

# Action Items For Retirement Plan Sponsors After CARES Act

By **Katuri Kaye and Bryan Card**

In an effort to alleviate the adverse financial consequences caused by the COVID-19 pandemic, on March 27, Congress passed and President Donald Trump signed into law the Coronavirus Aid, Relief and Economic Security, or CARES, Act. Part of how the CARES Act seeks to address the economic hardships caused by the COVID-19 pandemic is by providing certain participants with increased access to their retirement plan assets.



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In this article, we highlight features of the CARES Act that are most impactful for defined contribution plan sponsors and participants and suggest practical steps that plan sponsors should consider now to implement such features under their defined contribution plans.

## Coronavirus-Related Distributions

Under the CARES Act, participants who meet the definition of “qualified individuals” are eligible to receive a new penalty-free in-service distribution event from their retirement plan account (a coronavirus-related distribution) during the 2020 calendar year. In order to be a qualified individual, a participant must either:



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- Be diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 by a test approved by the Centers for Disease Control and Prevention;
- Have a spouse or dependent (as defined in Section 152 of the Internal Revenue Code, as amended, who is diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the CDC; or
- Experience adverse financial consequences as a result of being quarantined, furloughed or laid off, having work hours reduced, being unable to work due to lack of child care, or having to close or reduce hours of their owned or operated personal business due to the virus SARS-CoV-2 or coronavirus disease 2019, or other factors as determined by the secretary of the Treasury.

For these purposes the distributing retirement plan must be an “eligible retirement plan” under Code Section 402(c)(8)(B) (e.g., a plan under Code Section 401(k) or 403(b), a governmental Code Section 457(b) plan, or an individual retirement account or annuity under Code Section 408(a) or 408(b)) (please note that additional in-service distribution restrictions under the code apply in the case of a money purchase pension plan). Additionally, a plan sponsor may rely on self-certification from a participant that he or she is a qualified individual.

The total amount of any coronavirus-related distributions made to any individual for a taxable year may not exceed \$100,000, including the aggregate amount of any such distributions from all plans maintained by the plan sponsor (and any member of the plan sponsor’s controlled group within the meaning of Code Section 414(b), (c), (m) or (o)).

Moreover, any participant who is a qualified individual will not be subject to the 10% early

distribution penalty under Code Section 72(t) with respect to his or her coronavirus-related distribution. In addition, income taxes owed on any coronavirus-related distribution may be spread ratably over a three-year period (unless otherwise elected by the participant).

Participants receiving a coronavirus-related distribution have the option to repay such distribution within a three-year period following the date in which the participant received any such distribution.

### **Plan Loan Modifications Under the CARES Act**

Under the CARES Act, the plan loan threshold for participants who meet the definition of qualified individual above have been increased to the lesser of: (1) \$100,000 (increased from \$50,000) or (2) 100% of the participant's vested account balance (increased from 50%). This temporary increase is only available for plan loans made to participants during the 180-day period commencing on March 27.

In addition, the CARES Act provides a one-year extension period for loan payments owed by any qualified individual with a new or existing plan loan with a repayment date occurring any time between March 27 and Dec. 31.

Upon expiration of the one-year extension period, any subsequent loan repayments must be appropriately adjusted to reflect the delay and any interest accruing during the delay over the extended period. The period of the delay is not counted against the five-year loan term applicable to general purpose loans and the longer term (e.g., 10 years) applicable to principal residence loans.

### **Waiver of 2020 Required Minimum Distributions**

The CARES Act also provides for a waiver of any required minimum distribution, or RMD, payments under Code Section 401(a)(9) that are scheduled to be paid in 2020. This waiver applies to both 2019 RMD payments that were owed by April 1 and 2020 RMD payments to be made by Dec. 31. This waiver only applies to defined contribution plans.

### **Action Items for Plan Sponsors**

If a defined contribution plan sponsor wishes to take advantage of any of the relief provided under the CARES Act to allow for increased access to retirement plan funds for participants adversely impacted by COVID-19, we recommend the following action items:

1. A careful review of your plan's procedures and plan administrator's constraints should be conducted to determine if any platform changes are required in order to implement the applicable CARES Act provision(s), including but not limited to, the following:
  - If you intend to allow for coronavirus-related distributions in 2020, a new distribution event would have to be created that is not subject to the 10% early distribution penalty tax or mandatory 20% withholding. If you have multiple retirement plans, procedures must be put in place to make sure that the aggregate amount of coronavirus-related distributions to any individual do not exceed \$100,000. This should not present huge difficulties for plan sponsors and record-keepers, as these same requirements apply to qualified disaster distributions that are available to assist participants impacted by certain natural disasters (e.g., hurricanes, floods and wildfires).

- If coronavirus-related distributions are being repaid to your retirement plans, procedures must be in place to treat any such payments as rollover contributions. Such repayments must be limited to the aggregate amount of distributions that the individual received from all retirement plans in your controlled group.
- If you intend to increase the plan loan maximum thresholds under your retirement plan(s) in 2020, procedures must be in place to allow for the increase. If your retirement plan(s) currently includes a limit on the amount of outstanding plan loans an individual may have, careful consideration should be made to determine if the limit could be increased to allow participants to take advantage of this new feature.
- Any delayed loan repayments should be properly documented to ensure that such loans are not treated as being in default.
- Loan procedures and amortization schedules will have to be updated to address the loan changes. Additionally, changes to your loan policy may be required to address participants who are on a coronavirus-related leave.
- If your retirement plan does not provide for plan loans, now is the time to consider if you want to make plan loans available to your participants.
- Accommodations may be required if your plan(s) requires spousal consent before a plan representative or notary to in-service distributions or loans, where any such individuals may be subject to a coronavirus-related stay-at-home or shelter-in-place mandate.
- Procedures must be in place to ensure that any RMD payments that are being waived for 2020 are properly resumed in 2021 (absent any additional relief or extensions).

2. Participant communications should be prepared and distributed to properly inform participants of any operational changes under your retirement plan(s) as a result of the CARES Act and any additional steps that participants will have to take in order to take advantage of any such changes.

3. Plan documents should be timely reviewed and amended in order to incorporate any operational changes under your retirement plan(s) as a result of the CARES Act. We encourage you to consult with your ERISA attorney, plan record-keeper and third-party administrator to ensure that your plan's operations and documents are consistent with respect to its new features under the CARES Act.

## **Conclusion**

As the number of employees impacted by the COVID-19 pandemic continues to grow each day, we understand that participants are looking to their defined contribution retirement plan accounts now more than ever to help cover the unforeseen costs and financial hardships they are experiencing. While the CARES Act provides the framework to help retirement plan participants during these difficult times, we anticipate further guidance from the IRS, U.S. Department of Labor, U.S. Department of the Treasury, and other agencies will be needed to answer any outstanding questions.

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