



## The Coronavirus Aid, Relief, and Economic Security (CARES) Act


On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Included in this legislation are several provisions that impact defined contribution retirement plans. Following is a summary of those provisions.

### Coronavirus-related distributions

Retirement Plans and IRAs may permit individuals impacted by coronavirus to take withdrawals of up to \$100,000. The withdrawal would be exempt from the 10% early withdrawal penalty tax under Internal Revenue Code Section 72(t). The withdrawal would also be exempt from any mandatory federal withholding, but if required, state withholding would apply. The legislation also permits those individuals to pay tax on the income from the distribution ratably over a three-year period. Individuals are allowed to repay the amount distributed to any eligible plan that accepts rollover contributions over the three years following the date of the distribution. If the distribution is repaid, it would not be taxable. Those repayments would not be subject to the retirement plan contribution limits. The withdrawal must be completed prior to December 31, 2020. All plans of the employer and controlled group are combined for the limit, meaning participants would not be able to take \$100,000 from multiple plans sponsored by the same employer or employers that are in the same controlled group. Providing for these distributions is optional.

### Plan Loans

For individuals impacted by coronavirus, the CARES Act doubles the current retirement plan loan limits to the lesser of \$100,000 or 100% of the participant's vested account balance in the plan, subject to other limitations imposed by the IRS. The increased limit applies to loans made during the 180-day period beginning on the CARES Act enactment date of March 27, 2020. Individuals with outstanding loans that have repayments due between March 27, 2020 and December 31, 2020, can delay their loan repayments for up to one year. Interest would continue to accrue during the suspension period, and the due date of the loan can be extended, even if the loan extends past the 5-year period. It appears that the loan would be reamortized when payments are restarted over the remaining loan term as extended by the suspension period. Providing for these loan provisions is optional.



## Impacted Individuals

Only those individuals impacted by coronavirus are permitted to take the above distributions or loans. An impacted individual is anyone who falls into one of the categories listed below. Employees may self-certify that they meet one of these conditions.

- An individual who is diagnosed with coronavirus
- An individual whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with coronavirus
- An individual who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to coronavirus or being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of a business owned or operated by the individual due to such virus or disease
- An individual who meets other factors as determined by the Secretary of the Treasury

## Temporary Waiver of Required Minimum Distribution Rules

Under current law, generally, individuals at age 72 must start taking required minimum distributions (RMDs) from their defined contribution (DC) plans and IRAs. RMDs for calendar year 2020 from DC plans, including 401(k), 403(b), 457(b) and IRA plans would be waived, allowing individuals to keep funds in their retirement plans.

## Plan Amendments

Plans would not be required to be amended in advance of adopting the new provisions. The legislation permits retirement plans to adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans, provided the plan is amended on or before the last day of the first plan year beginning on or after January 1, 2022 (e.g., December 31, 2022 for calendar year plans), or later if prescribed by the Treasury Secretary. Governmental plans have until the last day of the first plan year beginning on or after January 1, 2024 to amend the plan.

## Other Important Items to Note

There are a few items not addressed in the legislation that we wanted to bring to your attention. Additional legislation and/or guidance may address these items, but unless any changes are made, plans must operate under the current rules in effect.

Partial Plan Terminations: Companies in industries that will be particularly hard hit by the financial impact of coronavirus should be mindful of the partial plan termination rules. These rules require retirement plans to 100% vest all participants who are affected by a partial plan termination. A partial plan termination is generally assumed to occur upon the reduction of 20% or more of your workforce. The occurrence of a partial plan termination might occur as a result of one or a chain of group layoffs. If you suspect a partial plan termination will occur, you may want to adjust how you handle any forfeitures in the short term. Please contact us if you think this might be the case.

Employer Contributions: In most cases, discretionary contributions may be stopped immediately. We suggest that you notify your employees as to any changes to the contribution formula in order to provide an opportunity to adjust their own contribution rates. If you have a fixed contribution formula in your plan document, an amendment will be required to make any changes. Safe harbor plans have special rules, and in addition to an amendment, require you to continue the contribution for another 30 days and provide a notice to the employees. Please note, if you discontinue the safe harbor contributions, even for part of the year, it will remove the plan from safe harbor status and would require you to pass the non-discrimination testing for the entire plan year.

Active vs Terminated Employees: We have received numerous inquiries as to the status of furloughed or laid off employees and whether these employees are eligible for a distribution or loan under the plan's rules. The regulations do not provide a definition for furlough or leave of absence. The determination generally relates to whether the employee's common law employment relationship with the employer has ended. This is a factual determination. Generally, a leave of absence is not considered a termination of employment and the participant remains an employee. Some items to consider are: 1) is the position held open for the employee in anticipation of their return?, 2) is the employee still eligible for benefits?, and 3) have you coded them as terminated in your payroll records? If you do not consider the employer/employee relationship severed, they should be considered an active employee. Adoption of the coronavirus distribution provisions outlined above will alleviate the need to make the determination of whether the employer/employee relationship has been severed.

Extension of the tax filing deadline: The IRS issued Notice 2020-18 which extends the due date of federal income tax returns and related tax payments that were originally due by April 15, 2020, making the new deadline July 15, 2020. Effectively, the new deadline applies to individual and C-Corp tax returns. The extended deadline remains October 15, 2020. This means that the unextended deadline for depositing employer contributions for a C-Corp is now July 15, 2020. Note that the new deadline does not apply to calendar year S-Corps/LLCs/Partnerships as their applicable unextended deadline of March 15, 2020 has already passed. Also note that the deadline for filing 5500s has not been extended at this point, but we are hopeful that the deadline will ultimately be extended.

Note that this is our current understanding of the provisions of the Act. If guidance is subsequently issued that conflicts with this summary, we will let you know. If you have any questions or concerns regarding your retirement plan, please contact us.