

### COVID Related Distributions from Retirement Plans | Part II

Coronavirus related distributions (CRD), as previously described [here](#) and [here](#) continue to be sources of questions. The following additional questions and answers regarding CRDs attempt to address some of these questions.

**Q-5:** Are CRDs optional or required?

**A-5:** Optional, at least for in-service CRDs. The language in the statute is broad and technically applies to any distribution to a CRD Eligible Individual. However, the statute, in creating a CRD for someone who has not separated from service has, in effect, created a new form of in-service distribution. Since in-service distributions are not required, it would follow that a CRD would be optional.

**Q-6:** If a plan sponsor wants to include in-service CRDs does it have to amend the plan documents before permitting in-service CRDs?

**A-6:** No. The plan sponsor can implement in-service CRDs operationally without amending the plan documents first. The plan document will have to be amended to conform to operation in the future. The amendments to conform the plan document to operation must be adopted by December 31, 2022 for calendar year plans and for non-calendar year plans, the end of the plan year that begins in 2022. The plan sponsor should coordinate with third party administrators, platform providers or other vendors to ensure that their systems can accommodate in-service CRDs. Additionally, sponsors will have to communicate the availability of the new option to the participants.

**Q-7:** Can a plan sponsor limit in-service CRDs to amounts credited to particular accounts or to just vested accounts?

**A-7:** There is no guidance on this, but if the in-service CRD is optional, the plan sponsor should be able to design its plan to limit the in-service CRD to amounts credited to particular accounts or to just the vested portion of the participant's account.

If the distribution is not an in-service CRD, but nevertheless a coronavirus related distribution to a CRD Eligible Individual, the rules applicable to the particular distribution would still apply. For instance, if the distribution were a hardship distribution, in addition to satisfying the hardship

distribution requirements, the distribution would be limited to the amount necessary to satisfy that financial need plus taxes.

**Q-8:** Is the relief provided for CRDs limited to in-service CRDs?

**A-8:** No. The CARES Act language is broad and provides relief for qualifying distributions to a CRD Eligible Individual. The relief available for such distributions is not limited to any particular type of distribution. For example, the 10% tax on early distributions would not apply to a participant who is under age 59½, who has a severance from employment due to a coronavirus related event and who takes a distribution from their retirement plan and does not roll over the distribution.

**Q-9:** Are CRDs subject to mandatory income tax withholding?

**A-9:** No. Mandatory withholding applies to distributions that are treated as an “eligible rollover distribution.” CRDs are not treated as “eligible rollover distributions” for this purpose. Accordingly, the mandatory 20% income tax withholding rule does not apply. However, the voluntary 10% income withholding rule does apply. Accordingly, unless the participant elects out of income tax withholding, 10% of the amount distributed will be subject to withholding.

**Q-10:** Is the 402(f) Special Tax Notice required for CRDs?

**Q-10:** No. Since CRDs are not treated as “eligible rollover distributions,” the 402(f) Special Tax Notice is not required. However, an alternative notice would apply that would describe the voluntary 10% withholding and other relevant items to the distribution.

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