



FACTS: IMPACT THE CARES ACT FOR COVID-19 HAS ON 401K PLANS

(Updated May 10, 2020)

The CARES Act eases both the 401k plan hardship and 401k loan rules to free up funds for individuals impacted by the pandemic. The Act also provides relief from the required minimum distribution (RMD) rules.

401k Hardship Distributions:

The CARES Act waives the 10% early withdrawal penalty tax on early withdrawals of up to \$100,000 from a 401k retirement plan. The legislation also permits those individuals to pay tax on the income from the hardship distribution over three years, and also and allows individuals to repay that amount tax-free back into the plan over the next three years.

401k Plan Loans:

The Act doubles the current 401k plan loan limits to the lesser of \$100,000 or 100% of the participant's vested account balance in the plan (currently, the 401k loan limit is the lesser of \$50,000 or 50% of the participant's vested account balance).

Required Minimum Distribution Rules (RMDs):

The CARES Act waives RMDs for the calendar year 2020 for 401k plans. The Act allows persons over 72 years old to keep funds in their 401k accounts. Under current law, individuals over age 72 must take an RMD from their 401k each year.



BACKGROUND: IMPACT OF CARES ACT and COVID-19 ON 401K PLANS (Updated 5/10/2020)

This document is in response to recent questions concerning how Covid-19 has impacted your company's 401k plan. To describe the situation in its most basic terms, your company uses a pre-approved IRS prototype document we customized on your behalf. This document is always kept current and in compliance with IRS and ERISA regulations, at no extra cost to you.

Much of what you recently may have heard or read about how Covid-19 and 401k plans is not precisely accurate. You are reading and hearing about "proposed" new 401k regulations. It is not clear if these proposed regulations will become permanent, or be temporary. For now, we will use these "proposed" rules to make your 401k plan as flexible as possible for your employees, upon your written request.

In this time of national emergency, we want to interpret the proposed regulation in the most flexible way possible, to help your employees. If, for example, a plan sponsor wants to grant an employee a 401k loan above written regulations, we will assist. If a plan sponsor wants to defer a Required Mandatory (RMD) distribution for an employee, we will help. If a plan sponsor wants to approve a hardship withdrawal under the temporary rules that waive the mandatory 10% penalty, we will assist as well.

Please keep in mind that the consequences of any deviation from the written prototype plan document that you instruct us to take will be your sole responsibility. If the IRS later decides to reverse course and re-institute previous 401k rules and regulations, the consequences of their reversal will become the responsibility of your 401k plan fiduciaries.

As a pre-approved 401k Prototype Mass Submitter, Pension Systems Corporation is legally restricted from making any word changes to the IRS-approved language written into your company's registered prototype. The IRS allows us to customize the 401k prototype to fit your company's needs and objectives, but the customization options are limited by predefined guidelines. We are not pension attorneys nor one of your plan's fiduciaries; we will act, within reason, upon to your written instructions to us. Agreeing to follow your instructions cannot be inferred as agreement with, or endorsement of the actions you want taken. Our stable 30-year relationship with the IRS as an approved 401k Prototype Mass Submitter would be in jeopardy if we took it upon ourselves to re-write plan documents or provide advice to clients that contradicts the written documents.

Lawmakers in Washington are making it easier for Americans struggling with the fallout from the coronavirus to draw on their 401(k)s and other retirement accounts. For a limited time (not currently defined in the legislation) Americans will be able to withdraw money from 401k accounts under a new set of rules:

401k Loans:

One provision makes it easier for participants to borrow money from their 401(k) accounts, raising the limit to \$100,000 from \$50,000. The payment dates for any loans due will be extended for an additional year.

Required Minimum Distributions (RMD)

Under normal circumstances, when retirees reach their early 70s, they're required to start taking money out their 401(k)s and IRAs and begin paying taxes on those distributions. The legislation waives those rules in this year only.

401k Hardship Withdrawals

401k participants can apply for a hardship withdrawal of any portion of their vested 401k balance. They will not be subject to a 10% mandatory penalty, but they will still be required to add the distribution to their federal and state income taxes for 2020. It is not assumed that participant will pay back this money to his or her 401k.

For more information derived directly from the IRS website, please refer to the attached pages.

Coronavirus-related relief for retirement plans and IRAs questions and answers

Section 2202 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, provides for special distribution options and rollover rules for retirement plans and IRAs and expands permissible loans from certain retirement plans.

Q1. What are the special rules for retirement plans and IRAs in section 2202 of the CARES Act?

A1. In general, section 2202 of the CARES Act provides for expanded distribution options and favorable tax treatment for up to \$100,000 of coronavirus-related distributions from eligible retirement plans (certain employer retirement plans, such as section 401(k) and 403(b) plans, and IRAs) to qualified individuals, as well as special rollover rules with respect to such distributions. It also increases the limit on the amount a qualified individual may borrow from an eligible retirement plan (not including an IRA) and permits a plan sponsor to provide qualified individuals up to an additional year to repay their plan loans. See the FAQs below for more details.

Q2. Does the IRS intend to issue guidance on section 2202 of the CARES Act?

A2. The Treasury Department and the IRS are formulating guidance on section 2202 of the CARES Act and anticipate releasing that guidance in the near future. IRS [Notice 2005-92 \(PDF\)](#), issued on November 30, 2005, provided guidance on the tax-favored treatment of distributions and plan loans under sections 101 and 103 of the Katrina Emergency Tax Relief Act of 2005 (KETRA) as those provisions applied to victims of Hurricane Katrina. The Treasury Department and the IRS anticipate that the guidance on the CARES Act will apply the principles of Notice 2005-92 to the extent the provisions of section 2202 of the CARES Act are substantially similar to the provisions of KETRA that are addressed in that notice.

Q3. Am I a qualified individual for purposes of section 2202 of the CARES Act?

A3. You are a qualified individual if –

- You are 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;
- Your spouse or dependent is diagnosed with SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention;
- You experience adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to SARS-CoV-2 or COVID-19;
- You experience adverse financial consequences as a result of being unable to work due to lack of child care due to SARS-CoV-2 or COVID-19; or
- You experience adverse financial consequences as a result of closing or reducing hours of a business that you own or operate due to SARS-CoV-2 or COVID-19.

Under section 2202 of the CARES Act, the Treasury Department and the IRS may issue guidance that expands the list of factors taken into account to determine whether an individual is a qualified individual as a result of experiencing adverse financial consequences. The Treasury Department and the IRS have received and are reviewing comments from the public requesting that the list of factors be expanded.

Q4. What is a coronavirus-related distribution?

A4. A coronavirus-related distribution is a distribution that is made from an eligible retirement plan to a qualified individual from January 1, 2020, to December 30, 2020, up to an aggregate limit of \$100,000 from all plans and IRAs.

Q5. Do I have to pay the 10% additional tax on a coronavirus-related distribution from my retirement plan or IRA?

A5. No, the 10% additional tax on early distributions does not apply to any coronavirus-related distribution.

Q6. When do I have to pay taxes on coronavirus-related distributions?

A6. The distributions generally are included in income ratably over a three-year period, starting with the year in which you receive your distribution. For example, if you receive a \$9,000 coronavirus-related distribution in 2020, you would report \$3,000 in income on your federal income tax return for each of 2020, 2021, and 2022. However, you have the option of including the entire distribution in your income for the year of the distribution.

Q7. May I repay a coronavirus-related distribution?

A7. In general, yes, you may repay all or part of the amount of a coronavirus-related distribution to an eligible retirement plan, provided that you complete the repayment within three years after the date that the distribution was received. If you repay a coronavirus-related distribution, the distribution will be treated as though it were repaid in a direct trustee-to-trustee transfer so that you do not owe federal income tax on the distribution.

If, for example, you receive a coronavirus-related distribution in 2020, you choose to include the distribution amount in income over a 3-year period (2020, 2021, and 2022), and you choose to repay the full amount to an eligible retirement plan in 2022, you may file amended federal income tax returns for 2020 and 2021 to claim a refund of the tax attributable to the amount of the distribution that you included in income for those years, and you will not be required to include any amount in income in 2022. See sections 4.D, 4.E, and 4.F of Notice 2005-92 for additional examples.

Q8. What plan loan relief is provided under section 2202 of the CARES Act?

A8. Section 2202 of the CARES Act permits an additional year for repayment of loans from eligible retirement plans (not including IRAs) and relaxes limits on loans.

- **Certain loan repayments may be delayed for one year:** If a loan is outstanding on or after March 27, 2020, and any repayment on the loan is due from March 27, 2020, to December 31, 2020, that due date may be delayed under the plan for up to one year. Any payments after the suspension period will be adjusted to reflect the delay and any interest accruing during the delay. See section 5.B of Notice 2005-92.
- **Loan limit may be increased:** The CARES Act also permits employers to increase the maximum loan amount available to qualified individuals. For plan loans made to a qualified individual from March 27, 2020, to September 22, 2020, the limit may be increased up to the lesser of: (1) \$100,000 (minus outstanding plan loans of the individual), or (2) the individual's vested benefit under the plan. See section 5.A of Notice 2005-92.

Q9. Is it optional for employers to adopt the distribution and loan rules of section 2202 of the CARES Act?

A9. It is optional for employers to adopt the distribution and loan rules of section 2202 of the CARES Act. An employer is permitted to choose whether, and to what extent, to amend its plan to provide for coronavirus-related distributions and/or loans that satisfy the provisions of section 2202 of the CARES Act. Thus, for example, an employer may choose to provide for coronavirus-related distributions but choose not to change its plan loan provisions or loan repayment schedules. Even if an employer does not treat a distribution as coronavirus-related, a qualified individual may treat a distribution that meets the requirements to be a coronavirus-related distribution as coronavirus-related on the individual's federal income tax return. See section 4.A of Notice 2005-92.

Q10. Does section 2202 of the CARES Act provide additional distribution rights to participants or otherwise change the rules applicable to plan distributions?

A10. Under section 2202 of the CARES Act, a coronavirus-related distribution is treated as meeting the distribution restrictions for a section 401(k) plan, section 403(b) plan, or governmental section 457(b) plan. For example, under section 2202 of the CARES Act, a section 401(k) plan may permit a coronavirus-related distribution, even if it would occur before an otherwise permitted distributable event (such as severance from employment, disability, or attainment of age 59½). However, the CARES Act does not otherwise change the limits on when plan distributions are permitted to be made from employer-sponsored retirement plans. For example, a pension plan (such as a money purchase pension plan) is not permitted to make a distribution before an otherwise permitted distributable event merely because the distribution, if made, would qualify as a coronavirus-related distribution. Further, a pension plan is not permitted to make a distribution under a distribution form that is not a qualified joint and survivor annuity without spousal consent merely because the distribution, if made, could be treated as a coronavirus-related distribution. See section 2.A of Notice 2005-92.

Q11. May an administrator rely on an individual's certification that the individual is eligible to receive a coronavirus-related distribution?

A11. The administrator of an eligible retirement plan may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual in determining whether a distribution is a coronavirus-related distribution, unless the administrator has actual knowledge to the contrary. Although an administrator may rely on an individual's certification in making and reporting a distribution, the individual is entitled to treat the distribution as a coronavirus-related distribution for purposes of the individual's federal income tax return only if the individual actually meets the eligibility requirements.

Q12. Is an eligible retirement plan required to accept repayment of a participant's coronavirus-related distribution?

A12. In general, it is anticipated that eligible retirement plans will accept repayments of coronavirus-related distributions, which are to be treated as rollover contributions. However, eligible retirement plans generally are not required to accept rollover contributions. For example, if a plan does not accept any rollover contributions, the plan is not required to change its terms or procedures to accept repayments.

Q13. How do qualified individuals report coronavirus-related distributions?

A13. If you are a qualified individual, you may designate any eligible distribution as a coronavirus-related distribution as long as the total amount that you designate as coronavirus-related distributions is not more than \$100,000. As noted earlier, a qualified individual may treat a distribution that meets the requirements to be a coronavirus-related distribution as such a distribution, regardless of whether the eligible retirement plan treats the distribution as a coronavirus-related distribution. A coronavirus-related distribution should be reported on your individual federal income tax return for 2020. You must include the taxable portion of the distribution in income ratably over the 3-year period – 2020, 2021, and 2022 – unless you elect to include the entire amount in income in 2020. Whether or not you are required to file a federal income tax return, you would use Form 8915-E (which is expected to be available before the end of 2020) to report any repayment of a coronavirus-related distribution and to determine the amount of any coronavirus-related distribution includible in income for a year. See generally section 4 of Notice 2005-92.

Q14. How do plans and IRAs report coronavirus-related distributions?

A14. The payment of a coronavirus-related distribution to a qualified individual must be reported by the eligible retirement plan on Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. This reporting is required even if the qualified individual repays the coronavirus-related distribution in the same year. The IRS expects to provide more information on how to report these distributions later this year. See generally section 3 of Notice 2005-92.

