



CARES ACT ADMINISTRATIVE Q&As

GENERAL QUESTIONS

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides sweeping relief to retirement plan participants impacted by the COVID-19 pandemic, notably in the form of expanded distribution and loan provisions for qualifying individuals, as well as some administrative relief for plan administrators. The FAQs below focus on some of the broader issues arising in the administration of the provisions of the CARES Act. The Internal Revenue Service (IRS) has provided guidance and clarification on some of the provisions of the CARES Act which will also be reflected in our Q & As.

These Q & As were updated as of July 1, 2020.

G1: When would a plan sponsor need to make the decision to adopt the provisions of the CARES Act?

A: There is no specific deadline, but as a practical matter certain provisions have a limited window. One such window is the increased amount of participant loans, which only applies to loans from the enactment date (3/27/20) through the next 180 days (until 9/22/20).

G2: Could a sponsor adopt some of the provisions and not adopt others?

A: Yes. But remember, the plan will need to be amended (by the end of the 2022 plan year for non-governmental plans) to reflect the actual administration of the plan. Governmental plans have an additional two years (by the end of the 2024 plan year) to amend their plans.

G3: If no withdrawal or loan provisions are utilized, will an amendment still be required for the RMD provisions?

A: The IRS has provided guidance on implementing the relief. Generally a plan must eventually be amended to reflect its operation. IRS Notice 2020-51, which provides the clarifying information on the waiver of Required Minimum Distributions for 2020, has sample amendments that may be utilized. Whether an amendment is needed will depend on what the employer does in operation and what the current plan provisions provide.

G4: Will there be any COVID-19 relief for nonqualified plans?

A: There was none in the CARES Act. We do not know if there will be any relief for nonqualified plans in subsequent legislation. However, in IRS Notice 2020-50, a nonqualified deferred compensation plan subject to §409A may provide for a cancellation of a deferral election if the service provider (i.e., employee) receives a coronavirus related distribution that will be considered a hardship distribution.

G5: Has the 403(b) restatement deadline been pushed back?

A: Yes, the deadline was moved from March 31, 2020, to June 30, 2020.



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G6: Does the Act extend the Form 5500 series filing deadline?

A: No, it does not, but the deadline for filings due on or after April 1, 2020, and before July 15, 2020, was extended to July 15, 2020, via IRS Notice 2020-23.

G7: What is the recommendation regarding preparing Form 5330s for late ADP returns, and advising our clients on filing them given the extension request by the ARA?

A: The IRS granted an extension in Notices 2020-23 and 2020-35. Form 5330s and the payment of associated excise taxes due on or after April 1, 2020, and before July 15, 2020, are now due on July 15, 2020. Note that the period beginning on March 30, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest or penalty for failure to file the Form 5330 or to pay the excise tax postponed by the notice. Interest and penalties will begin to accrue on July 16, 2020.

G8: Since the due date of tax returns is extended to 7/15 is there still another 6½-month extension as per usual—making them due 1/15/2021?

A: No, it is only the original 4/15 date that is given the extra time, not the extension date.

G9: If a plan uses the safe harbor hardship provisions, could an individual qualify for a hardship under the new safe harbor hardship event for FEMA declared disasters?

A: Yes, but only if the individual is in an area that is designated for individual assistance by FEMA. To monitor future updates on FEMA individual assistance, see <https://www.fema.gov/individual-disaster-assistance>.



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MISCELLANEOUS

Paycheck Protection Program

M1: Section 1102 of the Act provides forgiveness for SBA loans under the Paycheck Protection Program. This loan is forgiven if it used for certain items including payroll costs. One of the items listed under payroll costs is payment of compensation with respect to an employee that is payment of any retirement benefit. This does not appear to apply to the employer's retirement plan contribution. Do you have any insight on what payment of retirement benefits qualify as payroll costs under the Act?

A: The Department of the Treasury and the Small Business Administration clarified that employer contributions to both defined contribution plans and defined benefit plans are included in the definition of payroll costs. Further, with respect to employees who are not owners, the \$100,000 cap on compensation applies only to salary; the cap does not apply to employer contribution to DC and DB plans.



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Families First Coronavirus Response Act

M2: Are emergency paid leave payments for COVID-19 (childcare, Coronavirus diagnosis) pay for IRC §415 purposes? Employers might need time to amend their plan to reflect how they handled it in payroll for deferrals and benefits.

A: Until we get contrary guidance from the IRS, there is nothing to indicate that you can exclude it from 415 compensation. For many plan purposes, however, you can adjust 415 compensation. We do not know if the exclusion of these amounts would be a safe harbor adjustment under IRC §414(s), so it's possible that nondiscrimination testing may be required (but presumably you wouldn't need to worry about that until after the plan year has ended). If you want to exclude it for purposes of determining benefits, it would be advisable to amend the plan as soon as possible—otherwise you could have issues with the anti-cutback rules of IRC §411(d)(6).



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