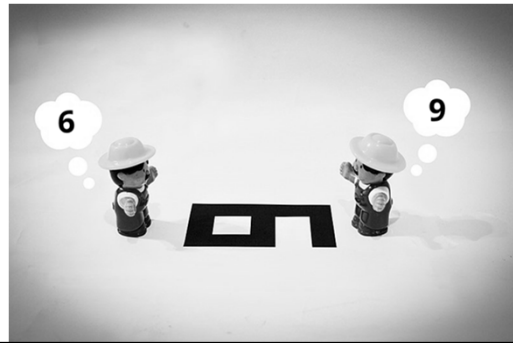


► Plan

- Distributable event
- Not eligible rollover distribution
 - No rollover notice
 - No 20% withholding
 - No automatic rollover
- Eligible for retribution

► QI recipient

- No 10% penalty
- 3-year tax option
- Recontrubution option



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What Can (and Cannot) be a CRD



► Can be CRD

- Severance distribution
- Plan termination distribution
- Hardship distribution
- RMD
- Substantially equal payments
- Plan loan offset
- In-service withdrawal
- Beneficiary distributions

► Cannot be CRD

- 402(g) correction
- ADP/ACP correction
- 415 correction
- Deemed distribution
- EACA permissible withdrawal
- Current costs of life insurance
- Premiums for health insurance
- Dividends on employer securities
- ESOP prohibited allocations

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PLAN'S PERSPECTIVE



Plan doesn't have to offer CRDs



Plan doesn't have to authorize maximum amount



Allowable distributions for 401(k), 403(b), gov't 457(b)



Doesn't change distribution rules for pension plans

Not distributable before 59 ½
QJSA still applies

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Is it CRD or Not From Plan's Viewpoint?



- ▶ If made under plan CRD rules, then it's a CRD
 - ▶ Maximum CRD from all plans of all related employers is \$100,000
- ▶ Otherwise, plan administrator can develop any reasonable procedures for identifying which distributions are treated as CRDs

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Significance from Plan's Standpoint

- ▶ Report on Form 1099 using:
 - ▶ Code 7 if 59½
 - ▶ Code 2 or Code 1 if under 59½
- ▶ Don't have to cooperate with direct rollover
 - ▶ But you can
- ▶ Don't have to give rollover (402(f)) notice
 - ▶ But you can
- ▶ Don't do 20% withholding
 - ▶ Voluntary withholding under Code §3405(b)
 - ▶ Remember to give Notice and Election
 - ▶ Sample in ERISApedia COVID-19 materials



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QI VIEWPOINT ON CRD



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QI Can Claim Benefits



- ▶ If its CRD, QI claims benefits whether or not plan treats it as CRD
- ▶ Can include multiple distributions from different sources
- ▶ If more than \$100K in possible CRD, QI chooses
- ▶ Example
 - ▶ QI takes \$50K from IRA; \$75K from 403(b) plan
 - ▶ QI designates \$100K as CRD
 - ▶ Remaining \$25K is subject to normal rules
 - ▶ Report on Form 8915-E

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CRD NOT SUBJECT TO PREMATURE DISTRIBUTION PENALTY



No 10% penalty
on distributions
before 59 ½

No 25% penalty
on SIMPLE IRA
distributions

Doesn't blow
substantially
equal
payments

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Reporting Options



- ▶ Pay tax in year of distribution
- ▶ Pay tax over 3 years
- ▶ Default: 3 year
- ▶ Irrevocable election
- ▶ Example:
 - ▶ Kevin receives \$45,000 CRD
 - ▶ Can Include \$15,000 in income in 2020, 2021, and 2022
 - ▶ Or Can include \$45,000 in 2020 income
- ▶ If QI dies before 2023, include balance in final return

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Recontribution Option



- ▶ QI can “recontribute” CRD within 3-year period
 - ▶ Beginning on date of CRD
- ▶ Can go to:
 - ▶ Plan that distributed (if QI is still participant)
 - ▶ Another plan
 - ▶ IRA
- ▶ Limited to eligible rollover distributions or hardship distributions
 - ▶ Can’t roll over RMD (such as from DB plan)
 - ▶ Can’t roll over series of substantially equal payments



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Notes on Recontribution



- ▶ Doesn't apply to non-spouse death beneficiaries
- ▶ Treated as rollover in direct trustee-to-trustee transfer
 - ▶ Allows rollover of Roth and after-tax to plans
 - ▶ Not subject to one-rollover-per-year IRA limitation
- ▶ Limited to amount of CRD (not subsequent earnings)

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How to Handle Taxes; 2020 Recontribution



- ▶ Recontribute in 2020
- ▶ File Form 8915-E
 - ▶ Report distribution
 - ▶ Report recontribution
- ▶ No tax on recontributed amount



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How to Handle Taxes; 2021 Recontribution



- ▶ Angela received \$30,000 CRD
- ▶ Recontributed \$18,000 in 2021 before filing 2020 return
- ▶ Attach 8915-E to 2020 return
 - ▶ Show distribution and recontribution
 - ▶ Reduce income by \$18,000
 - ▶ Net \$12,000 tax on 2020 return

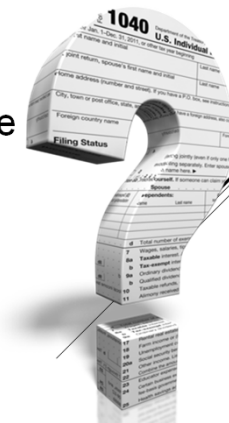


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How to Handle Taxes; 2021 Recontribution



- ▶ Angela received \$30,000 CRD
- ▶ Recontributed \$18,000 in 2021 after filing 2020 return
- ▶ Attach 8915-E to 2020 return
 - ▶ Show distribution
 - ▶ 2020 return initially recognizes \$30,000 in income
- ▶ File amended 2020 return after recontribution
 - ▶ Attach 8915-E to 2020 1040X
 - ▶ Reduce 2020 income by \$18,000
 - ▶ Get refund



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How to Handle Taxes; 2021 Recontribution

- ▶ Angela received \$30,000 CRD
- ▶ Reported only \$10,000 on 2020 return
- ▶ Recontributed \$18,000 in 2021
 - ▶ After filing 2020 return
- ▶ Attach 8915-E to 2021 return showing \$10K income and \$10K recontribution; wash
- ▶ Angela has a choice for remaining \$8,000
 - ▶ Claim reduction on 2022 return
 - ▶ File amended return for 2020



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Plan Protection for Recontribution

- ▶ Plan can claim normal rollover protection
 - ▶ Invalid rollover won't disqualify plan if:
 - ▶ Plan administrator reasonably concluded it was valid when received
 - ▶ Upon determining that the amount was an invalid rollover, the plan distributes the invalid amount, plus earnings, to the employee
- ▶ How to determine recontribution was valid when received?
 - ▶ Rely on employee certification, unless contrary actual knowledge



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Does a Plan *Have to* Accept Recontributions?



- ▶ In general, it is anticipated that eligible retirement plans will accept recontributions of coronavirus-related distributions, which are to be treated as rollover contributions.
- ▶ However, eligible retirement plans generally are not required to accept rollover contributions.
 - ▶ For example, if a plan does not accept any rollover contributions, the plan is not required to change its terms or procedures to accept recontributions of coronavirus-related distributions.

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PARTICIPANT LOANS

Debt



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Double Loan Limits



- ▶ Limited to QIs
- ▶ Limited to loans taken *before* September 23, 2020
- ▶ Total loans limited to lesser of:
 - ▶ \$100,000 (with adjustments)
 - ▶ 100% of vested account balance
- ▶ Plan doesn't have to implement
 - ▶ Or can use lower limits
- ▶ DOL has said it won't result in prohibited transaction

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Loan Suspension and Extension



- ▶ Allows plan to:
 - ▶ Suspend loan repayments from QIs that would otherwise be due March 27 to December 31, 2020
 - ▶ Payments delayed one year
 - ▶ Payments restart January 2021
 - ▶ Allows plan to extend loan term (normally 5 years) one year
 - ▶ Reamortize loan
- ▶ Participant at mercy of plan
 - ▶ Deemed distribution if plan doesn't extend, and participant misses payment
 - ▶ Plan can do all, part, or none of extension

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Suspension Rules

- ▶ Plan chooses suspension (and can choose none)
 - ▶ Start dates
 - ▶ No early than March 27
 - ▶ Could start with furlough
 - ▶ Could start July 1
 - ▶ End dates
 - ▶ No later than December 31
 - ▶ Could end when employee returns to work
 - ▶ Could end July 15 (Notice 2020-23 suspension)
 - ▶ Could be extended
 - ▶ Could have multiple suspension periods (e.g. with several furloughs)
- ▶ Regardless, plan can add up to one year to length of loan



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Safe Harbor Rule

- ▶ Add up to a year to the loan
- ▶ Suspend no earlier than March 27
- ▶ Restart payments at end of suspension
 - ▶ No later than January 2021
- ▶ Reamortize at end of suspension so level repayments over remaining term
 - ▶ Add interest that accrued during suspension



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Example in Notice



- ▶ Mary, QI, has \$40,000 vested account
- ▶ April 1, 2020, she borrows \$20,000
 - ▶ Level monthly payments of \$368.33 over 5 years
 - ▶ Due date March 31, 2025
 - ▶ Payroll withholding
- ▶ Employer suspends payments from July 1 to December 31
- ▶ January 1, 2021 balance is \$19,477; payments restart
 - ▶ New due date is March 31, 2026
 - ▶ New payment is \$343.27

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More Complex Approaches



- ▶ “There may be additional reasonable, if more complex, ways to administer section 2202(b) of the CARES Act.”
- ▶ Example
 - ▶ Suspension begins April 2021
 - ▶ Payments resume January 2021 at original level
 - ▶ Reamortized payments start April 2021

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Difference Between Deemed Distribution and Plan Loan Offset



Deemed Distribution

- ▶ Generally when employee is in-service
- ▶ Not actual distribution
- ▶ Account balance isn't reduced
- ▶ Not CRD
 - ▶ 10% penalty can apply
 - ▶ Pay tax in year of default
 - ▶ Can repay loan and get basis

Plan Loan Offset

- ▶ Generally if employment or plan terminates
- ▶ Actual distribution
- ▶ Account balance is reduced
- ▶ Can be CRD to QI
 - ▶ No 10% penalty
 - ▶ Can pay tax over 3 years
 - ▶ Can retribute within 3 years

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BONUS GUIDANCE!

409A plans



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Nonqualified Deferred Comp Plan Deferrals



- ▶ Can't accelerate under §409A
- ▶ Stopping deferrals midyear treated as acceleration unless
 - ▶ Unforeseeable emergency
 - ▶ Hardship distribution
- ▶ CRD will be treated as hardship distribution for this purpose
 - ▶ Permit midyear cancellation of deferral election
 - ▶ Not reduction

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RMD HIGHLIGHTS

Notice 2020-51

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RMDs under CARES Act



- ▶ CARES Act allows participants and beneficiaries to forego taking 2020 RMDs
 - ▶ Includes participants with 2020 Required Beginning Date if RMD not taken in 2019
 - ▶ Limited to defined contribution plans
 - ▶ Doesn't apply to 457(b) plans of tax-exempt organizations
- ▶ Plan doesn't treat 2020 RMDs as eligible rollover distributions
 - ▶ 20% mandatory withholding doesn't apply
 - ▶ Voluntary withholding does apply

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CARES Act Rollovers



- ▶ DC plan participant received \$30,000 distribution in January
 - ▶ \$20,000 RMD (until CARES passed)
 - ▶ Deadline to roll over excess \$10,000 60 days after distribution
- ▶ 60-day rollover deadline for \$20,000 (would have been RMD) extended to August 31, 2020

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SECURE Act RMD Rollover



- ▶ Diane turns 70½ in 2020
- ▶ Before SECURE Act, RMD would have been 4/1/21
- ▶ Thanks to SECURE Diane's RBD is 2022
- ▶ Plan distributed to her anyway
- ▶ 60-day rollover deadline extended to August 31, 2020
- ▶ Plan doesn't violate
 - ▶ Requirement to give special tax notice
 - ▶ Requirement to permit direct rollover
 - ▶ 20% withholding requirement

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IRA Rules on RMD Rollovers



- ▶ Applies to both CARES and SECURE rollovers
- ▶ Rollovers of 2020 RMDs are not subject to 1-rollover/year IRA limitation
- ▶ Nonspouse beneficiaries can roll over 2020 RMDs

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IRS Model Amendment



- ▶ Won't result in loss of reliance or preapproved status
- ▶ Choice:
 - ▶ Distribute 2020 RMDs unless participant says NO
 - ▶ Don't distribute 2020 RMDs unless participant says YES
- ▶ Either way, participant has choice
 - ▶ No anti-cutback waiver if you don't give choice
- ▶ Could choose to make RMDs according to document
- ▶ Also select what distributions mandate plan provide direct rollover option
- ▶ **Employer** must sign and enter effective date
 - ▶ Deadline for most plans is last day of 2022 plan year

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Questions?



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For Further Study



Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.