

The CARES Act Effect on Retirement Plans

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Newport Speakers:

Margaret Miley, Vice President, Legal

Michael DiCenso, Executive Vice President, National Distribution

NEWPORT
retirement services



Upcoming Webinars

Solutions for Overcoming Failed ADP/ACP Testing

Wednesday, April 29

2 p.m. ET (11 a.m. PT)

Use this link to register: <https://hubs.ly/H0phydt0>

Or look for the link in the chat box

Agenda

- **CARES Act**
- **Other Legislation and Guidance**
- **Commonly Asked Questions**
- **Cost-Free 3(16) Services**

CARES Act

- Signed on March 27, 2020
- Loosens restrictions on, and tax consequences of, loans and distributions
- Waives minimum distribution requirements for calendar year 2020
- Provides limited funding relief for defined benefit plans
- Authorizes Department of Labor to delay deadlines for tasks required under ERISA
- Includes provisions for loans to specified business entities that may be used to cover payroll costs, including certain retirement plan payments

CARES Distribution and Loan Provisions

Only available to “qualified individuals”

- Participant diagnosed with coronavirus or with coronavirus disease (COVID-19)
- Participant’s spouse/dependents diagnosed with the virus or with COVID-19
- Participant has been financially harmed because he/she:
 - Has been laid off, furloughed, or quarantined due to the virus or COVID-19
 - Has had his/her work hours reduced because of the virus or COVID-19
 - Is unable to work due to a lack of child care because of the virus or COVID-19
 - Has had to close or reduce the operating hours of a business he/she owns or operates due to the virus or COVID-19
- Above list can be expanded by the IRS

Plan can rely on employee’s certification that he/she meets the above requirements for purposes of distribution provisions

- What about loan provisions?

Coronavirus-Related Distributions

- Optional for sponsors of qualified plans, 403(b) plans, and governmental 457(b) plans
- If adopted, allows eligible participants to request a “coronavirus-related distribution” from their vested account balance, up to \$100,000
- \$100,000 limit applies to aggregate of all distributions from all plans maintained by employer and its controlled group
- Can be made even if participant is not otherwise eligible to take a distribution from elective deferral sources

Coronavirus-Related Distributions *(continued)*

- No exception for distribution restrictions applicable to pension plans; participants must be otherwise eligible for a distribution:
- Applies only to distributions made during 2020 (including distributions made prior to date CARES adopted)
- Exempt from 10% early payment penalty tax (IRS Form 5329)
- Direct rollover option not required
- Not subject to mandatory 20% federal income tax withholding, but subject to 10% optional federal income tax withholding
- Unless participant elects otherwise, included in income equally over three years
- Can be repaid in one or more installments over three years (IRS Form 8915)

CARES Act Loan Provisions

Available loan amount increased to lesser of \$100,000 or 100% of vested account balance

- Loan must be made on or before September 23, 2020
- Optional for sponsors of qualified plans, 403(b) plans, and governmental 457(b) plans
- Plans are not required to offer loans, nor required to offer larger CARES Act loans

Loan payments due between March 27, 2020 and December 31, 2020 can be deferred for one year

- Mandatory for qualified plans, 403(b) plans, and governmental 457(b) plans that permit participant loans
- Interest continues to accrue during period of deferment
- Loan term is extended by period of deferment
- Anticipate more guidance from IRS on mechanics, including required documentation (if any)
- Terminated employees likely eligible for deferment; changes to loan policy may be required

Waiver of Required Minimum Distributions

Required Minimum Distributions (RMDs) not required during calendar year 2020

Waiver applies to qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans

Terminated participant (or 5% owner) turned 70-1/2 in 2019, 2019 RMD due no later than 4/1/2020

- RMD Paid in 2019 – no special treatment
- RMD Paid in 2020 – can be rolled over

Terminated participant (or 5% owner) turned 70-1/2 in or prior to 2019, 2020 RMD due no later than 12/31/2020

- RMD not required; if paid, can be rolled over

Participant died prior to 2020 before RMDs had begun

- RMDs begun by end of year following year of death: 2020 RMD not required; if paid, can be rolled over
- RMDs not begun by end of year following year of death: Account balance must be completely distributed by end of 5th calendar year following year of death, disregarding 2020

Changes to Single Employer Pension Plan Funding Rules

Deadline for making required minimum contributions that would otherwise be due in calendar year 2020 is extended to January 1, 2021

- Includes required quarterly contributions
- Contribution when made must be adjusted for interest from original due date through date of actual contribution

Calculating Adjusted Funding Target Percentage (AFTAP) for 2020 Plan Years

- Can use AFTAP for last plan year ending before January 1, 2020
- Used to determine whether plan is subject to restrictions on benefits and benefit accruals

Authority to Secretary of Labor to Extend Deadlines for Public Health Emergencies

- **Applies to any act required under ERISA**
- **Deadline can be extended for up to one year**
- **No extensions issued by Department of Labor yet**

Payroll Protection Program

- Offers loans to certain small businesses with 500 or fewer employees to encourage employee retention
- Loans can be forgiven if used for specified purposes, including payroll costs such as “payment of retirement benefits” that are incurred during an eight-week period ending no later than June 30, 2020
- No guidance issued as of yet
- Appears qualified purposes likely include employee deferrals to a retirement plan
- May also include matching contributions calculated on a pay-period basis
- Employers should consult their lenders and outside counsel for specific advice and information

Stay Tuned for Future Legislation

CARES did not address all concerns of retirement plan sponsors

Industry groups are lobbying for additional assistance, including additional pension funding relief

Stay Tuned!

Guidance Separate from CARES Act

Extended amendment deadlines

- 403(b) remedial amendment period extended from March 31, 2020 to June 30, 2020
- End of second six-year remedial amendment cycle for pre-approved defined benefit plans extended from April 30, 2020 to July 31, 2020

Notice 2020-18: Deductible contributions for 2019 can be made until July 15, 2020 if corporate tax return due date is April 15, 2020

Families First Coronavirus Response Act

Signed on March 18, 2020

Requires some companies to provide paid sick leave and paid family and medical leave to employees affected by the coronavirus for a limited period of time

Paid leave will generally be counted for service-crediting purposes

- Up to 501 hours of service must be counted for periods during which employees are paid but not performing services

Paid leave will generally be counted as compensation for plan contribution purposes

- Most plans define compensation as W-2 wages, wages subject to income tax withholding, or taxable compensation
- Paid leave is taxable, reportable on W-2 and subject to income tax withholding
- Consult your plan's definition of compensation

Major Disaster Hardship Distributions

If plans do not adopt CARES Act distribution provisions, eligibility for distributions and withdrawals depends on existing plan terms

If plan allows hardship distributions under “safe harbor” hardship rules, employees may be eligible for a hardship distribution if they have an immediate and heavy financial need:

- Participant/spouse/dependents: Unreimbursed deductible medical expenses, post-secondary tuition/educational expenses, funeral expenses
- Participant: Eviction from, foreclosure on, purchase of, or casualty loss affecting principal residence
- **Participant: Expenses or losses (including loss of income) caused by a disaster that has been declared by FEMA, if the employee lives or works in an area designated by FEMA as eligible for individual assistance**
- Documentation required:

As of April 6, 2020, 45 states, plus Washington, D.C., Puerto Rico, and other U.S. possessions, have been declared disasters by FEMA in connection with COVID-19

In 10 of those states, individuals are eligible for crisis counseling; does that constitute being eligible for individual assistance?

For more, go to <https://www.fema.gov/disasters> and select “Major Disaster Declaration” under Declaration Type

Common Questions

Employment Status: Leave of Absence or Termination of Employment?

Terminated employees generally eligible for distribution of all vested balances

Employees on a leave of absence must satisfy plan rules for in-service distributions to access retirement accounts; also eligible for loans

Terminology (layoff/furlough) not necessarily determinative; look at surrounding facts and circumstances:

- Duration of absence
- Expectation of re-employment
- Receipt of pay or benefits

Common Questions (cont.)

What About Outstanding Loans?

Terminated employees: Loan policies generally require repayment in full at termination

- Participant's account is reduced by outstanding balance of loan ("offset")
- Loan offset is taxable to participant/reported on Form 1099-R; 10% early payment tax may be owed if under 59-1/2
- Employee can avoid/reduce taxes by rolling over cash equal to loan offset to an IRA or other employer plan

CARES impact on above:

- May be eligible for deferment under CARES Act to delay tax consequences
- Loan offset may be considered a CARES distribution that is exempt from the 10% early payment tax, associated income may be spread over three years, and loan offset amount may be recontributed within three years to avoid/reduce taxes

Employees on leave of absence: Loan policies may allow suspension of payments for one year if not receiving pay or pay that, after employment and tax withholdings, is less than loan payments

- Interest continues to accrue during suspension
- When leave ends or one-year period expires (whichever occurs first), loan payments must resume
- Loan must be repaid by maximum permissible loan term
- CARES impact on above: CARES requires up to one year of loan deferment, regardless of loan policy

Plan Diagnostics

Cost-Free 3(16) Fiduciary Services

ERISA Section 3(16) Fiduciary Services

Plan Operations

Maintenance of Data

- Distribution elections
- Beneficiary elections
- Loan applications
- Participant transactions
- Payroll and census
- Salary deferral changes

Distribution Processing

- Termination, death, disability
- RMDs
- Hardships
- QDROs
- Rollovers

ERISA Section 3(16) Fiduciary Services

Plan Document and Required Disclosures

Plan Document Interpretation:

- Eligibility
- Annual allocation of contributions
- Vesting

Reporting and Disclosure:

- Summary plan description
- Summary of material modifications
- Statements
- Required notices (QDIA, Safe Harbor)
- Required fee disclosures

Form 5500 Preparation:

- Coordination with auditors
- Signature ready 5500

The advantages of outsourcing 3(16) Co-Fiduciary Services to Newport:

Newport **assumes responsibility** for above referenced operational, transactional, and reporting functions of the plan

Creates efficiencies around operations, reporting, and disclosures as all processes are streamlined and consistent

Newport's **ERISA focused experts** take the helm, allowing the sponsor's professionals to do what they do best

Cost savings advantage to sponsor by increasing employee productivity

Avoids “conflict of interest” decision making

Overall **increased service** level

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