AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

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.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

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*.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

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.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

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).

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

COVID-19 DISTRIBUTIONS

There are two key aspects to COVID-19 distributions (referred to in the Coronavirus Aid, Relief, and Economic Security Act as coronavirus-related distributions: is a plan required to permit a COVID-19 distribution (i.e., is it a distributable event under the plan), and if it is optional for a plan, does that impact whether a participant can treat a distribution made for another reason as a COVID-19 distribution. For these purposes, a qualifying individual is defined as someone: 1. who is diagnosed with the virus (via test approved by CDC), 2. whose spouse or dependent is diagnosed with the virus, or 3. who experiences adverse financial consequences as a result of: quarantine, furlough, lay off, reduced hours, inability to work due to childcare, closing of business, or other factors as determined by the Secretary of the Treasury. The plan may rely on participant certification that those condition(s) are met.

With the release of IRS Notice 2020-50, the IRS updated who is considered a qualified individual to include someone: 1. Who experiences a reduction of pay (or self-employment income) or has a job offer rescinded or delayed due to COVID-19, 2. Who experiences adverse financial consequences due to the individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or 3.who experiences adverse consequences due to closing or reducing hours of a business owned or operation by the individual's spouse or a member of the individual's household due to COVID-19.

The FAQs below deal with several key elements of the new distribution rules: eligibility & adoption, administration & reporting, participant notices, and distribution repayments.

Eligibility & Adoption

CD1: Is a COVID-19 distribution a required provision, or is this an optional plan provision?
A: It is optional for the plan. See below regarding the application to participants.

CD2: Is a COVID-19 distribution available to plan participants who meet the "qualified individual" requirements, regardless of any other plan or code restrictions?
A: The distribution can be made regardless of any other "plan" restrictions (if the plan sponsor does not want those restrictions to apply). As to "code" restrictions, the only exception in the CARES Act is that the restrictions on elective deferrals, QNECs, QMACs and ADP test safe harbor contributions do not apply. See the following questions.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CD3: Can a business owner (a dentist) who is laying people off qualify for the distribution or participant loan option under COVID-19? He's not closing his business but is definitely feeling the effects of this. Is this an obvious area I am overlooking?
A: It seems you are asking about whether the dentist would be considered a qualified individual. The answer is yes. One of the criteria to be an eligible individual is that the individual experiences adverse financial consequences as a result of, among other items, "closing or reducing hours of business owned or operated by the individual."

CD4: Are terminated participants eligible for a COVID-19 distribution?
A: Yes. The treatment to an individual participant is independent from the treatment by the plan. In other words, it doesn't matter to the participant what the distributable event from the plan was. It may have been due to the plan permitting a COVID-19 distribution or due to another triggering event, such as termination of employment. If the participant is a qualified individual and receives a distribution in 2020, then the individual is entitled to treat the distribution as a COVID-19 distribution–there is no 10% additional tax; the amount can be included in income over three years; and there is a three-year repayment right.

CD5: Can participants take multiple COVID-19 distributions as long as they stay below the $100,000 maximum?
A: Yes, provided the distributions are made before December 31, 2020.

CD6: Can DB plans (including cash balance plans) offer a COVID-19 distribution?
A: The CARES Act does *not* provide an exception to the distribution restrictions that apply to pension plans (e.g., money purchase plans and defined benefit plans). This does not mean that pension plans cannot include a COVID-19 distribution. But, because a stated event (such as becoming a qualified individual) is not a permissible distributable event in a pension plan, it means the ability to use the provision is much more limited.

For example, a cash balance plan does not permit any in-service distributions. Under the law, the plan could have included an in-service distribution at age 59½ (as permitted by the SECURE Act). The plan sponsor could permit a COVID-19 distribution to be made to those participants who are age 59½. This would be a limited in-service withdrawal provision.

Let's assume the plan sponsor wants to permit COVID-19 distributions, and Jolene is an eligible individual who is age 63. Jolene could receive a COVID-19 distribution from the plan. Because Jolene is over age 59 ½, she would not have been subject to the 10% additional tax for early distributions. She would be able treat the distribution as a COVID-19 distribution and include the distribution in income over three years, and she would be entitled to a three-year repayment period.

CD7: Is a COVID-19 distribution permitted from an ESOP, since typically an ESOP has more restrictive distribution requirements than a profit sharing or 401(k) plan?
A: The SECURE Act does not provide an exemption for required distribution restrictions that apply to ESOPs. Thus, an ESOP may provide for a COVID-19 distribution provided it does not violate any other statutory distribution restrictions.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CD8: Can a custodial 403(b)(7) arrangement permit a COVID-19 distribution?
A: Congress intended to allow custodial 403(b)(7) arrangements to make COVID-19 distributions. However, the law contains a typo, and hopefully the IRS can address this without the need for a technical correction to the law. The problem is the law provides that a COVID-19 distribution will not violate IRC §403(b)(7)(A)(i). This should be subsection (ii), not (i). The correct reference was used in all the prior disaster relief provisions, so this is clearly a typo.

CD9: Do defaulted loans count as COVID-19 distributions?
A: Yes, assuming the loan in the participant's account is being offset by the loan (that is a distribution), if it happens during 2020 and the individual is a qualified individual. If the individual is not a qualified individual, then the individual still has until the due date of the filing of their tax return (4/15/21) to complete a rollover of the defaulted amount.

CD10: How much reduction in hours is needed to be considered "impacted by COVID-19" and thus an eligible individual? We have a client that reduced some employees by only four hours (full time employees), and others all the way to half their usual time.
A: The law does not provide any specific parameters, so all we can say is that it would be good-faith interpretation. For a full-time employee, a four-hour reduction per week could equate to a 10% reduction in pay. One could reasonably conclude that this is an "adverse financial consequence" within the meaning of the law.

CD11: Does a participant need to exhaust loan options before taking a COVID-19 financial hardship distribution? Can a participant take both a COVID-19 loan and a COVID-19 hardship distribution?
A: No, a participant does not need to exhaust loan options first and, yes, a participant can obtain both. The COVID-19 distribution is not a hardship distribution–it is a new distributable event. The plan does not need to offer hardship distributions to add the COVID-19 provision. Therefore, it is not subject to the hardship distribution rules, such as having to exhaust other options. Even if it were subject to the hardship rules, under the SECURE Act, a loan is no longer a prerequisite for obtaining a hardship distribution.

CD12: If an IRA owner currently taking substantially equal payments under IRC §72(t)(4) (to avoid the 10% additional tax for early distributions) takes additional money out of an IRA as a COVID-19 distribution, will it be treated as change that would result in the imposition of the 10% tax?
A:The IRS clarified in Notice 2020-50 that taking a COVID distribution would not be considered a modification of the substantially equal payments under IRC §72(t)(4).

CD13: Can a COVID-19 distribution be made from a SIMPLE IRA without being subject to the 25% additional tax?
A: Yes. SIMPLE IRAs are included in the definition of an eligible plan. The Act provides that the IRC §72(t) additional tax doesn't apply if a COVID distribution is made from an eligible plan. Because the 25% additional tax for early distributions from a SIMPLE IRA is part of IRC §72(t), the penalty would not apply if a COVID-19 distribution is made from a SIMPLE IRA.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CD14: I interpret the COVID-19 distribution to be a one-time opportunity. In essence, a participant can take all they want at once as opposed to being able to take $25k now and additional money later in the year if needed. Do you concur?
A: No. If permitted by the plan, a participant could take out multiple COVID-19 withdrawals as long as the $100,000 limit is not exceeded.

CD15: As far as the In-Service withdrawal, the new rules allow for a maximum of $100K, can the plan sponsor set a maximum of $40K?
A: Yes

CD16: What is the maximum aggregate amount an eligible participant can take from their plan? I've heard $100K and $200K (max withdrawal and max loan).
A: A participant may take a loan and a distribution up to $100,000 each (if the plan provisions allow).

Administration & Reporting

CD17: Do you know if there will be a new 1099-R code to identify COVID-19 distributions?
A: The IRS provided, in Notice 2020-50, that a plan could have used either code 2 (early distribution, exception applies) or distribution code 1 (early distribution, no known exception). For the new child/adoption distributions, the instructions to Form 1099-R indicate that code 1 should be used. Ultimately, the proper tax handling will be the responsibility of the individual when he or she files his or her income tax return (the individual can designate that the exemption from the 10% additional tax applies and will be able to elect whether to include the distribution in income over three years). This is similar to how 60- day rollovers are handled.

CD18: If a COVID-19 distribution is not considered an eligible rollover distribution, and therefore it does not have mandatory 20% income tax withholding, should the withholding be 10% instead (with the ability for the participant to waive it upon request)?
A: Yes.

CD19: Do you believe that forms such as the 8915-B would be utilized for tax reporting purposes of the COVID-19 distributions?
A: Yes. There will be a new Form 8915-E that will be available before the end of 2020. Once available, the IRS will post the forms on their disaster distributions and repayments web page at *https://www.irs.gov/forms-pubs/about-form-8915-a-and-8915-b*.

CD20: If a COVID-19 distribution is taken and the individual elects to pay the taxes over three years, how is that accomplished? Do they report one-third of the distribution on their tax return each year?
A: Yes, per IRS Notice 2020-50.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Participant Notices

CD21: For furloughed employees, how do we communicate their options for a COVID-19 distribution (similar to the IRC §402(f) notice) regarding distributions?
A: While an IRC §402(f) notice is not required, we anticipate the service providers who create the 402(f) notice will create a form that is suitable. There is no one standard for the industry at present, and the IRS has not indicated whether it intends on providing a sample notice.

CD22: How do we notify participants about the voluntary withholding rules?
A: While an IRC §402(f) notice is not required, plans are required to provide participants with a notice of withholding to allow them to elect to have something other than 10% withholding (Form W-4P is used for that purpose). One of the penalties that was increased by the SECURE Act was for failures to provide a notice of voluntary withholding.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Repayments

CD23: Will participants have to prove they took a COVID-19 distribution in order to repay it to a plan within three years?
A: IRS Notice 2020-50 states that an administrator of an eligible retirement plan may rely on the individual's certification that the individual satisfies the conditions to be a qualified individual in determining whether the distribution was a COVID-19 distribution, unless the administrator has actual knowledge to the contrary.

CD24: Relating to the repayment of a COVID-19 distribution over the three-year window, where can we find guidance as to how the taxes will be handled in 2020 and 2021 if they do not repay the distribution back until the last possible date? Have they provided guidance that the participant will need to file amended returns? Or was that just a "possible" handling?
A: The IRS addressed the details of how the repayment provisions will work in Notice 2020-50. The notice states that it can be paid back in one or more payments to not exceed, in total, the amount of the distribution. The IRS requires that the distribution either be taxable over the three-year period or in the year of the distribution. Upon repayment, a form will need to be completed and the tax return(s) for the year(s) that the distribution was included in income amended and refiled.

CD25: We have terminated employees who already took a distribution of their account after January 1, 2020, but prior to March 27, 2020. Could these distributions qualify as COVID-19 distributions so that they have the ability to repay it in three years and not be subject to 10% additional tax? If so, how would that work from a 1099-R standpoint? And is the client required to contact these individuals with a notice of their rights?
A: Yes, the distributions could be treated as COVID-19 distributions if they are qualified individuals. The law does not mandate that the plan notify the participants, although some providers may wish to do so as a matter of goodwill. Ultimately, participants may become aware of these rights when they file their tax returns for 2020. Regarding the 1099-R, see the questions in the Administration and Reporting Section of these Q&As.

CD26: If someone takes a COVID-19 distribution, can he or she repay it into another eligible vehicle (e.g., took a distribution from a plan and wants to repay into an IRA)?
A: Yes. A COVID-19 distribution is technically an eligible rollover distribution and can be rolled over (which the law refers to as a repayment) to any vehicle that is permitted (and willing to) accept rollovers.

CD27: When COVID-19 distributions are being paid back, can repayments be pretax payments directly through the plan?
A: Repayments are handled in the same manner as a rollover contribution.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CD28: How does the plan handle the repayment? Is it treated as a rollover? If so, is it a related or unrelated rollover for top-heavy purposes?
A: The plan would handle the repayment as though it were a direct rollover. If it is rolled back into the same plan that made the distribution, it is a related rollover (see Treas. Reg. §1.416-1 Q&A T-32).

CD29: On the repayment of COVID-19 distributions, would the repayments be reported directly on the 1040 line 4d?
A: Yes, they are reported on line 4d. Form 8915-E must also be completed and attached to the filing.

CD30: I got the impression that if a participant takes a COVID-19 distribution, the participant will receive a 1099-R in 2020 for the full amount of the distribution. If the participant chooses to repay some or all back, he or she will have to amend prior tax returns to spread the taxable amount over the three-year period. Is that accurate?
A: Not quite. There are two issues here. First, the participant must elect whether to include the entire amount in income in 2020 or spread it in income over three years. Second, how the repayment is handled will depend on when the repayment(s) is made. If the individual repays the total amount prior to filing the tax return for 2020, then an amended return is not required. If the participant repays an amount after a tax return was filed, then an amended return will be required. IRS Notice 2020-50 provides details on how these rules apply.

CD31: Does repayment of COVID-19 related distributions by a participant need to be by payroll? Or can a participant pay it back via other means?
A: It does not have to be via payroll. It can be like any other rollover into the plan.

CD32: Can a COVID-19 distribution from a Roth account be repaid so that future investment earnings on the amount repaid can be tax-free when withdrawn?
A: Yes. Normally, amounts attributable to a Roth account can only be rolled over by means of a direct rollover (i.e., a trustee-to-trustee transfer). The CARES Act provides that COVID-19 distribution repayments are treated as direct trustee-to-trustee rollovers.

CD33: I have a participant who is laid off and wants to roll his balance out of his 401(k) and into his IRA; he doesn't want a cash distribution. This doesn't appear to be part of the CARES Act. It is more to free up cash, not give the ability to do a rollover. Am I understanding this correctly?
A: If by "laid off" you mean that there has been a severance of employment, then the amount may be directly rolled to an IRA assuming the plan permits distributions on severance of employment. You are correct that this is not part of the CARES Act.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CD34: Can a COVID-19 distribution be directly repaid (i.e., rolled over) to any IRA or other plan?
A: Yes. While the COVID-19 distribution is intended to provide "relief," it does not prohibit an individual from immediately repaying the distribution to an IRA. Unlike a regular eligible rollover distribution, however, a plan is not required to offer a participant receiving a COVID-19 distribution with a direct rollover option. The plan could require that the participant receive an actual distribution, which the participant could then repay to the IRA or other plan.

CD35: Can an individual take a COVID-19 distribution from a pre-tax account and then repay it to a Roth IRA and pay the tax over three years?
A: There are differing opinions on this. But we believe the answer is "no." You can't convert amounts to Roth outside of a plan or IRA. The conversion would need to happen with the plan or IRA, and it would therefore not be a COVID-19 distribution.

CD36: If a participant took an RMD earlier in the year and is outside the 60-day rollover window, could it be treated as a COVID-19 distribution and therefore be repaid within three years?
A: Yes, but this would only be an option if the participant is a qualified individual. The IRS, in Notice 2020-51, provided an extension of the 60-day rollover requirement to August 31, 2020, to accommodate the retroactive effective date of the CARES Act provision.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

COVID-19 LOANS

A common question regarding the CARES Act loan provision is whether the loan provisions are optional or mandatory. Remember that, if allowed by the plan, a qualifying individual[i] may take a plan loan up to the lesser of $100,000 or 100% of the participant's vested account balance. This only applies to loans made on or before September 22, 2020 (180 days following enactment of CARES).

Eligibility & Adoption

CL1: Are the COVID-19 loan provisions optional?
A: Yes, the loan provisions are optional according to IRS Notice 2020-50.

CL2: If a plan allows loans increased to $100,000, is the employer responsible for determining if an employee meets the definition of a qualified individual?
A: The CARES Act and IRS Notice 2020-50 state that the administrator of an eligible retirement plan may rely on an employee's representation that the employee satisfies the conditions to be a qualified individual.

CL3: If one of the business owners is also a participant, are they still eligible for the new loan provision of up to $100,000?
A: Yes, if they meet the definition of qualified individual, they are eligible for the increased loan amount.

CL4: Can a business owner (a dentist) that is laying people off qualify for the distribution or participant loan option under COVID-19? He's not closing his business but is definitely feeling the effects of this. Is this an obvious area I am overlooking?
A: It seems you are asking about whether the dentist would be considered a qualified individual. The answer is yes. One of the criteria to be an eligible individual is the individual experiences adverse financial consequences as a result of, among other items, "closing or reducing hours of business owned or operated by the individual."

CL5: Can a terminated employee take a COVID-19 loan when the plan only allows loans to active employees?
A: Yes. A plan can permit terminated employees to take COVID-19 loans. This will require a change to the plan's loan program to allow the loans to terminated employees. The loan program will also need to be modified if it only permits loan repayments by payroll deduction.

CL6: How do COVID-19 CARES Act loans from IRA based plans work? Are they all characterized as early distributions that are taxed, and then after money is put back into an IRA, is an amended tax return is filed? Is there a way to simply take a loan from SEP or SIMPLE IRA?
A: IRAs and IRA based plans (SEPs and SIMPLE IRAs) cannot offer loans. The individual would have to take a distribution (and if a COVID Qualified Individual and distribution could repay in 3 years).

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CL7: If a plan sponsor wants to use the CARES special loan provision, but does not offer loans now, does it need to amend the plan to add a regular loan provision?
A: The short answer is yes the plan must be amended - but it's not clear which issue you are raising, so here are answers to both possible issues.
First, can the loan provision be limited to just COVID-19 loans or you must you also allow broader loan provisions? The answer to that is you can limit loans to COVID 19 loans - although you would still need all the loan program items you identified.
Second, when must the amendment be adopted? Some would say it's a discretionary amendment and must be adopted by the last day of the plan year - or even sooner because of ERISA. There are good arguments to support the position that the addition of the broader loan rules is integrally related to the change in the law and is covered by the extended deadline in the CARES Act - the end of the 2022 PY (two years later for governmental plans).

CL8: If a qualified individual asked for the loan and said that it was going to be used for the of the purposes that allowed repayment over more than 5 years, would that be allowed?
A: The Act doesn't limit loans (or distributions) to need. So, it would be possible for a participant to use the higher COVID limits and get a loan to purchase a principal residence and have a repayment period longer than 5 years. A plan could, however, limit the terms of loans so you could provide that COVID loans are limited to 5 years.

Administration & Reporting

CL9: Does the extension of the loan repayments expire on 12/31/2020 so it's only really a year applied retroactively back to 1/1/2020?
A: The law provides that any loan repayments due between March 27, 2020, and December 31, 2020, can be delayed. Thus, for example, a loan repayment that would be due in December 2020 could be extended to December 2021.

CL10: Does the rule providing that the maximum dollar loan amount is reduced by the principal paid on any loans in the past 12 months (i.e., the difference between the highest outstanding balance and the current balance of a loan) apply?
A: Yes, that rule still applies. The CARES Act only increased the limit on participant loans for qualified individuals. It did not change the calculation of the maximum permissible loan under IRC §72(p) so the calculation would be $100,00 minus the amount of principal repaid in the prior 12-month period. For example, suppose an employee took a $40,000 loan in 2019 and repaid the entire loan in January 2020. The maximum the employee could borrow under the CARES Act would be $60,000 ($100,000 - $40,000 principal repaid in the prior 12 months).

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CL11: If a plan does not already allow loans and the client wants to add loans temporarily due to COVID-19, do they have to amend the plan to allow loans, then amend to remove them? Or can they add them temporarily as part of the COVID-19 amendment?
A: This can be handled as part of the effective date of the amendment. For example, the amendment could provide: "For the 180 day-period beginning on March 27, 2020, the plan permits loans in accordance with the following provisions: …"

CL12: If a plan only allows CARES Act loans, how do they establish the interest rate, etc., other provisions of the loan policy if the amendment is not required until 12/31/2022?
A: The law only extends the deadline to adopt a plan amendment. The plan would still need to establish the parameters of the loan program in order to operationally implement the program.

CL13: Can you confirm that if a plan only allows one outstanding loan at a time, then a participant won't be able to request a higher loan amount until the existing loan has been repaid?
A: Confirmed. The CARES Act increases the maximum loan, but it does not force a plan sponsor to change its existing loan program. Of course, the plan's loan program could be amended to allow for more than one loan at a time.

CL14: An employee is laid off 3/13/2020 with an outstanding loan. Loan repayments are via payroll deduction but there is no payroll. Under the CARES Act, the loan can be extended for one year from 3/27/2020. What do they do about repayments that could not be made between 3/13 and 3/27?
A: This is not extended by the CARES Act. It would need to be handled like any other non- repayment of a loan (i.e., if not repaid by the plan's grace period, then the loan would be a default). However, it is possible the extension provided by Notice 2020-23 would apply to this loan (and if so, the repayment is extended to July 15, 2020).

CL15:What do you recommend we tell clients asking the question, "What do we do about loan payments for employees that may come back to work?" Do they need to have the employee send checks for loan payments while there is no payroll, or, do you think it best to tell the client wait and see when we have more guidance and in a few months when you know the employees are coming back? I feel that it may be best to tell employers to take a pause and wait to see what happens since the loans would not default under current loan policy without relief until 7/1/2020, as that would be one full quarter with no loan payments.
A: We can't provide a definitive answer, but your suggested approach makes sense. The individuals are qualified individuals so the plan could use the CARES Act loan repayment delay. The plan could either: (1) apply the one-year delay from the outset; (2) accept checks for loan repayments; or (3) wait until 7/1/20 before deciding whether to use the CARES Act provision (or a combination of (2) and (3) could be used).

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

CL16: Since interest continues to accrue on COVID-19 loan repayment suspensions, there is a mathematical need to either re-amortize payments or take more payments. Someone has to do the calculations. Someone is going to charge for these calculations. On large loans, no big deal maybe. On a $2,000 loan, the re-amortization fee could be higher than the additional interest. Is there any relief where if the additional interest is less than $100 or $150 just take same number of payments and can disregard additional interest?
A: The CARES Act requires that the additional interest accrue during the period that payments are suspended. There is no de minimis amount in the law where this does not have to be done.

CL17: We envision some problems on COVID-19 loans due to market volatility. These issues exist already but the COVID-19 limit and market volatility make them more likely to be an issue. A participant has $20,500 in their account on day 1, and they request a $20,000 COVID-19 loan on day 1. On day 2 they sign a promissory note and amortization schedule for $20,000 loan. On day 3, the recordkeeper goes to distribute the loan and there is only $19,000. What do they do? Restart whole process? Or just redo the amortization schedule? This can be a really downward cycle. Recordkeepers can do these documents quickly, but not quickly enough to deal with 10% market swings.
A: The moving target associated with making loans on daily valued plans has always been challenging with a cyclical market. For that reason, some providers have procedures in place that limit the maximum loan to a slightly smaller percentage of the maximum than otherwise allowed by the law. This would leave a buffer for market fluctuations.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Notices

CL18: Some recordkeepers are waiving some fees for COVID-19 distributions and/or loans. There is no practical way to update ERISA §404(a)(5) notices timely. Is there a requirement to do so?
A: Yes, if the fees that can be charged to a participant's account changes, then a new notice needs to be provided. There is not an exception in the CARES Act for this. Normally, the update must be provided at least 30 days before the change. However, DOL Reg. §1.404a-5 has an exception for "unforeseeable circumstances beyond the control of the plan administrator." In that case, the notice must be furnished as soon as reasonably practical.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Repayment Extension

CL19: How will amortization schedules be revised? Is there a consensus regarding how this should be handled?
A: The IRS provided guidance on how to handle this in Notice 2020-50. The safe harbor method, which is not the only method, would require the loan to be re-amortized as of January 1, 2021.

CL20: If a participant has existing loans, are repayments of those loans delayed by one year?
A: Under Notice 2020-50, it is optional whether a plan will allow the delay.

CL21: If a participant obtains a $100,000 loan and defers repayments for a year, will the accumulated interest cause the loan to violate the statutory limit?
A: No. The limit is applied at the time the loan is made.

CL22: Does the extension of the loan repayments expire on 12/31/2020 so it's only really a year applied retroactively back to 1/1/2020?
A: The law provides that any loan repayments due between March 27, 2020, and December 31, 2020, can be delayed. Thus, for example, a loan repayment that would be due in December 2020, could be extended to December 2021.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

RMD WAIVERS

The CARES Act waives the requirement for any required minimum distribution (RMD) that is required to be paid in 2020. This includes an individual's first RMD which is attributable to 2019 (not paid by January 1, 2020). This also includes the 2020 RMD that could have been delayed until April 1, 2021. If an RMD has already been received during 2020, then the participant may roll it over and defer paying taxes, including rolling back into the plan. This applies only to individual account plans. The FAQs that follow focus on eligibility & adoption, administration & reporting, and rollovers. IRS guidance on the 2020 RMD waivers can be found in Notice 2020-51.

Account Eligibility & Adoption

RMD1: If a non-owner participant, age 72, terminated employment with one company on January 22, 2020, and began employment with another company on January 27, 2020, and now wants to roll her account balance from her first 401(k) plan to her new 401(k) plan, am I correct that the RMD waiver does not apply to her? Since she has been working, she has not been required to take an RMD so her first RBD is now April 1, 2021, which falls outside of the RMD waiver, correct?
A: The RMD waiver under the CARES Act applies to calendar year 2020 RMDs. The termination in January 2020 for the 72-year-old participant triggers the 2020 distribution (which is waived). The fact that the payment could have been delayed to April 1, 2021, does not change the fact that it is the 2020 RMD and is waived under the CARES Act.

RMD2: For a DB plan (such as a cash balance plan) which calculates the RMD based on an account balance, is the 2020 RMD waived in the same way RMDs are waived for a DC plan?
A: The RMD waiver is not applicable to DB plans, including cash balance plans.

RMD3: Does the RMD waiver apply to an IRC §414(k) account within a defined benefit plan (such as a rollover account)?
A: No. IRC §414(k) provides that the account is treated as a defined contribution only for certain purposes. IRC §401(a)(9) is not one of the stated purposes. Therefore, the account is treated as a defined benefit plan.

RMD4: With regards to RMD waivers, does this also apply to RMDs from inherited IRAs?
A: Yes, the RMD waiver applies to inherited IRAs.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

RMD5: Can plan participants decide for themselves if the waiver applies or is it determined at the plan level?
A: It is ultimately determined by plan participants because for participants in DC plans, no distribution made in 2020 is an RMD and can therefore be rolled over (assuming it's not ineligible for other reasons).

RMD6: RMDs don't need to be taken this year. Do you know if it impacts a client that started pulling from retirement prior to 59½ utilizing the IRC §72(t) rule for substantially equal payments?
A: The law only provided relief for RMDs, not other payouts. In Notice 2020-51 the IRS stated that not making a distribution due to an RMD waiver would not be considered a modification of the payments and would therefore not trigger the 10%.

RMD7: Does the RMD waiver apply to all individuals or just non-owner individuals?
A: It applies to all participants, including owners.

RMD8: Does the RMD waiver apply to old fashioned pooled profit-sharing plans that are not "individual" accounts?
A: Yes. An individual account plan does not mean each participant has a separate account. Rather, it is just referring to whether there is a separate accounting of the plan assets for each participant.

RMD9: Does the waiver of RMDs apply to Money Purchase Plans?
A: Yes.

RMD10: If I decide to forgo my 2020 RMD, do I need to take it next year in addition to my 2021 RMD?
A: No. The RMD is waived completely for the 2020 year.

RMD11: If my inherited IRA doesn't require annual RMDs because I am depleting the balance over a five- or 10-year period, does the 2020 RMD waiver extend this period by one year?
A: The law states that there is an extension to the payouts over the five-year period. There was not corresponding language addressing the 10-year payout period. Absent further legislative relief, we have to conclude there is no extension for those beneficiaries.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Administration & Reporting

RMD12: Does the plan ultimately need an amendment to show they allowed the waiver? If RMD's have already been processed for 2020, does the plan need an in-service provision?
A: A plan must eventually be amended to reflect its operation. Whether an amendment is needed will depend on what the employer does in operation and what the current plan provisions provide. Pre-approved plans will need an amendment if the plans sponsor wants to suspend RMDs because the plans currently provide that a distribution will be made. Some individually designed plans might incorporate IRC §401(a)(9) by reference. In that case, the plan would automatically provide for the waiver, and they would need an amendment if the plan sponsor didn't want to permit a waiver of RMDs. The IRS issued sample amendments in IRS Notice 2020-51. But ultimately, the terms of the plan will need to reflect actual operation of the plan.

Rollovers

RMD13: If I roll my 2020 RMD back within 60 days, does it use up my one rollover allowed every 12 months?
A: No. The IRS provided, in Notice 2020-51, that the rollover of a waived 2020 RMD would not violate the one rollover in a 12-month period rule.

RMD14: If I have done a 60-day rollover in the last 12 months and have already taken my 2020 RMD, am I still eligible to roll it back within 60 days?
A: Yes, but the rollover of the 2020 distribution must be made by August 31, 2020.

RMD15: If a participant took an RMD earlier in the year and is outside the 60-day rollover window, could it be treated as a COVID-19 distribution and therefore be repaid within three years?
A: Yes, but this would only be an option if the participant is a qualified individual. The IRS provided an extension of the 60-day rollover requirement to accommodate the retroactive effective date of the CARES Act provision in Notice 2020-51. The new deadline for all 2020 distributions is August 31, 2020.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

PLAN TYPE SPECIFIC ISSUES

The CARES Act didn't specifically address longer-term issues that have arisen in the wake of the COVID-19 outbreak. The IRS did release Notice 2020-52 which provides limited relief for safe harbor plans. Below we address several key issues regarding safe harbor & SIMPLE plans, government plans, as well as defined benefit and cash balance plans.

Safe Harbor, QACA & SIMPLE Plans

SH1: What do you believe the likelihood is of relief for plan sponsors from the 30-day advance notice for suspending safe harbor contributions?
A: In Notice 2020-52, the IRS provided that for plans who adopted an amendment, between, March 13, 2020, and August 31, 2020, to reduce or suspend safe harbor nonelective contributions will NOT be treated as failing the 30-day notice requirements if the supplemental notice is provided no later than August 31, 2020, and if the plan amendment is adopted no later than the effective date of the reduction or suspension. The relief is not applicable to plans that suspend or reduce the safe harbor matching contributions.

Note: In Notice 2020-52, the IRS clarified that since HCEs are not required by law to receive safe harbor contributions that amending a plan to eliminate them will not be considered a suspension of the safe harbor; rather it is a permissible mid-year amendment as defined by Notice 2016-16. Therefore, a new notice and election opportunity must be provided to the impacted HCEs

SH2: If a plan sponsor chooses to suspend their safe harbor 3% nonelective contribution now, can they restart later in the year if business is better? What if it is a match safe harbor?
A: A matching safe harbor plan can generally not be added once the plan year has begun. However, neither the law nor the regulations address this issue with respect to the nonelective contribution. There doesn't appear to be anything in the law precluding this, particularly in light of the SECURE Act, which allows a plan sponsor to add a nonelective safe harbor plan after the plan year has ended.

SH3: If a plan sponsor ceases the safe harbor contribution during the 2020 plan year, when is the contribution due?
A: By the due date of the 2020 tax return, including extensions. This is the same as ongoing plans.

SH4: Is there any relief for employers with SIMPLE IRA plans? Do you see any possibility of SIMPLE IRA plan sponsors being able to terminate their SIMPLE IRA plan mid-year or skip their matches for 2020?
A: We have received a lot of inquiries about SIMPLE IRA plan funding. Based on past experience, if relief is granted to Safe Harbor 401(k) plans it most likely will be for SIMPLE IRAs as well.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

SH5: When a QACA safe harbor is suspended mid-year, do plans default to EACA when the Safe Harbor piece is removed? Does a new auto enroll notice need to be drafted or is the current notice provided with the Safe Harbor suspension notice? I have two clients suspending their Safe Harbor match and neither recordkeeper have said anything about the automatic enrollment notice, or how auto enroll will work. With both, we requested EACA and I have requests in regarding the notice, but curious if there's a general default process here that should be followed.
A: A plan's eligibility requirements and methodology do not change upon the amending out of Safe Harbor status - unless the amendment to suspend the contributions also changes the automatic enrollment feature of the plan. Note that we don't have guidance regarding mid-year amendments to EACA features, but most believe the same rules for mid-year amendments to a safe harbor plan would also apply to an EACA.

SH6: Do you know how true-ups are handled with a mid-year suspension? Are they still required and simply made form start of the plan year to suspension? I could see this piece getting missed if required.
A: This is something that should be addressed as part of the suspension amendment, and it's probably often overlooked. If overlooked, it would be open to different interpretations. For example, the suspension means the true-up is also suspended. Or, the suspension means that the true-up is applied to matching contributions made up to the point of the suspension, but still on a full annualized plan year basis (odd result but this could be a reasonable interpretation).

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Government Plans

GP1: How does the CARES Act apply to governmental or non-ERISA church plans?
A: The following provisions of the CARES Act apply to governmental and non-ERISA church plans (but please note that the required amendment date may be different for governmental plans):

- The distribution and loan provisions under Section 2202
- The waiver of the required minimum distributions under Section 2203

Note: The provision for the DOL to extend the deadline for plan notices (Section 3607) would not apply because these plans are not subject to ERISA:

Note: The provision regarding Single Plan Funding relief is not applicable to governmental and non-ERISA church plans because they are not subject to minimum funding requirements.

AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

CARES ACT
ADMINISTRATIVE Q&As

Defined Benefit & Cash Balance Plans

DB1: For a DB plan (such as a cash balance plan) which calculates the RMD based on an account balance, is the 2020 RMD waived in the same way RMDs are waived for a DC plan?
A: The RMD waiver is not applicable to DB plans, including cash balance plans.

DB2: Does the RMD waiver apply to an IRC §414(k) account within a defined benefit plan (such as a rollover account)?
A: No. IRC §414(k) provides that the account is treated as a defined contribution only for certain purposes. IRC §401(a)(9) is not one of the stated purposes. Therefore, the account is treated as a defined benefit plan.

DB3: I know there has been a proposal about relief for small employer defined contribution plans to waive 2019 contributions not made and suspend 2020 required contributions. Has there been any proposal for DB plans similar to this?
A: Not to forgo the contribution, but as we mentioned on the webcast, the CARES Act provided for a delay of any contributions due in 2020 to be made by January 1, 2021. But take note that there is interest due on the delayed payments.

DB4: If employers have up to 1/1/21 to make their DB contribution, what about the deduction, since most will file by 9/15/20?
A: The Act extended the deadline for making contributions but did not change the deduction timing rules. So, the deduction would have to be taken for 2021.

DB5: Any distribution relief for DB plans per payments to HCEs under Treas. Reg. §1.401(a)(4)-5(b)(3)(ii)?
A: Not at this point in time.