

Relief Provided for Plan Participants & Employers Under the CARES Act

On March 27, 2020 the President signed the Coronavirus, Aid, Relief, and Economic Security (CARES) Act into law. This legislation provides relief for those suffering financially and physically from the COVID-19 pandemic. With respect to retirement plans, the CARES Act provides targeted relief for plan participants who need access to their retirement plan funds through loans or distributions, waives required minimum distributions for the 2020 calendar year for most plans, and provides funding relief for employers who sponsor single-employer defined benefit plans.

Important Note: *It is expected the IRS and DOL will issue guidance with respect to the provisions of the CARES Act, as well as other retirement plan-related matters that were not addressed in the Act. It is also possible Congress will pass additional legislation, so the situation remains fluid.*

The following addresses the questions most frequently being asked by 401(k) plan sponsors related to the CARES Act.

Coronavirus-related Distributions Under the CARES Act

The CARES Act allows eligible retirement plans to make “coronavirus-related distributions” to “qualified individuals”. Such distributions are exempt from the additional 10% income tax for early withdrawals, and any plan distribution, up to \$100,000, can qualify. Additionally, the new law allows participants to pay the applicable income tax ratably over a three-year period, and also provides participants the opportunity to defer taxation by “repaying” the distribution to a qualified plan or IRA during a three-year period.

Are plans required to permit coronavirus-related distributions?

No. This is an optional provision, not a required one.

Does a plan need to be amended before it can permit coronavirus-related distributions?

No. The provision can be implemented immediately. The plan must adopt a conforming amendment no later than the last day of the plan year beginning after December 31, 2021 (December 31, 2022 for calendar year plans). Note that this deadline could be extended by the IRS.

What plans are “eligible retirement plans”?

Eligible retirement plans include 401(k) and other qualified plans, 403(b) plans and governmental 457(b) plans. In addition, IRAs (including SIMPLE IRAs and SEPS) are considered eligible retirement plans for this purpose.

Who are “qualified individuals”?

Qualified individuals are defined as any individual:

- Who has been diagnosed by a test approved by the Center for Disease Control and Prevention (CDC) with COVID-19
- Whose spouse or dependent has been diagnosed by a test approved by the CDC with COVID-19
- Who has experienced adverse financial consequences as a result of being quarantined, furloughed, laid off, or having their hours reduced as a result of COVID-19
- Who is unable to work due to lack of child care resulting from COVID-19
- Who owns or operates a business that is closed (or has experienced a reduction in hours) as a result of COVID-19
- Other factors as determined by the Secretary of Treasury

Is this a new type of hardship distribution?

No. Rather, a “coronavirus-related distribution” is defined as **any distribution made on or after January 1, 2020 through December 31, 2020 to a qualified individual**. This means that any distribution could qualify, even if it was made before the law was enacted and could include hardship distributions, termination distributions, in-service distributions made upon attainment of age 59 ½, etc.

Additionally, a plan is permitted to allow coronavirus-related distributions to qualified individuals even if they would not otherwise be eligible for a distribution under the terms of the plan document.

What 401(k) plan accounts are available for coronavirus-related distributions?

The CARES Act provides a waiver of most of the normal distribution restrictions. This means that coronavirus-related distributions can be made from any of the following

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accounts in a 401(k) plan:

- Elective deferral accounts (including 401(k) and Roth accounts)
- Safe harbor contribution accounts
- Employer profit sharing and matching contribution accounts
- Rollover contribution accounts
- Voluntary after-tax contribution accounts
- QNEC and QMAC accounts

Note, however, the CARES Act did not waive the distribution restrictions applicable to pension plan accounts. As a result, if a 401(k) plan has pension plan account balances (i.e. merged or transferred money purchase pension plan accounts), those accounts would not be eligible for a coronavirus-related distribution unless the participant has terminated or attained age 59½.

Can terminated participants receive coronavirus-related distributions?

Yes, provided they are a qualified individual.

Does a participant have to provide proof of their need?

No, but they do have to provide certification that they meet the requirements to receive a coronavirus-related distribution. The key here is whether the individual is a qualified individual; it is not dependent on a specific "need" like hardship distributions. Under the CARES Act, the plan sponsor can rely on the participant's certification that he or she is a qualified individual to make such a distribution.

Is there a limit on coronavirus-related distributions?

Yes. From a plan perspective, coronavirus-related distributions cannot exceed \$100,000, considering all plans maintained by the employer (including controlled or affiliated service group members) on an aggregated basis.

On an individual basis, coronavirus-related distributions are also limited to \$100,000, after considering all distributions made from eligible retirement plans. This

means that if a participant takes a \$100,000 distribution from their employer's qualified plan and also takes a distribution from their IRA, any amounts in excess of \$100,000 would be subject to the 10% additional income tax for early withdrawals (if they would not otherwise be exempt, e.g. they have attained age 59½). Additionally, the amounts in excess of \$100,000 would be taxable in 2020 and could not be repaid to defer taxation.

Is there a window for making coronavirus-related distributions?

Yes. Only distributions made between January 1, 2020 and December 31, 2020 can qualify.

Are coronavirus-related distributions subject to mandatory 20% federal withholding?

No. For this purpose, coronavirus-related distributions are not considered to be eligible rollover distributions. As such, they are not subject to mandatory 20% federal withholding. Rather, they are subject to 10% federal withholding, unless the participant elects otherwise (like a hardship distribution).

It is important to note that participants are not required to receive the special tax notice (i.e. the "402(f) notice") normally required for eligible rollover distributions; however, the plan sponsor must provide notification to the participant of their right to waive the applicable 10% federal withholding and provide them the opportunity to do so.

How does a plan report coronavirus-related distributions on Form 1099-R?

At this point, the IRS has not issued guidance. Presumably, it will be reported normally as a taxable distribution, although it is possible the IRS will create a new code for this purpose.

How does a participant tell the IRS they want to pay the applicable income tax over the three-year period?

It is anticipated the IRS will update IRS Forms 8915A and 8915B (which address previous Disaster Retirement Plan Distributions and Repayments) for this purpose.

How does a participant "repay" the distribution to defer taxation?

If a participant repays all (or a portion) of a coronavirus-related distribution, it is treated as a 60-day rollover provided it is made within the three-year window. The repayment can be made to the distributing plan (if

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accepts rollovers), to another employer's qualified plan that accepts rollovers, or to an IRA. Further, the repayment can be made in one (or more) payments.

Again, it is anticipated the IRS will update IRS Forms 8915A and 8915B to be used for this purpose. In that case, the reporting burden will be on the plan participant, not the plan itself.

If a participant "repays" a coronavirus-related distribution, how is it treated from a plan and recordkeeping perspective?

The answer isn't entirely clear. Since it is treated as a 60-day rollover, however, it would presumably be treated as a rollover contribution. In that case, if repaid to the distributing plan, it would be treated as a related rollover for top-heavy purposes. Hopefully, the IRS will provide guidance on this point.

Participant Loans Under the CARES Act

The CARES Act increased the maximum amount for participant loans to "qualified individuals" from the lesser of 50% of a participant's vested account balance or \$50,000 to 100% of a participant's vested account balance up to \$100,000. These new loan limits apply to loans made to qualified individuals from March 27, 2020 to September 23, 2020.

Additionally, the CARES Act permits suspension of loan payments due from March 27, 2020 through December 31, 2020 for new and existing plan loans for a period of up to a year for qualified individuals. Further, it allows for extension of the term of the loan for a period of up to a year, without violating the maximum 5-year term.

Is a plan required to provide for CARES Act loans?

No. This is an optional provision, not a required one.

Does a plan have to be amended before permitting CARES Act loans?

No. The provision can be implemented immediately like coronavirus-related distributions. The plan must adopt a conforming amendment no later than the last day of the plan year beginning after December 31, 2021 (December 31, 2022 for calendar year plans), unless extended by the IRS.

Who is a "qualified individual" for this purpose?

A qualified individual is a participant who meets the requirements to be considered a qualified individual for

purposes of coronavirus-related distributions. See **Who are "qualified individuals"?** above.

Can a participant take a CARES Act loan if he or she has been furloughed or laid off?

Yes. A qualified individual can take a plan loan under the CARES Act provisions if they have been furloughed or laid off as a result of COVID-19. Additionally, the CARES Act permits loan payments due from March 27, 2020 through December 31, 2020 to be suspended for a period of up to a year. This means that an eligible participant could receive a plan loan, and the payments could be immediately suspended.

Note that interest will accrue during the suspension period. Further, it would be permissible to extend the term of the loan for a period of up to one year without violating the maximum 5-year loan term.

Do existing participant loans have to be taken into consideration when determining the maximum amount available?

Yes. Under the CARES Act, the maximum loan is equal to the lesser of 100% of the participant's vested account balance or \$100,000. If a participant has (or has had) an existing loan, the plan still must consider the participant's highest outstanding loan balance during the last 12 months for purposes of the \$100,000 limit.

For example, assume a participant has a \$300,000 account balance and that he or she has taken a \$50,000 plan loan within the last 12 months. In that case, the maximum CARES Act loan would be \$50,000 (\$100,000 less \$50,000).

Do participants have to provide certification that they are a qualified individual to receive a CARES Act loan?

Unclear. The CARES Act doesn't specifically require participant certification for this purpose, although certification is required for coronavirus-related distributions. Hopefully, the IRS will issue guidance on this point, but absent that guidance, it would be prudent for plan sponsors to obtain certification.

Waiver of Required Minimum Distributions Under the CARES Act for 2020

The CARES Act waives required minimum distributions (RMDs) otherwise required to be made in 2020 for defined contribution plans, 403(b) plans, governmental 457(b) plans, and IRAs. **The waiver does not, however, apply**

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to defined benefit plans (including cash balance plans).

Additionally, if an RMD has already been paid this year, the CARES Act provides participants with the opportunity to “repay” that distribution to a qualified plan or IRA to avoid current taxation.

Is this a required plan provision or an optional one?

The answer isn’t entirely clear, but it appears the 2020 RMD waiver will be required. Hopefully, IRS guidance will be issued on this point.

Does this apply to participants whose required beginning date was April 1, 2020 for their first RMD?

It depends. Yes, if the participant deferred their first RMD (2019) to 2020. No, if it was paid in 2019.

Do participants have to take their 2020 RMD in 2021, meaning is this a deferment or a waiver?

It is a waiver, not a deferment. There is no requirement that a participant’s 2020 RMD (otherwise due) be paid in 2021.

Can a participant “repay” an RMD already taken in 2020 to the distributing plan?

Yes. It can be “repaid” to the distributing plan (assuming it accepts rollovers), another employer’s qualified plan that accepts rollovers, or to an IRA.

Under the CARES Act, RMDs already paid in 2020 from eligible retirement plans are treated as eligible rollover distributions. As such, they can be rolled over within the 60-day period following the distribution. It is anticipated the IRS may extend the window for making such rollovers given the timing of the CARES Act, but at this point, the 60-day rollover rule applies.

How does a plan report an RMD that is “repaid” on Form 1099-R?

Since RMDs that have been paid in 2020 are treated as eligible rollover distributions under the CARES Act, it appears they should be reported normally as taxable distributions. It would be up to the participant to indicate if they completed a 60-day rollover on their individual income tax return to avoid current taxation.

Relief for Sponsors of Single-Employer Defined Benefit Plans

The CARES Act grants relief for plan sponsors who have single-employer defined benefit plans (including cash balance plans) by extending the due date for contributions required for 2020 (including quarterly contributions) to January 1, 2021. If a plan sponsor relies on the extended due date, the required contributions must also include interest when funded.

Expansion of DOL Authority Under the CARES Act

The CARES Act granted the DOL additional authority to extend certain deadlines, including required participant disclosures, notices, and the Form 5500. We would anticipate the DOL will issue guidance soon.

How can I learn more about the CARES Act?

As discussed, this is a very fluid situation, and we anticipate the IRS and DOL will be issuing additional guidance. We are monitoring the situation closely and are here to help you and your plan participants navigate through these difficult times. If you have any questions, please contact us.



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