

CARES Act FAQs for Retirement Plan Sponsors



COVID-related Distributions, Loans, RMD Relief, and Special Consideration for Balance Forward Plans

Coronavirus-Related Distributions (CRDs)

Can a participant receive a Coronavirus-Related Distribution from my plan?

Yes, if you decide to offer it within your plan design.

Congress recently passed the CARES Act, which created a new distribution event for retirement plans called a "Coronavirus-Related Distribution" or CRD. Participants in 401(k), profit sharing, 403(b), and governmental 457(b) plans that elect to offer this new feature may take a CRD if the participant

- is diagnosed with the SARS-CoV-2 virus or COVID-19 disease in a test approved by the Centers for Disease Control and Prevention (CDC), or has a spouse or dependent who is similarly diagnosed; or
- because of the virus or disease, has experienced adverse financial consequences as a result of
 - being quarantined;
 - being furloughed, laid off, or having work hours reduced;
 - being unable to work for lack of child care;
 - facing reduced hours or closure of a business owned or operated by the participant; or
 - other factors determined by the Treasury Secretary.

Plan sponsors who offer this CRD feature may rely on participants' self-certification that they meet these requirements. Ultimately, participants must be able to prove their eligibility in the event that the IRS challenges it.

A CRD distribution

- must be requested and distributed before December 15, 2020 (to ensure processing by December 31);
- cannot be more than \$100,000 in total, which includes distributions from all eligible retirement plans and IRAs combined;
- is subject to 10% withholding—which the participant may waive—instead of the normal 20% mandatory withholding;
- will not be subject to the 10% early distribution penalty when participants file their 2020 income tax returns;
- for personal income taxes, can be taxed ratably over a 3-year period instead of all in 2020; and
- can be repaid into an eligible retirement plan or an IRA as a rollover contribution, if repaid within 3 years of the distribution.

How do I add a Coronavirus-Related Distribution triggering event to my plan?

Contact your consultant, who will be happy to assist you through the process of adding this distribution option to your plan. Once these distributions are set up, your consultant will help you and your participants obtain the CRD distribution paperwork.

Please note that you will need to amend your plan document to reflect that you offered the CRD option. Fortunately, the CARES Act generally gives plans until the end of the 2022 plan year to document this change. If your recordkeeper is also your document provider, it will track your election to ensure that your future document amendment reflects your operations.

Can participants access their funds for coronavirus-related reasons even if I do not add the new Coronavirus-Related Distribution option to my plan?

Possibly. It will depend on your plan design. Your participants may be able to access funds without the Coronavirus-Related Distribution event

- if your participant meets the age, service, or other requirements for an in-service distribution; or
- if your participant qualifies for a hardship distribution and your plan offers a hardship distribution feature; or
- if your participant terminates employment, and your plan allows for distributions after termination of employment.

Some distributions under these alternate distribution events may be subject to mandatory 20% withholding. But if participants meet the general Coronavirus-Related Distribution qualifying criteria, they may qualify for relief from the 10% early distribution penalty when they file their 2020 income tax return, and they may qualify to spread the tax on the CRD over three years. Withholding of state taxes may apply if a participant resides in a state with mandatory withholding.

Coronavirus Loan Relief

What loan relief is provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)?

The recently enacted CARES Act contains two important loan relief components. First, plans can allow participants to take a coronavirus loan until September 23, 2020. This allows qualified individuals to take loans of up to the lesser of \$100,000 or 100% of participant's vested account balance. Second, plan sponsors can permit qualified individuals to delay payments on these coronavirus loans and on existing loans for up to one year for any payments scheduled to occur between March 27, 2020, and December 31, 2020.

Participants with delayed loan repayments will be able to extend their payment terms for up to a year, but interest will accrue during this delayed period. When payments resume, the loan must be reamortized to include the additional accrued interest and the extended time to repay.

Qualified individuals are participants in 401(k), profit sharing, 403(b), and governmental 457(b) plans who

- were diagnosed with the SARS-COV-2 virus or COVID-19 disease in an approved test, or have a spouse or dependent who was diagnosed; or
- because of the virus or disease, experienced adverse financial consequences as a result of
 - being quarantined;
 - being furloughed, laid off, or having work hours reduced;
 - lack of child care;
 - closed or reduced hours of a business owned or operated by the participant; or
 - other factors determined by the Treasury Secretary.

Note: The IRS has issued Notice 2020-23, which grants loan repayment relief for all participants—not just those affected by the coronavirus outbreak—allowing them to delay until July 15, 2020 only, any loan payments that are due between April 1, 2020, and July 15, 2020.

My plan already offers a loan program. How do I add this coronavirus loan relief?

Contact your consultant, and they will be happy to assist you through the process of adding the coronavirus loan relief options to your plan.

In addition to your current loan program provisions, the coronavirus loan relief features will

- permit loans up to the lesser of \$100,000 or the borrower's full vested account balance for loans processed by September 23, 2020, and

- allow eligible participants to delay for 12 months any loan payments that are due on or before 12/31/2020.

Please note that the IRS will require you to amend your plan document or loan policy to reflect that you adopted the coronavirus loan relief. Fortunately, the CARES Act generally gives plans until the end of the 2022 plan year to document this change

My plan does not currently offer loans. How do I add this coronavirus loan relief?

Contact your consultant, who will be happy to assist you through the process of adding a loan program allowing coronavirus loan relief options to your plan. Please note that you may be charged an amendment fee based on your service agreement.

- All outstanding loans for a participant cannot exceed the lesser of \$100,000 or the borrower's full vested account balance for loans distributed on or before September 23, 2020.
- Repayments must be made through payroll deduction on a per-payroll basis. Loans will be considered in default if not repaid on time, if the borrower breaches an obligation under the loan agreement, or when the borrower separates from service. If separation from service is a distributable event under the plan, upon separation from service, any outstanding loans will be offset upon the earlier of a) the date designed by the plan sponsor, or b) 60 days after separation from service.
- Loan payments due on or after March 27, 2020 and on or before December 31, 2020 for any qualified individual can be delayed for up to 12 months.

Please note that the IRS will require you to amend your plan document or loan policy to reflect that you adopted the coronavirus loan relief. Fortunately, the CARES Act generally gives plans until the end of the 2022 plan year to document this change.

I have participants who would like to delay their loan payments. How does this work?

Note: The IRS has issued Notice 2020-23, which grants loan repayment relief for all participants—not just those affected by the coronavirus outbreak—allowing them to delay until July 15, 2020 only, any loan payments that are due between April 1, 2020, and July 15, 2020.

Once you have added the coronavirus loan relief feature to your plan, employees who qualify can request to start delaying payments any time before December 31, 2020. This payment delay can apply to a new loan taken or to any existing loan. Participants should contact you (as the plan sponsor) to request a delay to their loan repayments. You will need to document the participants' confirmation that they qualify for coronavirus loan relief. We have included a participant certification form for your use. You may rely on the participant's self-certification that they qualify unless you have specific knowledge to the contrary. Keep this documentation for your plan records.

IMPORTANT: Once you confirm that the participant qualifies for coronavirus loan relief, you should work within your company's payroll process to stop deducting loan repayments from payroll. Once the delay is in place, participants can delay repayments for up to one year from the first delayed repayment.

You do not need to notify us the delayed loan repayments. As long as the participant remains as an active or suspended employee, the loan will remain open to resume payments.

When it is time to start loan repayments again, please contact your consultant. They will walk you through the process of requesting a new loan repayment schedule—which will include the outstanding loan balance plus the additional accrued interest—so that you can resume payroll withholding of loan repayments. The new repayment schedule can extend the loan term for up to a year beyond the original loan term.

RMD Relief

What required minimum distribution (RMD) relief is provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)?

Under the CARES Act, 2020 RMDs are waived. This means there is no 2020 RMD distribution requirement, either for retirement plan participants or for their beneficiaries.

- Participants who had been taking RMDs do not have to take a 2020 RMD.
- Participants whose first RMD was for the 2019 calendar year—but who had until April 1, 2020, to distribute it and had not taken their RMD by January 1, 2020—do not have to take that RMD in 2020.

RMDs for 2021 are not waived, and participants will have to resume RMD payments for 2021.

What if a participant already took a distribution this year, thinking it was an RMD?

Participants who are in RMD status and already took a 2020 distribution need not do anything if they want to keep the distribution. If they would like to put the distribution back, they can roll over the amount into your plan (if your plan design permits the rollover contribution) or into an IRA within 60 days of the distribution. (The IRS has also just extended the 60-day rollover deadline to allow most individuals until July 15, 2020, to recontribute the funds.) This option to roll over the distribution does not currently extend to nonspouse beneficiaries.

Can participants in RMD status still take distributions if they want to?

Yes, unless you notify us that you would like to stop allowing participants to distribute their funds using the RMD distribution event for 2020. Our assumption is that most plan sponsors will choose to allow participants continued access to their funds, and we will continue to process any RMD distribution requests received.

If you would like to disable this distribution trigger for 2020, please elect this option on the CARES Act Election Form. Your election needs to be tracked for a future plan document amendment, which will reflect how your plan operated under the CARES Act relief. Before disabling the RMD distribution trigger for 2020, you will want to determine whether any RMD distributions have been taken in 2020 to be sure you do not create an operational failure.

Special Q&As for Plan Sponsors of Balance Forward Plans

What is a “balance forward” plan?

Balance forward is a retirement industry term given to those qualified defined contribution plans, such as 401(k) and profit sharing plans, in which participants' accounts are valued monthly, quarterly, semi-annually, or annually—instead of being valued on a daily basis.

Can participants receive their full vested account balance through a CRD or a loan?

The CARES Act allows plans to temporarily offer CRDs and increase the loan amounts that plan participants may take. The Act states that under both provisions, the limit is the lesser of \$100,000 or 100% of the participant's vested balance. Both of these provisions are optional, so an employer could decide not to offer them—or to limit the amount or percentage that can be taken. Most employers will either choose to allow the full amount or decide not to adopt the new provisions at all. But some employers—most likely those whose plans are administered on a “balance forward” basis—may elect to adopt the new provisions while limiting the amounts to something less than 100% of a participant's vested balance.

Why should balance forward plans consider limiting the CRD or loan amount?

Balance forward plans are generally valued once per year (or perhaps quarterly). Because of these infrequent valuations, the actual present value of plan assets will be different from the amount determined at the last valuation date. Especially in financially turbulent times such as these, market fluctuations can make the present value of plan assets much lower than when the plan was last valued. For example, let's say that a plan was last valued as of December 31, 2019 at \$1 million. But if the financial markets are broadly down 20% from the last valuation date, let's assume that the plan currently has \$800,000 in it. Even though the last official valuation says that the plan has \$1 million, the reality is quite different.

Plan sponsors have a duty to administer their plans fairly for the benefit of all their participants. In the unlikely event that all (or most) participants in a plan requested distributions in the scenario above, the plan assets might be fully depleted before everyone could get paid. Or if the plan were terminated after a deeper economic downturn, participants that hadn't already taken their balances from the plan might get shortchanged. Of course, this is rare. But it has happened enough so that employers should be careful not to create a situation that could end up risking participants' retirement savings.

If my plan is considered a "balance forward" plan, what should I do to avoid the risk of improperly depleting plan assets?

You may want to consider limiting the percentage that participants can take from their vested balance as a loan or CRD. Although we cannot dictate to you what an appropriate percentage is, many plan sponsors will choose to limit loans and CRDs to 70% of each participant's last account valuation. This will diminish the risk described in the previous question. Ultimately the decision to limit the percentage of vested balance available for distribution is up to you as the plan sponsor.

How do I confirm and memorialize my decision to limit the percentage of vested balance available?

You will be able to confirm this decision and elect other provisions in the plan sponsor election form. While this decision to limit the distribution amount is common in the balance forward plans, you should clearly communicate this limitation with your employees who request a CRD or a loan. Let them know that the amount available to them will be less than they may have estimated from their last account statement. Giving them a heads up about this limit will make things easier for both you and your participants. Please make sure to administer the CRD and loan limitations consistently for all of your participants, just as you would for any other plan provision.