

### COVID Related Distributions from Retirement Plans

As previously described [here](#), CARES Act Section 2202(a) permitted certain eligible retirement plans and individual retirement accounts to offer coronavirus related distributions (CRD) of up to an aggregate limit of \$100,000 (taking into account all plans of all control group members) to CRD Eligible Participants. The following Q&As are intended to address some questions that have arisen regarding CRDs.

**Q-1:** Is true that an individual may not be a CRD Eligible Participant if they only experienced a reduction in salary or earnings without any other COVID-19 related factor? For example, a member or partner experiencing a reduction in guaranteed payments or cash flow distributions without any other COVID-19 related factor.

**A-1:** Yes, that should be true. Absent future guidance, an individual is a CRD Eligible Participant if: 1) they, their spouse or a dependent is diagnosed with the COVID-19 virus; 2) they experience financial consequences as a result of being quarantined, furloughed, laid off, or are working reduced hours due to the COVID-19 virus; 3) they are unable to work due to a lack of child care; or 4) they have, due to the virus, closed or are working fewer hours, in a business owned by such an individual. A reduction in salary or earnings due to the economic downturn related to the COVID-19 crisis alone would not make the individual a CRD Eligible Participant.

**Q-2:** Can a plan sponsor rely on the participant's certification that they are a CRD Eligible Participant?

**A-2:** Yes, if the plan sponsor requires the certification permitted under the CARES Act, it should be able to rely on it.

**Q-3:** Can the plan sponsor rely on the participant's certification even if the plan sponsor knows that the individual is not a CRD Eligible Participant?

**A-3:** Maybe not depending the plan sponsor's level of knowledge. The statute seems clear that the plan sponsor should be able to rely on the certification. However, on May 4, 2020, the IRS posted FAQs on their website that casts doubt on the scope of the reliance that the employer has on the certification.

FAQ-11 provides that the administrator may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual in determining whether a distribution is a coronavirus-related distribution, unless the administrator has actual knowledge to the contrary. The FAQ does not elaborate on what is meant by “actual knowledge to the contrary.”

The standard announced in the FAQ implies that the administrator does not have to verify or investigate the truthfulness of the certification but if the administrator knows for a fact that the certification is false, the administrator would not be able to rely on the certification. Hopefully, future guidance will clarify this standard.

**Q-4:** Which Section 457(b) plans are considered eligible retirement plans for purposes of CRDs?

**A-4:** Section 457(b) plans maintained by a governmental entity are eligible to make CRDs. Section 457(b) plans maintained by a nongovernmental entity (*i.e.*, tax exempt organization) are not.

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