



Relief for COVID-19 & the CARES ACT

We understand the uncertainty and disruption caused by the Coronavirus (COVID-19) pandemic and like many, we are practicing social distancing by working at home and taking turns covering the office as needed. Rest assured our service remains uninterrupted and we continue to support our clients' needs.

We are closely monitoring the quickly developing effects of COVID-19 and want to get some much-needed answers to you in regard to the recent legislation passed by Congress that impacts retirement plans of all types.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law by President Trump on March 27th, 2020 includes several provisions that will provide Americans with the funds to provide for themselves and their families during these uncertain times. Below is a brief overview of the key provisions in the CARES Act that impact retirement plans:

Coronavirus Related Distributions:

The CARES Act provides that Plans may permit in-service coronavirus-related distributions from a participant's vested account balance without regard to the normal withdrawal restrictions. This relief is offered through December 31, 2020.

These distributions are subject to the following requirements:

- Limited to \$100,000 per tax year, aggregated across all plans of the employer or controlled group.
- Not subject to 20% mandatory tax withholding upon distribution.
- Exempt from the 10% early withdrawal penalty generally applicable to distributions made to participants who are 59-1/2 or younger.
- Can be repaid over a three-year period from the date of the distribution.
- Taxable over a three-year period (to the extent that it is not repaid).
- Eligible to be indirectly rolled into an IRA or employer plan within 3 years from the date the distribution is taken.
- Amounts not indirectly rolled into an IRA or employer plan are included in gross taxable income, ratably, over 3 tax years (beginning with the tax year of the distribution), unless the participant elects to include all amounts in a single tax year.

A coronavirus-related distribution is available to "eligible" participants who:

- are diagnosed with COVID-19;
- have a spouse or dependent diagnosed with COVID-19; or
- experience "adverse financial consequences" as a result of a quarantine, furlough, lay-off, reduction in work hours, business closure, the lack of child care, or other factors determined by the IRS due to the coronavirus emergency.

Plans may rely on the participant's self-certification that they meet one of the above criteria.

Coronavirus Related Loan Relief:

The CARES Act provides the following participant loan relief for "eligible" participants:

- Plans may increase the participant loan limit to the lesser of \$100,000 or 100% of the participant's vested account balance/accrued benefit for loans made during the 180-day period following the enactment of the CARES Act (March 27, 2020).
- Plan Sponsors may suspend loan repayments on outstanding loans that are in good order until December 31, 2020. The suspension period is to be added to the original loan term when repayments, including accrued interest, resume, regardless of the length of the loan's original term.
- "Eligible" participants include those as outlined above for Coronavirus related distributions.

Required Minimum Distributions (RMDs):

The CARES Act provides for a waiver of required minimum distributions (RMDs) due in calendar year 2020 from qualified 401(a)/(k), 403(b), and governmental 457(b) plans; specifically:

- Participants who turned age 70½ prior to 2019 will not be required to receive an ongoing RMD for 2020.
- Participants who turned age 70½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020 will not have to receive their first (2019) RMD or their 2020 RMD.
- Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD.
- Beneficiaries who have an account balance in the plan subject to the five-year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death).

If a 2020 RMD is provided to any of the above, it may be rolled over to an IRA or employer plan to include the plan from which it came. A participant's RMD or beneficiary's life expectancy RMD for 2021 will need to be paid.

***NOTE:** We are looking for more guidance from the IRS as to whether the 60-day rollover requirement will be waived. It is expected, just not confirmed at this time.*

Defined Benefit Plan Relief:

The due date for any minimum required contributions to a single-employer defined benefit plan otherwise due in 2020 is extended to January 1, 2021, at which time the payment will be due *with interest*.

The CARES Act further provides that a plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020.

Other Considerations:

Plan Amendments – Except for terminating plans, plans may adopt the CARES Act provisions immediately provided that the plan is amended before the last day of the plan year beginning in 2022, to reflect plan operations. Sponsors of governmental plans have until the last day of the plan year beginning in 2024 to amend their plans.

The CARES Act provides that it will not be a plan failure to operate the plan in accordance with the new legislation so long as a retroactive amendment is adopted by the deadline.

The coronavirus-related distribution and increased loan limits are optional plan provisions and a Plan Sponsor may decide to implement one, both or neither of the provisions. They will not go into effect unless you opt to affirmatively add them to your plan.

***NOTE:** Be sure to notify us if you implement any of the CARES Act options so we can ensure your plan document is properly amended by the deadline.*

Furloughed, Laid off, or Terminated – Generally, an employee “furloughed” or “laid off” is expected to be recalled to work, while an employee “terminated” is not. *Why does this matter?* Termination is a distributable event, while “furlough” or “layoff” are not. A true termination of employment would result in a participant having the right to take a full distribution of his or her account balance and any outstanding loans generally become due and payable. If unpaid, outstanding loan balances become taxable.

***NOTE:** It is important to provide your service providers with the correct employment status for these participants so that their loan repayment suspensions and other CARES Act provisions are properly administered.*

Not covered by the CARES Act:

For issues not addressed by the CARES Act, the current rules continue to apply unless there is further legislation or guidance.

Stopping Matching / employer contributions. Generally, if your plan document states that the match or employer contribution is discretionary, then you have the right to stop these contributions at any time without amending your plan. Should you decide to stop a discretionary contribution, we recommend you notify the participants that you are suspending the contribution to help them understand your decision.

If you utilize a Safe Harbor contribution, you may be more restricted in your options. Generally, a Safe Harbor contribution may only be suspended or reduced under limited circumstances, such as, the Plan Sponsor operating at an economic loss.

Relief from the spousal consent requirements. To date, neither the IRS nor the DOL have provided any guidance that might relieve plans from their notarized spousal consent requirements.

Unforeseeable Emergency. Another area in which we are awaiting guidance from the IRS is whether a coronavirus-related financial need may be included as part of a nonqualified plan's unforeseeable emergency distributions. Based on current guidance, a coronavirus-related distribution would not be included within this withdrawal right.

We will continue to monitor the COVID-19 situation and will keep you up to date as additional guidance from government agencies is provided. In the meantime, if you have any immediate questions about the legislation, or how it may affect your plan, please do not hesitate to reach out to us.

Laura Carnes, QPA, QKA, ERPA
Managing Partner

Black Creek Retirement Plans, Inc.