

> Covid-19 Client Alert

CARES Act - Q&As for Retirement Plan Sponsors

April 15, 2020

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The [Coronavirus Aid, Relief, and Economic Security Act](#), or CARES Act, enacted sweeping measures to strengthen the U.S. economy and support businesses and individuals during the COVID-19 crisis, including new ways for retirement plans to give participants greater access to retirement funds and reduce plan-related tax and loan repayment obligations, as well as providing funding relief for sponsors of single employer defined benefit plans.

What Relief Can We Give to Our Retirement Plan Participants?

The CARES Act permits sponsors of qualified retirement plans (including defined contribution/401(k) plans, defined benefit plans, 403(b) plans, governmental 457(b) plans and IRAs) to give their qualifying participants the following special benefits:

1. **COVID-19 Related Distributions (“CRDs”).** A plan may allow “qualifying participants” (discussed below) in 2020 to receive distributions of their vested benefits, up to \$100,000. CRDs are exempt from the 10% early withdrawal penalty on distributions taken before age 59 ½. Participants may choose to either repay the CRD to the distributing plan (or to another eligible rollover plan or IRA) within 3 years, or pay tax on the CRD ratably over 3 years.
2. **Plan Loan Increase.** A plan that permits participant loans may allow qualifying participants to take out a larger loan between March 27, 2020 and September 23, 2020. The maximum loan amount during this period is increased from \$50,000 to \$100,000 up to 100% of the participant’s vested balance.
3. **Plan Loan Suspension.** A plan that permits participant loans may also allow qualifying participants to suspend their plan loan repayments between March 27, 2020 and December 31, 2020.
4. **Waive required minimum distributions (“RMDs”).** Defined contribution plans and IRAs may waive payment of RMDs – the mandatory taxable distributions to participants who have attained age 70 ½ (or age 72, starting in 2020), for the remainder of 2020.

Are All Participants Eligible for This Relief?

CRDs, plan loan increases and plan loan suspensions (1 through 3 above) are **only** available to a qualifying participant (i) who was diagnosed with COVID-19, (ii) whose spouse or dependent was diagnosed with COVID-19, or (iii) who experienced adverse financial consequences as a result of being quarantined, furloughed, laid-off, having work hours reduced, being unable to work due to lack of childcare because of

COVID-19, or the closing or reducing hours of a business owned or operated by the participant due to COVID-19. The Secretary of the Treasury has been authorized to expand this definition of “qualifying participants”.

Plan administrators may rely on participants’ self-certification whether they qualify for these benefits. While self-certification reduces an employer’s administrative burden, it also raises the question of what an administrator should do if it knows that a self-certification is inaccurate (for example, if a participant certifies that the participant’s work hours were reduced, but the administrator knows that no such reduction has occurred).

RMD suspensions (4 above) may be permitted for **all** plan participants, not just “qualifying participants”.

Are We Required to Grant This Relief?

No – the four provisions above are optional and may generally be adopted any time before December 31, 2020 (if at all). Additionally, sponsors may choose to adopt some but not all of these provisions.

Sponsors using a plan document maintained by a third party service provider should inquire whether the provider will take an “opt-in” or “opt-out” approach to these changes. Under an “opt-in” approach, the four provisions above will not be adopted for a plan unless the plan sponsor affirmatively opts in. Under an “opt-out” approach, however, some or all of these provisions may be adopted by default, unless the plan sponsor affirmatively and timely opts out. This could come as a surprise to unwary sponsors.

What Should We Consider in Deciding Whether to Grant This Relief?

The four provisions above are intended to help people in need to access and keep more of their money during the COVID-19 emergency. While this is a laudable goal, sponsors should also consider potential downsides of CRDs and plan loan increases (1 and 2 above):

- Participants who withdraw funds from their plan (whether as a CRD or a loan distribution) are liquidating their investment of such funds. In the current market environment, such participants could “lock in” significant investment losses and miss out on the opportunity to “ride the market” back to recovery.
- If a plan loses significant funds due to CRDs, this could increase the plan’s administrative costs and fees, as service providers factor in their loss of asset-based fees.

Will We Need to Amend Our Plan and Notify Our Participants?

A sponsor that implements any of the four provisions above should notify its eligible participants as soon as possible, in order to maximize participants’ use of this relief. If the sponsor chooses not to implement any such provision, no notice is required.

A sponsor that implements any of the four provisions above will also need to adopt a plan amendment by the last day of the first plan year beginning in 2022 (by December 31, 2022 for calendar year plans). Until such time, only operational compliance is required.

What Additional Relief is Available to Sponsors of Defined Benefit Plans?

The CARES Act also extends the due date for all 2020 funding contributions for single-employer defined benefit plans until January 1, 2021. The extended payment is adjusted for any interest accrued. Defined benefit plans are also permitted to use the adjusted funding target attainment percentage (AFTAP) from the last plan year ending before January 1, 2020 (2019 for calendar year plans) in applying benefit restrictions under Section 436 of the Internal Revenue Code for 2020, which could help plans avoid possible accrual and benefit restrictions.

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Morrison Cohen LLP has created the [COVID-19 Resource Taskforce](#), a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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