SUMMARY OF THE CARES ACT RETIREMENT PLAN PROVISIONS AND
FREQUENTLY ASKED QUESTIONS

The following provides an overview of the key changes made under the Coronavirus, Aid, Relief and Economic Security (CARES) Act related to retirement plans, along with recently issued IRS guidance regarding defined benefit and 403(b) plan required restatements. In addition, we have included Frequently Asked Questions (FAQs) regarding the impact of COVID-19 on employers, their retirement plans, and plan participants based on questions the Technical Answer Group (TAG) has received from its clients.

Important Note: Although the CARES Act and recent IRS guidance provides targeted relief for specific retirement plan-related issues, there are numerous additional areas where IRS or DOL guidance is needed and, potentially, additional action by Congress. Some of these issues are discussed in the FAQs below. TAG anticipates additional guidance will be issued soon, and the situation will remain fluid for the near future. TAG will provide additional updates as new information becomes available.

THE CARES ACT

The CARES Act was signed into law by President Trump on March 27, 2020. The following is a summary of the key provisions impacting retirement plans:

Coronavirus-Related Distributions

The 10% additional income tax on early distributions imposed under IRC §72(t) will not apply to “coronavirus-related distributions” made to plan participants or IRA owners on distributions up to $100,000. For purposes of the $100,000 limitation, any (and all) distributions made to an individual from any eligible retirement plan are aggregated.

Coronavirus-related distributions are defined as any distribution made from an eligible retirement plan, provided the distribution is made on or after January 1, 2020 and before December 31, 2020 to an individual:

- who has been diagnosed by a test approved by the Center for Disease Control and Prevention (CDC) with COVID-19, or
- whose spouse or dependent has been diagnosed by a test approved by the CDC with COVID-19, or
- 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, or
- who is unable to work due to lack of child care resulting from COVID-19, or
- who owns or operates a business that is closed (or has experienced a reduction in hours) as a result of COVID-19, or
- other factors as determined by the Secretary of Treasury.

For this purpose, eligible retirement plans include 401(k) plans and other qualified plans, 403(b) plans, and governmental 457(b) plans as well as IRAs (including SIMPLE IRAs and SEPs).

Although distribution restrictions generally apply to certain account balances, the CARES Act treats as satisfied the distribution restrictions normally applying to 401(k), Roth, safe harbor, QNEC or QMAC
account balances, restricted accounts in 403(b) plans, and restricted accounts in governmental 457(b) plans for purposes of coronavirus-related distributions. Additionally, it is permissible to distribute profit sharing or matching contributions upon a stated event—in this case, the coronavirus. As a result, it would be permissible to distribute any such accounts to a qualified individual if the plan elects to permit coronavirus-related distributions.

The distribution restrictions applicable to money purchase pension plans (and other pension plans such as defined benefit and cash balance plans) were not referenced in the CARES Act as being satisfied. As a result, while a pension plan is not prohibited from permitting coronavirus-related distributions, an individual would have to be a qualified individual and either have terminated employment or attained age 59 ½ to be eligible to receive such a distribution since the CARES Act did not provide a waiver of the age 59 ½ requirement for this purpose.

The plan administrator (i.e. employer) may rely on the participant’s certification that they are a “qualified individual” (as described above) in order to receive a coronavirus-related distribution.

Additionally, such distributions are not treated as eligible rollover distributions for purposes of the withholding rules under IRC §3405 and, therefore, are not subject to mandatory 20% federal withholding. Rather, they are subject to a default withholding rate of 10%, unless elected otherwise by the participant. Although participants are not required to receive the special tax notice regarding eligible rollover distributions, i.e., the “402(f) notice,” they would need to be provided with a notice informing them of their right to waive the applicable 10% federal withholding.

Lastly, the new provisions provide individuals with the ability to spread the applicable income tax ratably over a three-year period, if desired. Participants also have the option of repaying the distribution to the distributing plan (or any other qualified plan that accepts rollovers) or to an IRA within the three-year period following the distribution to defer taxation. For this purpose, it is anticipated that the IRS will update IRS Forms 8915A and 8915B (which address previous Disaster Retirement Plan Distributions and Repayments) for this purpose.

**Increased Plan Loan Limits and Extension of Due Date**

The CARES Act increased the maximum amount available 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 (the date of enactment) to September 23, 2020 (180 days after the date of enactment).

The CARES Act also provides relief to “qualified individuals” with outstanding plan loans (on or after March 27, 2020) by allowing suspension of loan payments (due from March 27, 2020 through December 31, 2020) for a period of up to one year. During the suspension period interest continues to accrue, and the term of the loan may be extended for a period of up to one year without violating the 5-year maximum term under IRC §72(p)(2).

For this purpose, “qualified individuals” are any individuals who meet the criteria (discussed above) to be eligible for a coronavirus-related distribution.
Waiver of Required Minimum Distributions for 2020

The CARES Act waives the requirement for required minimum distributions (RMDs) for defined contribution plans (including 403(b) plans and governmental 457(b) plans) and IRAs for any RMD that would otherwise be due during 2020. This includes RMDs due to participants and IRA owners whose required beginning date is April 1, 2020 (for their 2019 RMD), but who did not take their first RMD by December 31, 2019.

Further, if a participant or IRA owner has already taken an RMD in 2020, they are permitted to roll that amount to an IRA or other qualified plan (that accepts rollovers) to defer taxation. At present, the rollover must be made within the 60-day period following the distribution. We would expect, however, that the IRS will issue guidance extending the window for such rollovers.

Important Note: The waiver does not apply to RMDs due from defined benefit plans during 2020.

Plan Amendment

Plans can implement any of the provisions immediately without a plan amendment. Under the CARES Act, the deadline to amend plan documents for the changes made under the Act is the last day of the first plan year beginning on or after January 1, 2022 (i.e. December 31, 2022 for calendar year plans), unless extended by the Department of Treasury. Governmental plans have an additional two years to amend the plan document for the changes.

Extended Deadline for Funding Contributions for Single-Employer Defined Benefit Plans

The CARES Act grants relief for employers with single-employer defined benefit plans by extending the due date for contributions due in 2020 (including quarterly contributions) to January 1, 2021. If an employer relies on the extended due date, the contribution must also include interest when funded.

Expansion of DOL Authority to Extend Certain Deadlines

The CARES Act grants the Department of Labor the authority to extend certain deadlines, including the Form 5500 and required participant notices and disclosures. Accordingly, we would anticipate guidance from the DOL in the near future.

IRS GUIDANCE AND RELIEF

Deadline Extended for 403(b) Plans and Pre-Approved Defined Benefit Plans

The IRS has extended the last day of the initial remedial amendment period for 403(b) plans from March 31, 2020, to June 30, 2020. Plan sponsors now have until June 30, 2020 to update their preapproved and individually designed 403(b) plan documents.

The IRS has also extended the deadline for employers to adopt a preapproved defined benefit plan from April 30, 2020 to July 31, 2020. An employer that adopts a preapproved defined benefit plan (either traditional DB or cash balance) by July 31, 2020 will be considered to have timely adopted the plan within the second six-year remedial amendment cycle.
TAG FREQUENTLY ASKED QUESTIONS (FAQs)

TAG Note: Supporting citations are provided following the FAQs.

Click on the links below to go directly to the question(s).

Plan Amendments for Changes made under the CARES Act
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Mid-Year Amendment to Suspend Safe Harbor Contributions due to COVID-19
  1. Has there been any guidance specific to safe harbor plans and the coronavirus?
  2. Can a safe harbor plan be amended mid-year to remove or reduce the safe harbor matching contribution?
  3. If so, can the plan be amended later this year to add back the safe harbor match?
  4. Would the answer be different if the plan provides for safe harbor nonelective contributions?

Waiver of RMDs under the CARES Act
  1. An owner of the business is due his first RMD by April 1, 2020. The plan is a cash balance plan. Does the 2020 RMD waiver apply to cash balance plans?
  2. Are 2020 RMDs postponed to 2021 or will they not need to be taken at all?
  3. Can 2020 RMDs already taken be returned to a 401(k) plan and treated as non-taxable?
  4. Can a participant’s first RMD, required to be taken by April 1, 2020, be returned to a 401(k) plan and treated as non-taxable?

Deadline Extended for Certain Employer Contributions and IRA Contributions for 2019
  1. With the recent IRS pushback of the tax filing deadline to July 15, 2020, do employers now have until that date to fund employer plan contributions?
  2. Does the extension also apply to IRA contributions?
Plan Amendments for Changes made under the CARES Act

1. Does a plan need to be amended before the changes can be implemented?

No. It is permissible to implement the provisions prior to the plan being amended. The deadline under the CARES Act to adopt conforming amendments is the last day of the first plan year beginning on or after January 1, 2022 (i.e., December 31, 2022 for a calendar year plan), unless extended by the IRS.

2. Are these changes required?

A plan is not required to permit coronavirus-related distributions or loans (as permitted under the CARES Act); these provisions are optional. As far as the waiver of RMDs due in 2020, it appears the changes are required.

Coronavirus-Related Distributions under the CARES Act

1. Is this a new type of hardship distribution?

No. It is separate and distinct from a hardship distribution (or any other type of distribution). The CARES Act defines a coronavirus-related distribution as “any distribution from an eligible retirement plan made— (i) on or after January 1, 2020, and before December 31, 2020, (ii) to an individual— (I) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention, (II) whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test, or (III) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary’s delegate).”

What this means is that any distribution made during 2020 could be considered a corona-virus related distribution as long as it is made to a qualified individual (described above). This would include hardship distributions, distributions upon attainment of age 59 ½, termination of employment, etc.

Additionally, for qualified individuals who would not otherwise qualify for a distribution under the terms of the plan, a plan can permit a coronavirus-related distribution from any accounts under the plan (with certain exceptions for pension plan accounts, see question #6 below).

The plan administrator (i.e., employer) may rely on the participant’s certification that they are a “qualified individual” to receive a coronavirus-related distribution.

2. Is there a limit on the coronavirus-related distribution amount?

Yes. A plan can permit coronavirus-related distributions up to $100,000. All plans maintained by the employer (which include controlled and affiliated service group members) are aggregated for this purpose.
The 10% additional income tax imposed under IRC §72(t) will not apply to coronavirus-related distributions made to plan participants (or IRA owners) on distributions up to $100,000. Note, however, any (and all) distributions made to an individual from any eligible retirement plan are aggregated. As a result, if an individual takes a $100,000 distribution from their employer’s plan and withdraws additional funds from his or her IRA, the 10% additional income tax would apply to the amount in excess of $100,000 assuming the individual does not otherwise meet an available exception, e.g., attainment of age 59 ½.

3. Can a terminated employee receive a coronavirus-related distribution and be exempt from the 10% additional income tax?

Yes, as long as they are a qualified individual and provide the necessary certification to the plan administrator.

4. Are they subject to the normal withholding rules?

No. Such distributions are not subject to mandatory 20% federal withholding under IRC §3405. Rather, they are subject to a default withholding rate of 10%, unless elected otherwise by the participant.

5. Can a participant repay the distribution to avoid taxation?

Yes. If the distribution is repaid to the distributing plan (or to another qualified plan that accepts rollovers) or to an IRA within the three-year period following the distribution, the repayment is treated as a 60-day rollover. Thus, the participant can defer taxation.

6. Are coronavirus-related distributions available from pension plans (e.g. money purchase pension plans, cash balance plans, defined benefits plans, etc.)?

It would be permissible to allow coronavirus-related distributions from a pension plan, however, in order for a qualified individual to be eligible to receive such a distribution, they would either have to have terminated employment or attained age 59 ½. The CARES Act did not provide an exception to the age 59 ½ age requirement under IRC §401(a)(36) for in-service distributions from pension plans.

7. How are coronavirus-related distributions reported on Form 1099-R?

The IRS has not yet issued guidance. Based on what we have now, it seems this would be reported normally as a taxable distribution. Further, if this were treated in the same manner as distributions for qualified birth or adoption expenses (which are also exempt from the 10% additional income tax), it appears Code 1 would be used (unless the participant otherwise meets an exception, e.g., age 59 1/2) on the Form 1099-R. It may be the IRS will provide a new code to report coronavirus-related distributions. TAG does expect the IRS will issue guidance soon.
Participant Loans under the CARES Act

1. Can a plan make a participant loan to an employee who has been furloughed or laid off as a result of COVID-19?

Yes, if permitted under the plan. In general, if an employee who has been furloughed or laid off would be considered on a leave of absence, it would be permissible to issue a loan to that participant and immediately suspend loan payments if permissible under the terms of the plan document and loan policy. Treas. Reg. §1.72(p)-1, Q&A-9 provide that "The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and paragraph (b) of this Q&A-9), that a participant is on a bona fide leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan."

In addition, the CARES Act expanded the options with respect to plan loans. 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 from March 27, 2020 (the date of enactment) to September 23, 2020 (180 days after the date of enactment).

The CARES Act also provides relief to “qualified individuals” with outstanding plan loans (on or after March 27, 2020) by allowing suspension of loan payments (due from March 27, 2020 through December 31, 2020) for a period of up to one year. During the suspension period, interest continues to accrue, and the term of the loan may be extended for a period of up to one year without violating the 5-year maximum term under IRC §72(p)(2).

For this purpose, “qualified individuals” include any of the following:

- an individual who has been diagnosed by a test approved by the CDC with COVID-19, or
- an individual whose spouse or dependent has been diagnosed by a test approved by the CDC with COVID-19, or
- an individual 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, or
- an individual who is unable to work due to lack of child care resulting from COVID-19, or
- an individual who owns or operates a business that is closed (or has experienced a reduction in hours) as a result of COVID-19, or
- other factors as determined by the Secretary of Treasury.

In summary, if an individual who is on a leave of absence isn't a qualified individual, a loan could be made and payments could immediately be suspended as long as this is permissible under the terms of the plan and loan policy. In that case, the original maximum 5-year term would apply.
If the individual is a qualified individual, under the new rules the loan could be made and payments immediately suspended (assuming the plan will permit such loans). The difference (other than the amount available) is that the maximum loan term can be extended for a period of up to one year if the loan is made to a qualified individual.

2. Should the $100,000 limit for COVID-19 loans be reduced by the employee’s highest outstanding loan balance in the last 12 months?

Yes. You would consider the highest outstanding loan balance during the past 12 months in determining the maximum amount available. There is nothing in the CARES Act that would change this, even for a "qualified individual"; the difference is that the loan limit is the lesser of $100,000 or the participant's vested account balance. For example, assume a participant has a $200,000 vested account balance and took a $50,000 plan loan within the last 12 months. The maximum amount of a new loan would be $50,000 ($100,000 less $50,000).

Mid-Year Amendment to Suspend Safe Harbor Contributions due to COVID-19

1. Has there been any guidance specific to safe harbor plans and the coronavirus?

No, however, we would anticipate the IRS will issue guidance for retirement plans related to COVID-19, which may (or may not) address safe harbor 401(k) plans. Further, it is our understanding that the American Retirement Association (ARA), along with other interested parties, are reaching out to members of Congress advocating for relief for employers with respect to required employer contributions under defined contribution plans. TAG can’t say, however, what relief may (or may not) ultimately become available; all we have at this point are the existing rules to follow.

2. Can a safe harbor plan be amended mid-year to remove or reduce the safe harbor matching contribution?

It depends. Under the regulations, a safe harbor plan can only be amended to suspend (or reduce) safe harbor matching contributions mid-year if the employer (1) is operating at an economic loss (as defined under IRC §412(c)(2), or (2) has previously provided participants with a notice stating that safe harbor contributions may be reduced or suspended mid-year, and the necessary procedural requirements are met.

If permissible, a supplemental notice must be provided to employees at least 30 days in advance of the amendment to suspend the safe harbor contribution, and the safe harbor contribution would have to be made through the effective date of the amendment. Eligible employees must also be provided a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) to change their deferral elections prior to the effective date of the suspension.

In addition, the plan must be amended to provide for ADP/ACP testing using the current year testing method for the entire year. Further, the top-heavy exemption would not be available (if applicable). In effect, the plan reverts to a traditional 401(k) plan.
3. If so, can the plan be amended later this year to add back the safe harbor match?

No. This is not permissible under the Code and current regulations.

4. Would the answer be different if the plan provides for safe harbor nonelective contributions?

The regulatory requirements to remove or suspend safe harbor nonelective contributions mid-year are essentially the same as the requirements for safe harbor matching contributions.

With the changes made under the SECURE Act, however, it appears a plan that previously provided safe harbor nonelective contributions for a portion of the plan year would not be prohibited from adopting a safe harbor nonelective contribution provision (again) for the same plan year within the required time frame, e.g., 30 days prior to the close of the plan year for a 3% safe harbor nonelective contribution; by the last day of the following plan year for a 4% safe harbor nonelective contribution.

The Code specifically prohibits a plan that provided for safe harbor matching contributions for a portion of the plan year (either under a regular safe harbor plan or a QACA) from retroactively adopting a safe harbor nonelective contribution feature for that same plan year, but it does not include such a prohibition for a plan that made safe harbor nonelective contributions for a portion of the plan year.

Waiver of RMDs under the CARES Act

1. An owner of the business is due his first RMD by April 1, 2020. The plan is a cash balance plan. Does the 2020 RMD waiver apply to cash balance plans?

No. The CARES Act waives the requirement for RMDs for defined contribution plans (including 403(b) plans and governmental 457(b) plans) and IRAs. It does not waive the requirement for defined benefit plans, including cash balance plans. As a result, the owner’s 2019 RMD must be made by his required beginning date, i.e., April 1, 2020.

2. Are 2020 RMDs postponed to 2021 or will they not need to be taken at all?

The CARES Act provides a waiver of the 2020 RMD for eligible retirement plans. As a result, there is no requirement that the 2020 RMD be made in 2021.

3. Can 2020 RMDs already taken be returned to a 401(k) plan and treated as non-taxable?

Any RMDs required for 2020 that have already been made are treated as eligible rollover distributions under the CARES Act. As a result, participants are permitted to roll the distributions (not “repay”) back into the distributing plan (assuming the plan accepts rollovers), to another qualified plan that permits rollovers, or to an IRA. At present, the rollover must be made within the 60-day period following the distribution. We would expect, however, the IRS will issue guidance extending the window for such rollovers.

Additionally, since these payments are considered eligible rollover distributions, it would appear they would be reported normally on Form 1099-R as taxable, and then the participant would
indicate on their income tax return that they completed a 60-day rollover to avoid taxation. Again, the IRS will likely issue guidance clarifying these issues.

4. Can a participant’s first RMD, required to be taken by April 1, 2020, be returned to a 401(k) plan and treated as non-taxable?

The answer is the same for a 2019 RMD, as long as it was made after December 31, 2019, i.e., in 2020.

**Deadline Extended for Certain Employer Contributions and IRA Contributions for 2019**

1. With the recent IRS pushback of the tax filing deadline to July 15, 2020, do employers now have until that date to fund employer plan contributions?

Yes, if the employer’s return was originally due on April 15, 2020. IRC §404(a)(6) provides that “a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).”

2. Does the extension also apply to IRA contributions?

Yes. IRC §219(f)(3) states that "a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).” While extensions are generally not recognized for this purpose, IRS Notice 2020-18 specifically refers to this as a postponement (rather than an extension), so the July 15, 2020 due date will also apply for purposes of funding IRA contributions.
CITSATIONS

Citations for All FAQs addressing the CARES Act

From the Coronavirus, Aid, Relief and Economic Security (CARES) Act

(a) TAX-FAVORED WITHDRAWALS FROM RETIREMENT PLANS.—

(1) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 shall not apply to any coronavirus-related distribution.

(2) AGGREGATE DOLLAR LIMITATION.—

(A) IN GENERAL.—For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as coronavirus-related distributions for any taxable year shall not exceed $100,000.

(B) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would (without regard to subparagraph (A)) be a coronavirus-related distribution, a plan shall not be treated as violating any requirement of the Internal Revenue Code of 1986 merely because the plan treats such distribution as a coronavirus-related distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $100,000.

(C) CONTROLLED GROUP.—For purposes of subparagraph (B), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) 24 of section 414 of the Internal Revenue Code of 1986.

(3) AMOUNT DISTRIBUTED MAY BE REPAID.—(A) IN GENERAL.—Any individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make 1 or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), of the Internal Revenue Code of 1986, as the case may be.

(B) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a coronavirus-related distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the coronavirus-related distribution in an eligible rollover distribution (as defined in section 402(c)(4) of such Code) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(C) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM IRAS.—For purposes of the Internal Revenue Code of 1986, if a contribution is made pursuant to subparagraph (A) with respect to a coronavirus-related distribution from an individual retirement plan (as defined by section 7701(a)(37) of such Code), then, to the extent of the amount of the contribution, the coronavirus-related distribution shall be
treated as a distribution described in section 408(d)(3) of such Code and as having been transferred to
the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) DEFINITIONS.—For purposes of this subsection—

(A) CORONAVIRUS-RELATED DISTRIBUTION.—Except as provided in paragraph (2), the term
“coronavirus-related distribution” means any distribution from an eligible retirement plan made— (i) on
or after January 1, 2020, and before December 31, 2020, (ii) to an individual— (I) who is diagnosed with
the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for
Disease Control and Prevention, (II) whose spouse or dependent (as defined in section 152 of the
Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test, or (III) who
experiences adverse financial consequences as a result of being quarantined, being furloughed or laid
off or having work hours reduced due to such virus or disease, being unable to work due to lack of child
care due to such virus or disease, closing or reducing hours of a business owned or operated by the
individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury
(or the Secretary’s delegate).

(B) EMPLOYEE CERTIFICATION.—The administrator of an eligible retirement plan may rely on an
employee’s certification that the employee satisfies the conditions of subparagraph (A)(ii) in
determining whether any distribution is a coronavirus-related distribution.

(C) ELIGIBLE RETIREMENT PLAN.—The term “eligible retirement plan” has the meaning given such term
by section 402(c)(8)(B) of the Internal Revenue Code of 1986.

(5) INCOME INCLUSION SPREAD OVER 3-YEAR PERIOD.—

(A) IN GENERAL.—In the case of any coronavirus-related distribution, unless the taxpayer elects not to
have this paragraph apply for any taxable year, any amount required to be included in gross income for
such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable
year.

(B) SPECIAL RULE.—For purposes of subparagraph (A), rules similar to the rules of sub paragraph (E) of
section 408A(d)(3) of the Internal Revenue Code of 1986 shall apply.

(6) SPECIAL RULES.— (A) EXEMPTION OF DISTRIBUTIONS FROM TRUSTEE TO TRUSTEE TRANSFER AND
WITHHOLDING RULES.—For purposes of sections 401(a)(31), 402(f), and 3405 of the Internal Revenue
Code of 1986, coronavirus-related distributions shall not be treated as eligible rollover distributions.

(B) CORONAVIRUS-RELATED DISTRIBUTIONS TREATED AS MEETING PLAN DISTRIBUTION
REQUIREMENTS.—For purposes of the Internal Revenue Code of 1986, a coronavirus-related
distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i),
403(b)(11), and 457(d)(1)(A) of such Code and section 8433(h)(1) of title 5, United States Code.

(b) LOANS FROM QUALIFIED PLANS.—

(1) INCREASE IN LIMIT ON LOANS NOT TREATED AS DISTRIBUTIONS.—In the case of any loan from a
qualified employer plan (as defined under section 72(p)(4) of the Internal Revenue Code of 1986) to a
qualified individual made during the 180-day period beginning on the date of the enactment of this
Act—(A) clause (i) of section 72(p)(2)(A) of 4 such Code shall be applied by substituting “$100,000” for “$50,000”, and (B) clause (ii) of such section shall be applied by substituting “the present value of the nonforfeitable accrued benefit of the employee under the plan” for “one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan”.

(2) DELAY OF REPAYMENT.—In the case of a qualified individual with an outstanding loan (on or after the date of the enactment of this Act) from a qualified employer plan (as defined in section 72(p)(4) of the Internal Revenue Code of 1986)—

(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) of such Code for any repayment with respect to such loan occurs during the period beginning on the date of the enactment of this Act and ending on December 31, 2020, such due date shall be delayed for 1 year,

(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under subparagraph (A) and any interest accruing during such delay, and

(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2) of such Code, the period described in subparagraph (A) of this paragraph shall be disregarded.

(3) QUALIFIED INDIVIDUAL.—For purposes of this subsection, the term “qualified individual” means any individual who is described in subsection (a)(4)(A)(ii).

(c) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any amendment to any plan or annuity contract—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury (or the Secretary’s delegate), such plan or contract shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SUBSECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made— (i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor (or the delegate of either such Secretary) under any provision of this section, and (ii) on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe. In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) CONDITIONS.—This subsection shall not apply to any amendment unless— (i) during the period— (I) beginning on the date that this section or the regulation described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the
effective date specified by the plan), and (II) ending on the date described in subparagraph (A)(ii) (or, if
earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such
plan or contract amendment were in effect, and (ii) such plan or contract amendment applies
retroactively for such period.

SEC. 2203. TEMPORARY WAIVER OF REQUIRED MINIMUM DISTRIBUTION RULES FOR CERTAIN
RETIREMENT PLANS AND ACCOUNTS.

(a) IN GENERAL.—Section 401(a)(9) of the Internal Revenue Code of 1986 is amended by adding at the
end the following new subparagraph:

“(I) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION.— “(i) IN GENERAL.—The
requirements of this paragraph shall not apply for calendar year 2020 to—

“(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

“(II) a defined contribution plan which is an eligible deferred compensation plan described in section
457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

“(III) an individual retirement plan.

“(ii) SPECIAL RULE FOR REQUIRED BEGINNING DATES IN 2020.—Clause (i) shall apply to any distribution
which is required to be made in calendar year 2020 by reason of—

“(I) a required beginning date occurring in such calendar year, and

“(II) such distribution not having been made before January 1, 2020.

“(iii) SPECIAL RULES REGARDING 2 WAIVER PERIOD.—For purposes of this paragraph—

“(I) the required beginning date with respect to any individual shall be determined without regard to
this subparagraph for purposes of applying this paragraph for calendar years after 2020, and

“(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be
determined without regard to calendar year 2020.”

(b) ELIGIBLE ROLLOVER DISTRIBUTIONS.—Section 402(c)(4) of the Internal Revenue Code of 1986 is
amended by striking “2009” each place it appears in the last sentence and inserting “2020”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply for calendar years beginning after
December 31, 2019.

(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

(A) IN GENERAL.—If this paragraph applies to any plan or contract amendment—
(i) such plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section, and (ii) except as provided by the Secretary of the Treasury (or the Secretary’s delegate), such plan or contract shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.— (i) IN GENERAL.—This paragraph shall apply to any amendment to any plan or annuity contract which—

(I) is made pursuant to the amendments made by this section, and

(II) is made on or before the last day of the first plan year beginning on or after January 1, 2022. In the case of a governmental plan, subclause (II) shall be applied by substituting “2024” for “2022”.

(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2020, the plan or contract is operated as if such plan or contract amendment were in effect.

Additional Citation for FAQs on Coronavirus-Related Distributions

401(a)(36) DISTRIBUTIONS DURING WORKING RETIREMENT.— A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 59 ½ and who is not separated from employment at the time of such distribution.

From Instructions for Forms 1099-R and 5498 (2020)

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Form 1099-R

Distributions for qualified birth and adoption.

Section 113 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), which is Division O of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), added section 72(t)(2)(H). This new section provides for a distribution of up to $5,000 for a qualified birth or adoption that is exempt from the 10% early distribution tax and that can be repaid. See Table 1. Guide to Distribution Codes, later
Table 1. Guide to Distribution Codes

<table>
<thead>
<tr>
<th>Distribution Codes</th>
<th>Explanations</th>
<th>*Used with code ...(if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1—Early distribution, no known exception.</td>
<td>Use Code 1 only if the participant has not reached age 59½, and you do not know if any of the exceptions under Code 2, 3, or 4 apply. <strong>However, use Code 1 even if the distribution is made for</strong> medical expenses, health insurance premiums, qualified higher education expenses, a first-time home purchase, a qualified reservist distribution, or a <strong>qualified birth or adoption distribution under section 72(t)(2)(B), (D), (E), (F), (G), or (H)</strong>. Code 1 also must be used even if a taxpayer is 59½ or older and he or she modifies a series of substantially equal periodic payments under section 72(q), (t), or (v) prior to the end of the 5-year period which began with the first payment.</td>
<td>8, B, D, K, L, M, or P</td>
</tr>
</tbody>
</table>
| 2—Early distribution, exception applies. | Use Code 2 **only if** the participant has not reached age 59½ **and you know** the distribution is the following.  
- A Roth IRA conversion (an IRA converted to a Roth IRA).  
- A distribution made from a qualified retirement plan or IRA because of an IRS levy under section 6331.  
- A governmental section 457(b) plan distribution that is not subject to the additional 10% tax. But see **Governmental section 457(b) plans**, earlier, for information on distributions that may be subject to the 10% additional tax.  
- A distribution from a qualified retirement plan after separation from service in or after the year the participant has reached age 55.  
- A distribution from a governmental defined benefit plan to a public safety employee (as defined in section 72(t)(10)(B)) after separation from service, in or after the year the employee has reached age 50.  
- A distribution that is part of a series of substantially equal periodic payments as described in section 72(q), (t), (u), or (v).  
- A distribution that is a permissible withdrawal under an eligible automatic contribution arrangement (EACA).  
- Any other distribution subject to an exception under section 72(q), (t), (u), or (v) that is not required to be reported using Code 1, 3, or 4. | 8, B, D, K, L, M, or P |

**Additional Citation for FAQs on Participant Loans under the CARES Act**

Treas. Reg. §1.72(p)-1. Loans treated as distributions

Q-9: Does the level amortization requirement of section 72(p)(2)(C) apply when a participant is on a leave of absence without pay?

A-9: (a) Leave of absence. The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and
paragraph (b) of this Q&A-9), that a participant is on a bona fide leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan.

(c) Latest permissible term of a loan. For purposes of this Q&A-9, the latest permissible term of a loan is the latest date permitted under section 72(p)(2)(B) (i.e., five years from the date of the loan, assuming that the replacement loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans) plus any additional period of suspension permitted under paragraph (b) of this Q&A-9.

Citations for FAQ on Mid-Year Amendment to Suspend Safe Harbor Contributions due to COVID-19

Treas. Reg. §1.401(k)-3. Safe harbor requirements

TAG Note: The regulations have not yet been updated by the changes made under the SECURE Act; however, those changes only impacted plans that provide for safe harbor nonelective contributions. They have no impact on plans that provide for safe harbor match.

(g) Permissible reduction or suspension of safe harbor contributions

(1) General rule

(i) Matching contributions.— A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective contributions (and, if applicable, employee contributions) provided that—

(A) In the case of plan years beginning on or after January 1, 2015, the employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (d) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor matching contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (g)(2) of this section;

(C) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section;
(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(k)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to amounts deferred through the effective date of the amendment.

(ii) Nonelective contributions.— For amendments adopted after May 18, 2009, a plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section for the plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer either—

(1) Is operating at an economic loss, as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (d) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor nonelective contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (g)(2) of this section;

(C) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(k)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) Supplemental notice.— The supplemental notice requirement of this paragraph (g)(2) is satisfied if each eligible employee is given a notice (in writing or such other form as prescribed by the Commissioner) that explains—
(i) The consequences of the amendment that reduces or suspends future safe harbor contributions;

(ii) The procedures for changing their cash or deferred elections and, if applicable, their employee contribution elections; and

(iii) The effective date of the amendment.

412(c)(2) Determination of business hardship.— For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

412(c)(2)(A) the employer is operating at an economic loss,

412(c)(2)(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

412(c)(2)(C) the sales and profits of the industry concerned are depressed or declining, and

412(c)(2)(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

401(k)(12)(F) TIMING OF PLAN AMENDMENT FOR EMPLOYER MAKING NONELECTIVE CONTRIBUTIONS.—

401(k)(12)(F)(i) IN GENERAL.— Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (C) shall apply to the arrangement for the plan year, but only if the amendment is adopted—

401(k)(12)(F)(i)(I) at any time before the 30th day before the close of the plan year, or

401(k)(12)(F)(i)(II) at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

401(k)(12)(F)(ii) EXCEPTION WHERE PLAN PROVIDED FOR MATCHING CONTRIBUTIONS.— Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of subparagraph (B) or paragraph (13)(D)(i)(I) applied to the plan year.

401(k)(12)(F)(iii) 4‐PERCENT CONTRIBUTION REQUIREMENT.— Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (C) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee's compensation.

401(k)(12)(B) MATCHING CONTRIBUTIONS.—
401(k)(12)(B)(i) IN GENERAL.— The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

401(k)(12)(B)(i)(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

401(k)(12)(B)(i)(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

401(k)(12)(B)(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.— The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

401(k)(12)(B)(iii) ALTERNATIVE PLAN DESIGNS.— If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

401(k)(12)(B)(iii)(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

401(k)(12)(B)(iii)(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

401(k)(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

401(k)(13)(A) IN GENERAL.— A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

401(k)(13)(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.— For purposes of this paragraph, the term "qualified automatic contribution arrangement" means a cash or deferred arrangement—....

401(k)(13)(D) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

401(k)(13)(D)(i) IN GENERAL.— The requirements of this subparagraph are met if, under the arrangement, the employer—

401(k)(13)(D)(i)(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or
401(k)(13)(D)(i)(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

401(k)(13)(D)(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.— The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

401(k)(13)(D)(iii) WITHDRAWAL AND VESTING RESTRICTIONS.— An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

401(k)(13)(D)(iii)(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

401(k)(13)(D)(iii)(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

401(k)(13)(D)(iv) APPLICATION OF CERTAIN OTHER RULES.— The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

Citations for FAQ on Deadline Extended for Certain Employer Contributions and IRA Contributions for 2019

404(a)(6) Time when contributions deemed made.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

From IRS Notice 2020-18

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

III. GRANT OF RELIEF

The Secretary of the Treasury has determined that any person with a Federal income tax payment or a Federal income tax return due April 15, 2020, is affected by the COVID-19 emergency for purposes of the relief described in this section III (Affected Taxpayer). The term “person” includes an individual, a trust, estate, partnership, association, company or corporation, as provided in section 7701(a)(1) of the Code.

For an Affected Taxpayer, the due date for filing Federal income tax returns and making Federal income tax payments due April 15, 2020, is automatically postponed to July 15, 2020. Affected
Taxpayers do not have to file Forms 4868 or 7004. There is no limitation on the amount of the payment that may be postponed.


**Filing and Payment Deadlines Questions and Answers**

**Individual Retirement Accounts (IRAs) and workplace-based retirement plans**

Q17. Does this relief provide me more time to contribute money to my IRA for 2019?

A17. Yes. Contributions can be made to your IRA, for a particular year, at any time during the year or by the due date for filing your return for that year. Because the due date for filing Federal income tax returns has been postponed to July 15, the deadline for making contributions to your IRA for 2019 is also extended to July 15, 2020. For more details on IRA contributions, see Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs).
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- Archives – Law
- Cases (with archives back to 1960)

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– Cathy Wells
Carr, Riggs & Ingram, LLC
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