



CAPITAL GROUP

CARES Act Relief for Retirement Plan Sponsors and Participants

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Different forms of relief are available to you and your retirement plan participants at this difficult time



Americans are facing unprecedented new challenges in their personal and professional lives, brought about by the COVID-19 crisis. As an employer, you too may be struggling with different impacts to your business – including your company retirement plan.

Help for your plan participants

The Coronavirus Aid Relief and Economic Security (CARES) Act was signed into law on March 27, 2020. It includes disaster-related relief for participants in retirement plans as well as IRA owners and their beneficiaries. At this time, interpretive guidance for the provisions in the Act is still forthcoming while Congress considers additional relief measures.

1| You may choose to offer participants coronavirus distributions

The CARES Act gives you the option to extend special coronavirus-related distributions (CRDs) to affected participants* – in addition to regular hardship distributions and other in-service distributions that may already be in place. For CRDs, you may decide to make available distributions up to \$100,000 per affected participant before December 31, 2020, which includes four key benefits:

- Not subject to otherwise mandatory 20% tax withholding

- Not subject to the 10% penalty typically assessed for early withdrawals
- Taxes on the distribution can be spread out over three years
- If the participant repays the amount received within three years, there are no tax consequences at all (in effect, it would be treated like a rollover) and the participant could claim a refund on previously paid taxes

* To qualify for a CRD, a participant must be someone who:

- Is diagnosed with/tested positive for coronavirus disease (Covid-19) or SARS-CoV-2
- Has a spouse or dependent diagnosed with the virus

Or

- Experiences adverse financial consequences as a result of being quarantined, being laid off from work, being furloughed, having work hours reduced due to the

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virus or being unable to work in order to care for a child and other related economic factors.

2| You may choose to expand plan loan limits

The CARES Act enables qualified plans to increase the amount that COVID-affected participants* (see above) can borrow from their account – up to the lesser of \$100,000 or 100% of the participant's vested balance. (Previously, the maximum was \$50,000 or up to 50% of their vested balance.) Loan provisions are not available in SIMPLE and SEP IRAs.

3| Participants do not have to make loan repayments in 2020

Eligible participants may suspend loan repayments that are due

March 27, 2020, through December 31, 2020. The ability to delay payment applies to loans taken prior to March 27 when the CARES Act went into effect as well as loans taken out earlier this year. The maximum five-year repayment period is similarly extended by the length of the suspension period. Interest would continue to accrue during the period.

4| Required minimum distributions (RMDs) are not required this year

This could be highly beneficial to participants who do not wish to take money from their retirement account because RMDs are generally calculated using each account's balance as of December 31 of the year prior. The Dow Jones was at market highs at that time so balances

Q: Do I need to amend my plan document now?

A: You have until the end of the 2022 plan year to adjust your plan document for the CARES Act.

would have been much higher than they may be now, during the COVID-19 crisis.

ALL of your plan participants are eligible for the RMD waiver which applies to both 2019 initial RMDs that were due by April 1, 2020, and 2020 RMDs. This provision extends to all defined contribution retirement plans as well as individual IRAs.

Help for you, the plan sponsor

The COVID-19 crisis may have you evaluating whether you can afford to make employer contributions. Under current law, there are several strategies that may help you manage your plan at this time and protect your company from increased financial hardship. We have included a few below that we believe are worth considering. Of course, your situation may be unique, so we strongly encourage you to consult with your third-party administrator and/or experienced benefits counsel before making any changes to your plan.

1| You may be able to delay making employer contributions until next year

It is important to understand when you're required to deposit employer contributions. Employers often make matching contributions on a payroll basis, but may have flexibility to delay those contributions until the due date of your company's tax return (including extensions), which could be as late as the third quarter of next year. This may provide some immediate relief if your company

is struggling with cash flow during this difficult time. Even plans with safe harbor matching contributions made on a payroll basis can be amended mid-year to delay without adversely affecting safe harbor status.

2| You may have the option of reducing or suspending employer contributions

If the economic impact of the current environment to your business warrants it, you may want to reduce or even suspend the contributions your company makes to participant accounts. If so, you should carefully review the types of company contributions made under the plan, whether the right to such contributions has already accrued and whether there are any conditions to reducing or suspending the contributions.

For example, discretionary contributions offer substantial flexibility. You may generally, at any time, reduce or suspend a discretionary contribution.

Q: Can I use participant contributions to keep my company running?

A: No, you are not permitted to use employee contributions to help keep your company running. Using employee contributions for the company's benefit is a conflict of interest under ERISA and such a prohibited transaction will result in fines and other corrective measures.

Note that the Department of Labor has also repeatedly stressed that business disruptions and associated cash crunches are not an excuse for delaying the deposit of employee elective contributions to a plan. It is your fiduciary responsibility to continue to deposit employee elective deferrals as soon as reasonably possible.

No amendment is required. Even fixed matching or non-elective contributions can be reduced or suspended prospectively by amendment. But contributions that have already been accrued by plan participants prior to the effective date of the amendment must still be made.

On the other hand, whether a safe harbor plan may be amended to reduce or suspend safe harbor contributions will depend on various circumstances, including the terms of the plan, the safe harbor notice content and whether the company is operating at an economic loss.

Significantly, you would need to provide notice to employees regarding the suspension at least 30 days in advance of its effective date and your plan would lose its "free pass" on the Actual Deferral Percentage (ADP) test, the Actual Contribution Percentage (ACP) test and the top-heavy test. If your plan were to fail any of these tests, you may be required to make additional top-heavy contributions and refunds of employee and/or matching contributions. The rules also require that safe harbor contributions be made through the effective date of suspension.

Regarding other small business plan retirement savings programs:

SIMPLE IRAs: You cannot reduce or suspend your employer contributions mid-year, but you can delay making the contributions until next year. While employers must either make a matching or nonelective contribution to a SIMPLE IRA program, the contribution is not required to be made until the due date of the company's tax return (including extensions).

Additional relief is available for future years. Most companies elect to match each employee's contribution on a dollar-for-dollar basis up to 3% of the employee's total compensation. You have the option of reducing your employer match (to no less than 1%) for up to two years out of every five-year period, but such an election is only available if notification is given to employees *before* the beginning of the plan year. As a result, the soonest your match could be reduced would be for the 2021 plan year.

SEP IRAs: Employers, not participants, make contributions to SEP accounts. SEP programs offer flexibility in times like these since contributions are discretionary and employers can choose whether or not to make a contribution.

3| You may be eligible for a forgivable small-business loan

The CARES Act includes a Paycheck Protection Program to support

Q: If I reduce my workforce now, how are payouts affected?

A: The current business environment has prompted many companies to significantly reduce their workforce. If you believe you need to reduce your staff by, say, 20% or more, you might be required to fully vest the impacted participants under the "partial termination" rules. In other words, you can't just pay out what has been vested to date; you might need to pay out the entire balance as if it were 100% vested.

businesses with fewer than 500 employees and nonprofit organizations that are affected by the COVID-19 crisis. Low-interest loans may be forgiven as long as they are used to cover approved near-term business operating expenses such as accounts payables, payroll and other bills. Notably, operating expenses appear to include employer contributions to a defined contribution plan. For more information, you may wish to contact the Small Business Administration (see [sba.gov](https://www.sba.gov)).

Review your options

Difficult times like these underscore the tremendous value of an effective retirement plan third-party administrator (TPA). Reach out to your plan's TPA or dedicated plan contact to learn which actions may help you and your participant employees.

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