

IRS and DOL Release Employee Benefits Guidance for COVID-19-Related Administration

Related Practice Areas

- Employee Benefits & Executive Compensation

Two recent sets of guidance affecting employers' operations of employee benefit plans have been issued by the Internal Revenue Service (the IRS) and the Department of Labor (the DOL). The IRS published on its website a short set of Q&As that serve as interim guidance on those portions of the CARES Act that relate to the special distribution and loan features that retirement plans and Individual Retirement Accounts (IRAs) can choose to implement as measures to give coronavirus-related relief for those eligible individuals who might need it. In addition the IRS and DOL have issued a joint notice that has the effect of extending specific deadlines affecting COBRA continuation election and payment rules, special enrollment periods, and other employee benefit plan administrative concerns.

Retirement Plan and IRA Guidance on Distributions and Loans Under the CARES Act

The IRS is working on, and is expected to release, more official guidance on this topic in the future. In its Q&As, however, the IRS draws upon, and refers to, previous guidance issued in connection with significant natural disasters (like Hurricane Katrina) and says that can be used as a possible source to understanding how similar the CARES Act rules will or should be applied. (IRS Notice 2005-92 is specifically mentioned.)

Although this IRS interim Q&A guidance mostly recites and confirms key parts of the law changes under the CARES Act, there are a few notable takeaways and key highlights from the new Q&A's, as follows:

General Eligibility

IRS states that they are considering comments received that are requesting an expansion of the list of conditions that make an individual eligible for special distribution or loan treatment under the CARES Act (the CARES Act gives the IRS the authority to identify other permissible eligibility rules). The IRS stresses that an individual is not entitled to treat a distribution as a coronavirus-related distribution for income tax purposes unless the individual actually meets applicable eligibility conditions. The IRS, however, allows administrators of an eligible retirement plan to 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.

Distributions

The IRS confirms that employers are not required to adopt and implement the specific CARES Act relief for coronavirus-related distributions under their retirement plans. If a retirement plan does not have such specific features for coronavirus-related relief, the IRS says that eligible individuals can still take a distribution and treat it as a coronavirus-related distribution when an individual's income tax returns are filed.

Ordinary income taxes will be due on coronavirus-related distributions, but reporting can be spread out ratably over a period of three years. However, the IRS confirms that there is an option of including the entire distribution in the year of the distribution, which might make sense for those with income that year that is lower than what is expected in future years.

No taxes are due if steps are taken to repay a coronavirus-related distribution. Repayments are handled in a similar way as rollover contributions are. Because employer retirement plans do not have to allow rollover contributions, however, the IRS confirms that a plan is not required to

change its terms or procedures to accept repayments of a coronavirus-related distribution.

The IRS reports there will be a new IRS Form 8915E, for eligible individuals to report repayments of coronavirus distributions. Retirement plans will report all coronavirus-related distributions on Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. This reporting is required even if the eligible individual repays the coronavirus-related distribution in the same year. The IRS expects to provide more information on how to report these distributions later this year.

Loans

The IRS states that plan sponsors are permitted (but not required) to provide eligible individuals up to an additional year to repay their plan loans. The IRS notes that any loan payments due after the suspension period will be adjusted to reflect the delay and any interest accrued during the delay.

Extended Deadlines for Employee Benefit Plans Due to COVID-19

The IRS and DOL have also jointly extended a number of deadlines for employee benefit plans, plan participants, and beneficiaries in order to help those during the COVID-19 outbreak. While the particular affected deadlines continue to apply, the IRS and DOL chose an approach where the period beginning on March 1, 2020, and ending on the 60th day following the end of the national emergency declared by President Trump (the emergency period) does not count for purposes of tracking the time periods for the affected deadlines. The effect is to extend the due dates and deadlines during the emergency period.

The joint notice of the IRS and DOL identifies which specific deadlines are affected. The joint notice also makes clear that the extensions apply to all participants and beneficiaries (and not just to those who might be individually impacted in some way by COVID-19).

Some of the key deadlines being extended are as follows:

Special Enrollment Period Election

Employees who wish to change their coverage elections typically must notify their employer within 30 days of experiencing a “qualifying life event” (such as a loss of coverage or birth of a child) to enroll in the employer’s coverage. This deadline has been extended during the emergency period.

COBRA Elections and Initial Premium Payments

Employees who lose medical coverage through an employer group health plan typically have 60 days to elect COBRA continuation coverage and 45 days after electing coverage to make their first payment for COBRA continuation coverage. These deadlines have been extended during the emergency period.

Claims for Benefits

Employee benefit plans that are subject to ERISA may specify a time period by which participants must file a formal claim of benefit if they believe they are entitled to a benefit that has not been paid. In addition, group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal that determination (60 days in the case of pension plans and other welfare plans). These deadlines have been extended during the emergency period.
