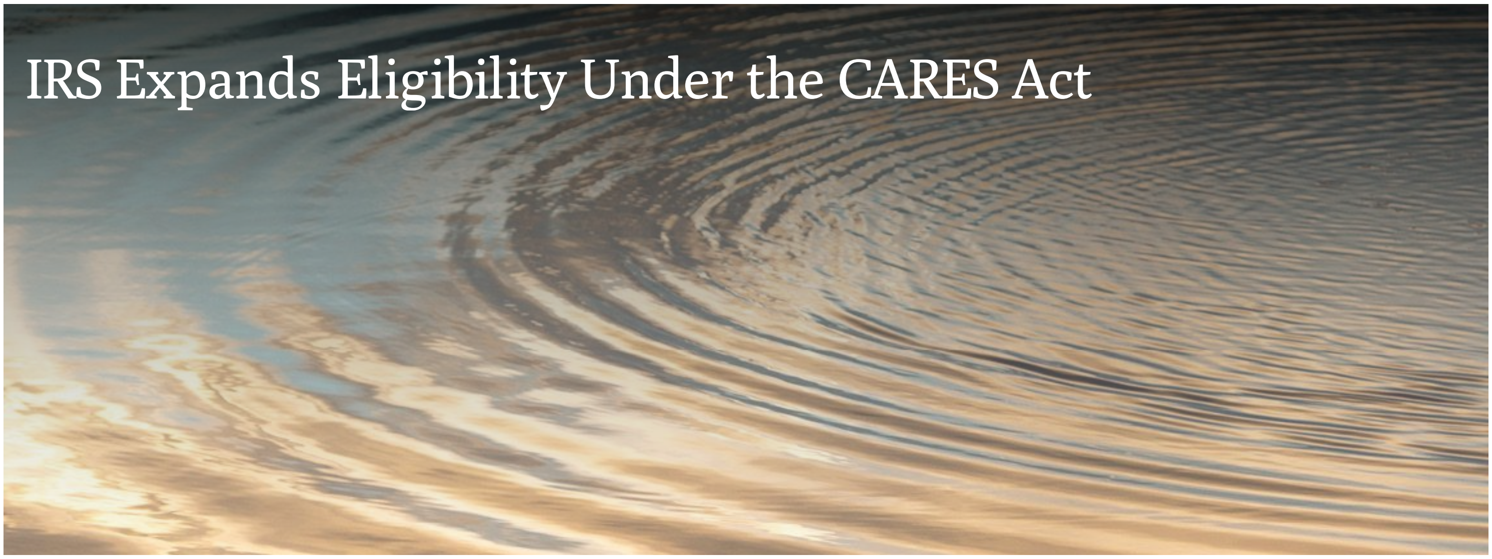
WINSTON & STRAWN LLP

BLOG



IRS Expands Eligibility Under the CARES Act

JUNE 23, 2020

On June 19, 2020, the Internal Revenue Service (IRS) issued Notice 2020-50, which makes a number of updates and clarifications for plan sponsors and participants under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). One of the most significant changes described in the Notice is an expansion of the categories of individuals eligible to take coronavirus-related distributions or larger plan loans from their retirement plans, or to suspend loan repayments in 2020 under the CARES Act. Specifically, Notice 2020-50 updates the existing definition of a "qualified individual" under the CARES Act to include additional factors such as reductions in pay, rescissions of job offers, and delayed start dates due to the coronavirus, as well as adverse financial consequences for the individual due to a spouse or a household member being impacted by the coronavirus.

BACKGROUND: THE CARES ACT

The CARES Act, enacted on March 27, 2020, includes provisions allowing qualified individuals to take coronavirus-related distributions from certain retirement plans and relaxing certain loan requirements. In particular, the CARES Act allows qualified individuals to take coronavirus-related distributions of up to $100,000 from their tax-qualified defined contribution plans (*i.e.*, 401(k) plans or 403(b) plans) or IRAs, from January 1, 2020, to December 30, 2020, without incurring the additional 10% tax under section 72(t) of the *Internal Revenue Code* that would otherwise apply to early withdrawals made by individuals under age 59½. Such coronavirus-related distributions can be included in income in equal installments over a three-year period. Individuals have three years to repay the coronavirus-related distributions to their plan or IRA.

In addition, the CARES Act relaxes certain rules for qualified individuals with respect to plan loans and repayments, including raising the dollar limit on plan loans from $50,000 to $100,000 and allowing plans to suspend loan repayments that are due from March 27 through December 31, 2020.

ORIGINAL DEFINITION OF A "QUALIFIED INDIVIDUAL" UNDER THE CARES ACT

Prior to Notice 2020-50, section 2202(a)(4)(A)(ii) of the CARES Act defined a "qualified individual" as an individual who:

- is diagnosed, or whose spouse or dependent has been diagnosed, with COVID-19 or SARS-CoV-2 (collectively, COVID-19) by a CDC-approved test; or
- who experiences adverse financial consequences arising from COVID-19 as a result of being quarantined, being furloughed or laid off, having work hours reduced, closing or reducing hours of a business owned or operated by the individual, or being unable to work due to lack of childcare.

Under this original definition, only individuals who certified that they were diagnosed with COVID-19, personally suffered adverse financial consequences arising from COVID-19, or had a spouse or dependent diagnosed with COVID-19, could take early retirement distributions without penalty or could be eligible for relaxed loan requirements.

EXPANDED DEFINITION OF A "QUALIFIED INDIVIDUAL" UNDER NOTICE 2020-50

Notice 2020-50 expands the list of factors taken into account when determining whether someone constitutes a "qualified individual" under the CARES Act. The definition of a qualified individual now includes factors such as reductions in pay, rescissions of job offers, and delayed start dates with respect to an individual, as well as adverse financial consequences to an individual arising from the effects of the coronavirus on the individual's spouse or household member (*i.e.*, someone who shares the individual's principal residence).

As expanded by Notice 2020-50, a "qualified individual" under the CARES Act is an individual who:

- is diagnosed, or whose spouse or dependent is diagnosed, with COVID-19 by a test approved by the CDC (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or
- experiences adverse financial consequences as a result of the individual, the individual's spouse, or a member of the individual's household:
  - being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19;
  - being unable to work due to lack of childcare due to COVID-19;
  - closing or reducing hours of a business that they own or operate due to COVID-19;
  - having pay or self-employment income reduced due to COVID-19; or
  - having a job offer rescinded or start date for a job delayed due to COVID-19.

The chart below summarizes the expanded definition of "qualified individual" under Notice 2020-50 for employees of employer plan sponsors:

A. ORIGINAL DEFINITION "QUALIFIED INDIVIDUAL"	B. NEW DEFINITION NOW INCLUDES

A. ORIGINAL DEFINITION "QUALIFIED INDIVIDUAL"	B. NEW DEFINITION NOW INCLUDES

• (A)(i) **You, your spouse or your dependent** are diagnosed with COVID-19
• (A)(ii) **You** experience adverse financial consequences due to COVID-19:
  ◦ **You** are quarantined
  ◦ **You** are furloughed or laid off
  ◦ **Your** work hours are reduced
  ◦ **You** are unable to work because of lack of child care
	• (B)(i) **You** have adverse financial consequences due to a reduction in pay, a job offer rescinded or start date delayed due to COVID-19
	• (B)(ii) **You** have adverse financial consequences due to **your spouse or member of your household** experiencing (A)(i), (A)(ii) or (B)(i)
	• A "member of your household" = anyone who shares your principal residence

ADDITIONAL GUIDANCE PROVIDED IN NOTICE 2020-50

Notice 2020-50 also provides a sample certification to be signed by an individual claiming to be a qualified individual and clarifies that a retirement plan administrator can rely on an individual's certification that he or she is a qualified individual, unless the administrator has actual knowledge to the contrary. However, to obtain favorable tax treatment on a coronavirus-related distribution for purposes of a federal income tax return, an individual must actually meet the eligibility requirements. In addition, employers can choose whether to implement these coronavirus-related distribution and loan rules, but qualified individuals can claim the tax benefits of coronavirus-related distribution rules even if plan provisions are not changed.

Winston Takeaway: Employers and retirement plan administrators should be aware that under this new IRS guidance, individuals with a reduction in pay or self-employment income, or who had a start date delayed or rescinded due to COVID-19, are eligible for special tax treatment. In addition, individuals are eligible for special tax treatment if the individual experiences an adverse financial impact if their spouse or a member of their household has been quarantined, furloughed, laid off, had work hours or pay reduced, or had a job offer rescinded or start date delayed due to COVID-19. By expanding the definition of qualified individuals, Notice 2020-50 will allow more retirement-plan participants affected by COVID-19 to take advantage of the CARES Act provisions that provide enhanced access to plan distributions and plan loans.

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your relationship attorney for further information.

View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

5 Min Read

Related Locations

Washington, DC

Related Topics

COVID-19

IRS

Related Capabilities

Labor & Employment

Related Regions

North America

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.

© 2024 Winston & Strawn LLP.