

On March 27, 2020, the U.S. House of Representatives passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The President signed the bill into law on March 27, 2020. This is a brief summary of provisions contained in the CARES Act and subsequent guidance from the IRS that impacts 401(k) retirement plans.

If you have any questions or need additional information please [contact us](#) or visit us at www.sdretirementsolutions.com.

<p>What are the major changes that impact 401(k) plan sponsors and participants?</p>	<p>There are several changes that impact 401(k) plan sponsors and participants, including:</p> <ul style="list-style-type: none"> • Relief impacting “Coronavirus-Related Distributions” for qualified participants; • Relief impacting plan loans to qualified participants; • Waiver of Required Minimum Distributions for calendar year 2020; • Layoffs possibly resulting in Partial Plan Terminations; • Employer contribution assistance under the Paycheck Protection Program (PPP); • Compensation considerations under the expanded paid leave policies; • Safe Harbor 401(k) Plan Modification or Suspension; and • Expanded DOL authority to postpone filing deadlines. <p>More information on each of these items is below.</p>
<p>What changes impact “hardship” distributions? Are there different rules for Coronavirus-Related Distributions?</p>	<p>Traditional hardship distributions are subject to an additional 10% tax on early withdrawals. The CARES Act waives the additional 10% for an individual who takes a distribution on or after January 1 and before December 31, 2020, and meets the following requirements:</p> <ul style="list-style-type: none"> • Is diagnosed with COVID-19; • Has a spouse or dependent diagnosed with COVID-19; • Experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of childcare due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; OR • Meets other factors as determine by the Treasury Secretary. <p>In addition, for participants who meet the requirements above:</p> <ul style="list-style-type: none"> • Up to \$100,000 can be withdrawn from 401(k) plans, or aggregated across all qualified plans, 403(b) plans, governmental 457(b) plans or IRAs of the individual; • Tax on the income due to the distribution can be spread over a three-year period; and • Amount distributed can be repaid into the plan (or IRA) over the next three years. Any repayments would not be subject to the plan contribution limitations. <p>Distributions made pursuant to Coronavirus-Related Distribution rules do not have to satisfy other plan-related distribution requirements. Coronavirus-Related Distributions will be treated as a rollover for the purpose of allowing repayments; however, they will not be subject to mandatory withholding on traditional distributions from plans or IRAs.</p> <p>Coronavirus-Related Distribution provisions:</p> <ul style="list-style-type: none"> • Can be adopted immediately, even if the plan does not currently allow for hardship distributions, provided the plan is amended on or before the last day of the first plan year beginning on or after January 1, 2022 (or later if prescribed by the Treasury Secretary). <p>Plan Sponsor Takeaways: for those participants who meet the requirements above:</p> <ul style="list-style-type: none"> • This is an optional provision that can be implemented immediately; • Verify that tax-reporting service providers are aware of which distributions qualify for special treatment; • Verify that the party approving the distributions, the plan sponsor or service provider properly evaluates qualification requirements for each impacted participant. Participants are able to self-certify that they meet the requirements; • Make sure the plan is amended properly, if necessary, by the deadline stated above.

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<p>What changes impact plan loans?</p>	<p>Under the CARES Act, the following relief regarding plan loans is available to participants who meet the requirements identified above regarding Coronavirus-Related Distributions:</p> <ul style="list-style-type: none"> • For plan loans taken between March 27, 2020 and September 23, 2020, the maximum loan amount is doubled from lesser of \$50,000 or 50% of the participant’s vested account balance to lesser of \$100,000 or 100% of the vested account balance for loans to qualified participants; • Participants who have a loan from their account that is due from March 27, 2020 through December 31, 2020 can delay their repayment(s) and extend the term of the loan for up to one year;¹ • Changes can be adopted immediately, even if the plan does not currently allow for loans, provided the plan is amended on or before the last day of the first plan beginning on or after January 1, 2022 (or later if prescribed by the Treasury Secretary). <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • This is an optional provision that can be implemented immediately; • A plan amendment is required by the last day of the plan year beginning on or after January 1, 2022, or such later deadline as stated above.²
<p>What changes impact Required Minimum Distributions for 2020?</p>	<p>Required Minimum Distributions (RMDs) from 401(k) are waived for calendar year 2020.</p> <p>This includes the RMDs for participants who turned 70½ during 2019 and did not take their distribution prior to January 1, 2020.</p> <p>This change also provides that amounts that would have been RMDs, but for the CARES Act, that are (or were) distributed, are eligible rollover amounts that can be rolled over within 60 days (and the IRS granted further relief extending this 60-day deadline through August 31, 2020). The CARES Act also excludes such amounts from the mandatory withholding requirements even though such amount could be rolled over.</p> <p>IRS guidance clarifies that participants receiving periodic payments (other than from a defined benefit plan) that would not normally be eligible for rollover may treat the portion of the payment representing the 2020 RMD as an eligible rollover distribution.</p> <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • This is an optional provision that can be made available immediately; • Rollover notices are not required; • Since it is optional, plan sponsors will need to make the decision on implementation and must then communicate the decision to service providers. Some plans experienced operational failures in 2009 because plan sponsors and service providers were not aligned, resulting in Voluntary Correction Program (VCP) filings with the IRS; • For plan sponsors that choose to adopt this provision, the plan can be amended retroactively on or before the last day of the first plan year beginning on or after January 1, 2022. For governmental plans, the deadline to amend is on or before the last day of the first plan year beginning on or after January 1, 2024.
<p>What effect do employee furloughs and employee terminations have on the Partial Plan Termination Rules?</p>	<p>Furloughed employees are considered to be employed, although they may not be drawing a paycheck; it is presumed this is a temporary situation and the intention is to return them to regular employment. Terminated employees have severed ties with their employer and are no longer receiving compensation.</p> <p>A partial plan termination generally is deemed by the IRS to occur when 20% of total plan participants are terminated. When this occurs, the terminated employees must become 100% vested in all employer contributions.</p> <p>Plan Sponsor Takeaways: if more than 20% of total plan participants are terminated due to the current state of emergency caused by COVID-19, a partial plan termination is presumed.</p> <ul style="list-style-type: none"> • The increased vesting could have a significant financial impact on the employer’s share of the plan benefits; and • Employers might want to consider furloughing employees rather than terminating them, especially if there is good chance the workforce will be called back to full employment once the economy picks up.

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<p>How does the Paycheck Protection Act assist plan sponsors in continuing their employer contributions to plan participants at little or no cost?</p>	<p>If PPP loans through the Small Business Association (SBA) are used to fund payroll costs, the loans, including principal and interest, may be fully forgiven. Under the CARES Act, payroll costs include “payment of any retirement benefit.”</p> <p>Plan Sponsor Takeaways: IRS guidance has clarified that retirement plan contributions are treated as “payroll costs,” subject to certain limitations.</p> <ul style="list-style-type: none"> • Includes elective deferrals made by employees during the covered period of the loan. • Includes employer match contributions attributable to the covered period of the loan. • Includes employer profit sharing contributions – provided that contributions are made during the covered period of the loan. Forgivable contributions are also limited to amounts attributable to compensation earned during the covered period of the loan. • If PPP loan is forgiven, employer is not entitled to a deduction for any contributions that were made with the loan proceeds.
<p>How does The Families First Coronavirus Relief Act (FFCRA) impact company-sponsored retirement plans?</p>	<p>While not retirement plan specific in its provisions, the FFCRA impacts retirement plan administration and operation by providing relief in the form of compensation when employees must take leave as a result of the coronavirus. Barring any specific exclusions written into the plan document, the paid time off employees receive under the FFCRA is eligible plan compensation.</p> <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • Participants can make 401(k) salary deferrals on this compensation; • Participants who are on FFCRA leave must have their paid leave compensation included with their other eligible compensation when calculating employer matching, safe harbor contributions, and any profit sharing contributions made to the plan; and • To reduce employer costs, the plan could be amended to exclude paid leave or other forms of pay from the plan’s definition of compensation.
<p>What options are available to plan sponsors to eliminate or reduce their Safe Harbor contributions?</p>	<p>Interestingly, the CARES Act did not address relief options associated with Employer Safe Harbor contributions; however, recent IRS Notice 2020-52 did.</p> <p>Safe Harbor Nonelective and/or Matching contributions may be suspended or reduced midyear under the following terms:</p> <ul style="list-style-type: none"> • The plan provides a notice at least 30 days prior to the elimination of a Safe Harbor matching contribution. • Plans may be amended for the reduction or suspension of safe harbor nonelective contributions without providing 30 days’ notice to plan participants as long as a notice is provided no later than August 31, 2020 and the amendment is not retroactive. • Additionally, plan sponsors can eliminate safe harbor 401(k) contributions for highly compensated employees only and retain the plan’s safe harbor status, provided that the safe harbor 401(k) contributions continue to be made for non-highly compensated employees. <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • If the Safe Harbor contribution is suspended, the plan must pass ADP nondiscrimination testing. • Additionally, safe harbor plans are usually exempt from any possible top-heavy minimum contributions; therefore, a plan that suspends the safe harbor contribution might need to make a top-heavy contribution to non-key employees, which is equal to 3% of each respective eligible employee’s compensation for the plan year.

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<p>Deadlines extended for meeting certain filing requirements</p>	<p>In Disaster Relief Notice 2020-01, the DOL’s Employee Benefits Security Administration (EBSA) extended the time for plan officials to furnish benefit statements, annual funding disclosures, and other notices and disclosures required by ERISA “so long as they make a good-faith effort to furnish the documents as soon as administratively practicable” and believe participants and beneficiaries have access to electronic means of communication.</p> <p>The notice also includes compliance assistance guidance regarding:</p> <ul style="list-style-type: none"> • Plan loans, • Participant contributions and loan payments, • Blackout notices, • Form 5500 and Form M-1 filings, and • Other general compliance guidance on ERISA fiduciary responsibilities.
<p>Final electronic disclosure rules</p>	<p>Effective July 26, 2020, the final regulations provide a “safe harbor” method for employers to deliver required disclosures under ERISA by means of email, mobile application or website. Compliance with the DOL final regulations is optional, and employers are not required to adopt the new regulatory safe harbor; they even may elect to do so with respect to some but not all of their plan participants. However, because the safe harbor provides a clearly delineated method to ensure compliance with ERISA’s disclosure requirements, most plan sponsors will likely find it beneficial to begin using these delivery procedures as soon as possible. We speak to the requirements specifically in this article: DOL Finalizes Electronic Disclosure Rules.</p>
<p>Next steps?</p>	<p>There could very well be other regulatory updates in the days and weeks ahead, including:</p> <ul style="list-style-type: none"> • IRS may issue additional guidance impacting 401(k) plans; • The American Retirement Association (ARA) has indicated that they will continue “to push for defined contribution funding relief”; and • As mentioned earlier in the brief, it is possible that Congress could issue additional technical corrections and/or additional bills to address the COVID-19 pandemic. <p>We will continue to monitor developments and update you as we know more. In the meantime, please contact our office or visit our website, www.sdretirementsolutions.com.</p>

¹ Interest accrues during the delay period, but the one-year delay is disregarded in determining the term of the loan and the maximum five-year repayment period.

² Caution: Plan sponsors may wish to contact their service providers or counsel to determine the impact on pre-approved plan reliance, if the IRS does not provide additional guidance.