Mutual of America Financial Group℠
Retirement Services • Investments

Frequently Asked Questions about the CARES Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" or the "Act") was signed into law. The CARES Act is the third and, to date, most sweeping legislative measure to provide economic safety nets for individuals and businesses. What follows are answers to some of the questions our clients have been asking us directly with respect to their retirement plan operations during this unprecedented period.

You should use this as a general guide while navigating the recent legislative changes and their impact on your plan administration. We also provide answers to other related questions that have arisen during this time in connection with discussions about the Act's provisions, such as how furloughed employees are impacted and what constitutes a partial plan termination.

You and your employees' individual circumstances may be different. If you have questions related to a specific situation or plan provision, please contact your local Mutual of America office for assistance.

This is being provided for informational purposes only and should not be construed as legal or tax advice. These answers relate only to products and services offered by Mutual of America Financial Group and may not be applicable to similar products or services offered in the marketplace.

For the telephone number of your local Mutual of America office, please visit mutualofamerica.com/regionaloffices, or call 800.468.3785.

A. General

Q: Which products are discussed in these FAQs?

A: The provisions in the CARES Act related to retirement plans generally impact tax-qualified plans, like 401(k) plans, profit-sharing plans, 403(b) plans and Governmental 457(b) plans. The Act also affects IRAs and IRA-based plans, like SEP and SIMPLE plans. The Act's provisions apply to those plans and products whether the plans are covered by ERISA or not.

If you have any other Mutual of America product, please direct your questions to your local Mutual of America office.

Q: What are the provisions of the CARES Act that may affect my plan and participants?

A: The Act included three provisions that may affect your retirement plan and participants, each of which will be described in more detail below. First, the Act created special "coronavirus-related distributions," or "CRDs", for certain individuals to access their retirement plan accounts on an emergency basis. See B below for more detail about CRDs. Second, the Act increased the amount participants can borrow from their plans and extended the time they have to repay the loan. See C below for more detail. Third, the Act waived required minimum distributions from retirement plans and IRAs for 2020. More detail on that provision is at D below.

Q: Do I need to amend my plan at this time to apply the Act's provisions?

A: No, if you intend to incorporate the Act's provisions into your plan, you do not need to adopt a plan amendment at this time. The CARES Act has a remedial amendment provision that allows plans to adopt these practices in operation now, provided the plan is amended by the end of the 2022 plan year.

As a matter of administrative convenience, Mutual of America will opt plan sponsors into the provisions of the Act, unless they tell us otherwise. **If you do not want to permit your participants to be able to take CRDs or increased loan amounts, please contact your local Mutual of America office immediately.**

As we have done in the past, we will amend our existing preapproved plan documents automatically and provide the option to reject the amendment. We will, likewise, provide an amendment to individually designed plans to adopt on their own.

B. Coronavirus-Related Distributions

Q: What are coronavirus-related distributions?

A: The Act permits participants who are "qualified individuals" (defined below) to take up to $100,000 of their vested account balance as a "coronavirus-related distribution" (CRD). The CRD can be any distribution from the plan made from January 1, 2020, to December 31, 2020, and can be made without regard to the participant's age or status as actively employed. In addition, the normal 20% mandatory income tax withholding does not apply to CRDs, and the normal notice (402(f) Notice) that accompanies distributions from qualified plans does not need to be provided.

The participant will pay regular income tax on CRDs (to the extent not from designated Roth accounts), but unless they elect otherwise when they file their individual income tax returns, the income will be spread ratably over three years.

Q: If a participant received a distribution during 2020 but before the Act became effective, can that distribution be recharacterized as a CRD?

A: The Act states that any distribution taken from January 1, 2020, to December 31, 2020, can be treated as a CRD. Participants who have taken a distribution prior to the Act's effective date will be eligible to apply for CRD treatment for those distributions.

Q: Are CRDs the same as "hardship distributions"?

A: No. CRDs are different from normal "hardship distributions" in a number of ways.

Eligibility: Only a "qualified individual" can be eligible for a CRD. Participants facing an "immediate and heavy financial need" are eligible for a hardship distribution.

Amount: CRDs are limited to $100,000. Hardship distributions are limited to the amount of the financial need.

Substantiation: Plan administrators are permitted to rely on a participant's representation that he or she is a "qualified individual" unless the plan administrator has actual knowledge* to the contrary. For hardship distributions, however, plan administrators are generally required to obtain evidence that the participant's financial need is immediate and heavy and that the amount of the requested distribution does not exceed such need.

Tax Treatment: CRDs are subject to taxation but not a 10% penalty tax for early distributions. Also, unless the participant elects otherwise, CRDs are included in income ratably over three years. Hardship distributions are also subject to income tax, and a 10% penalty tax if the participant is younger than age 59½. Hardship distributions are always included in income in the year of distribution.

Repayments: CRDs may be repaid to a qualified plan or IRA within three years of the distribution. Hardship distributions cannot be repaid.

Q: If one of my terminated participants wishes to take a CRD, is that permitted?

A: Yes. A terminated participant can take a CRD if he or she otherwise is a "qualified individual." However, because the participant is terminated, the plan may not accept repayment of that distribution (that is, the plan does not accept contributions from a terminated participant). In that case, the participant would be able to repay the amounts to an IRA and have it treated as a rollover to the IRA.

Q: Are laid-off participants who are younger than 55 subject to the usual in-service-distribution 10% penalty?

A: Laid-off participants younger than 55 would be subject to the 10% penalty unless they are qualified individuals.

*The IRS guidance does not address whether an employer has an affirmative obligation to investigate an employee's claim that he or she meets the definition of "qualified individual," and the CARES Act itself states that the employer may rely on the employee's certification. However, we believe that the IRS will likely conclude actual knowledge if the employer's personnel file contains any information that contradicts the employee's certification.

B. Coronavirus-Related Distributions (continued)

Q: Who can take a CRD?

A: The Act permits "qualified individuals" to take CRDs. A "qualified individual" is participant who is, or whose spouse or dependent is, diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the Centers for Disease Control and Prevention; or a participant who experiences adverse financial consequences because of being quarantined, furloughed or laid off; had work hours reduced due to the virus; is unable to work due to lack of childcare on account of the virus; is impacted by the closing or reduced hours of a business owned or operated by the individual due to the virus; or is impacted by other factors as determined by the Secretary of the Treasury.

Q: Plan administrators are permitted to rely on the employee's representation that he or she is a "qualified individual." What does that mean?

A: An employee does not need to substantiate his or her claim that he or she is a "qualified individual." You are allowed to accept the employee's statement (verbally or in writing) that he or she is a qualified individual, and you can rely on the representation alone without having to obtain additional information (such as a copy of an eviction notice), unless you have actual knowledge* to the contrary about the participant's status as a "qualified individual."

Q: Should the plan sponsor request documentation to approve or deny a withdrawal request under the Act?

A: No. The Act says the individual can represent to the plan sponsor that he or she is a qualified individual, and the plan sponsor can rely on that representation alone, unless the plan sponsor has actual knowledge* that the participant making this request is not a "qualified individual." That is, the plan sponsor does not need to get documented evidence as it does for, as an example, a normal hardship distribution.

Q: If the employee calls Mutual of America directly, will Mutual of America need to get confirmation of the employee's status as a qualified individual from the plan sponsor or will we rely on the employee's representation to us?

A: Since we will be applying the Act's provisions to your plan (unless you tell us in writing that you want to opt out), the individual only needs to make the representation to us. So, you can direct your employees to us. We can accept the employee's representation via a new Coronavirus Tracking Form that we are developing for our administrative purposes, on our recorded Loan 800 Line or general 800 Line, or by another writing (such as email). However, we will be contacting you to find out if you have actual knowledge* that the participant making the request is not a "qualified individual."

Q: Are there special Mutual of America withdrawal forms that should be used by participants? Since distributions to qualified individuals are not hardship distributions, should participants use regular Mutual of America withdrawal forms? How does a participant indicate on these forms that he or she is a qualified individual?

A: Participants will use regular Mutual of America withdrawal forms. We will also ask that the participant represent to us that he or she is a qualified individual using a new Coronavirus Tracking Form that we are developing for our administrative purposes. However, such representation can be done by the participant calling us on our recorded Loan 800 Line or general 800 Line or sending us an acceptable writing, such as an email from an email address we have in our records. We will also be contacting the plan administrator to find out if it has actual knowledge* that the participant making the request is not a "qualified individual."

*The IRS guidance does not address whether an employer has an affirmative obligation to investigate an employee's claim that he or she meets the definition of "qualified individual," and the CARES Act itself states that the employer may rely on the employee's certification. However, we believe that the IRS will likely conclude actual knowledge if the employer's personnel file contains any information that contradicts the employee's certification.

C. Loans

Q: What are the Act's loan provisions?

A: The Act provides for a 180-day period during which the usual loan limits (the participant may borrow the lesser of $50,000 or 50% of his or her vested account balance) are increased such that the participant may borrow the lesser of $100,000 or 100% of his or her vested balance. That is, the increased loan limits are applicable for loans taken out between March 27, 2020, and September 23, 2020.

The Act also provides for a one-year suspension of loan repayments for any loan with a due date during the period March 27, 2020, through December 31, 2020. Interest continues to accrue, and when the one-year delay is over, the loan will be re-amortized over the remaining loan term, plus one year.

The rules apply to 401(a), 401(k), 403(b) and Governmental 457(b) plans that permit loans. IRAs are not included. Non-governmental 457(b) plans are also not included.

Q: Who can take advantage of these loan provisions?

A: Qualified individuals (see definition above). Participants who do not meet the definition of "qualified individual" are subject to the regular loan limits.

Q: But, weren't certain participants allowed to suspend loan repayments for up to one year before the CARES Act took effect?

A: Yes. Prior to the Act, only participants on a *bona fide* leave of absence or military leave of absence were eligible for a suspension of loan repayments of up to one year (or longer, if a military leave). That rule was in place prior to the CARES Act and applies to individuals regardless of the reason for the furlough.

The CARES Act created a new loan repayment suspension rule for qualified individuals. Those individuals can request a one-year delay in repaying participant loans. Interest continues to accrue, and when the one-year delay is over, the loan will be re-amortized over the remaining loan term, plus one year.

Q: Is the loan provision automatic?

A: No. IRS guidance issued in 2005 suggests that the IRS will interpret the loan provisions as discretionary amendments, meaning that plan administrators can choose to opt out of providing increased loan limits and repayment suspensions to qualified individuals. See Section A, Q3, above, for more detail.

Q: Can the one-year delay in loan repayments extend a loan past the standard five years?

A: The one-year delay applies to any loan repayment that is otherwise due between March 27, 2020, and December 31, 2020. Interest continues to accrue, and when the one-year delay is over, the loan will be re-amortized over the remaining loan term, plus one year. In other words, the delay is added to the end of the original repayment term – so, for a five-year loan, the participant would ultimately have six years to repay.

Q: Regarding the loan limit increase – with respect to group annuity loans (generally, those offered under our 403(b) plan), does the 20% reserve continue to apply?

A: Yes. The collateral requirement for 403(b) plan loans should continue to apply.

C. Loans (continued)

Q: Mutual of America allows the option to switch loans from payroll deduction repayments (the plan sponsor remits the loan repayments deducted from participants' salaries to Mutual of America) to "home-billed" (Mutual of America bills participants directly at their home). If I want to have the one-year loan repayment suspension offered under the Act applied to all of my participants, should I switch all of their loans to "home-billed"?

A: No. For these participants, our Loan Department will need to know that the reason for the request of suspension by the employer is a result of COVID-19 affecting its staff (making those staff qualified individuals under the Act). To accomplish that, we need to have written (email) or verbal (on our recorded Loan 800 Line) confirmation from the employer that the impact to its employees is a result of the coronavirus, causing its employees to be qualified individuals. (Of course, individual participants can call us to let us know they are a qualified individual, but we can also take direction from the employer with respect to its staff.)

The employer should not switch the loans to home-billed for this purpose.

Q: Are there special Mutual of America loan forms that should be used by participants? How does a participant indicate on these forms that he or she is a qualified individual?

A: Participants will use regular Mutual of America loan forms. We will also ask that the participant represent to us that he or she is a qualified individual via a new Coronavirus Tracking Form that we are developing for our administrative purposes. However, such representation can be done by the participant calling us on our recorded Loan 800 Line or general 800 Line or sending us an acceptable writing, such as an email from an email address we have in our records. We will also be contacting the plan administrator to find out if it has actual knowledge* that the participant making the request is not a "qualified individual."

*The IRS guidance does not address whether an employer has an affirmative obligation to investigate an employee's claim that he or she meets the definition of "qualified individual," and the CARES Act itself states that the employer may rely on the employee's certification. However, we believe that the IRS will likely conclude actual knowledge if the employer's personnel file contains any information that contradicts the employee's certification.

D. Required Minimum Distributions

Q: How does the CARES Act impact 2020 Required Minimum Distributions (RMDs)?

A: The CARES Act suspends all required minimum distributions from defined contribution plans, including 401(k), 403(b) and Governmental 457(b) plans; IRAs; and IRA-based plans like SEPs and SIMPLEs. Required distributions of death benefits to beneficiaries are also waived for 2020.

Q: If a participant who is subject to the RMD requirements elects to take a withdrawal to represent their 2020 RMD, would they still be allowed to opt out of the required withholding?

A: The participant is able to take a distribution from the plan, but it will not be treated as an RMD (even if calculated in a manner to otherwise satisfy the RMD requirements). Since the amounts were distributed directly to the individual, those amounts would not be eligible for direct rollover and are not subject to the 20% withholding.

Q: Can a participant return a distribution to a plan or IRA if an RMD payment was made in 2020 prior to the enactment of the CARES Act?

A: Probably. The IRS has not provided specific guidance on this question, but we understand that the IRS would permit individuals to be able to roll the RMD distribution back into the plan or RMD as an indirect rollover. The rollover must be done within 60 days of the distribution.

Q: How will Mutual of America's Automatic Minimum Distribution Option (AMDO) be administered later in the year if a participant does not want to receive such payment this year?

A: We will need a letter or email from the participant stating that he or she does not want the 2020 RMD. We will write to those AMDO participants later this year to let them know they can opt out of the AMDO for this year.

E. Furloughed Employees

Q: What happens if employees are furloughed?

A: If you furlough your employees, they will be suspended without pay. (Contrast this against layoffs, which are more permanent in nature and are considered a separation of service for retirement plan purposes.)

Furloughed employees are still considered to be active participants for retirement plan purposes, meaning they are not automatically eligible for a distribution of their retirement plan account (as they would be if they were terminated from employment).

Furloughed employees cannot lose vested benefits, but their time on furlough will not be counted toward vesting service if the plan uses the "counting-hours" method to calculate such service.

Under normal circumstances, and depending on the terms of the plan, furloughed participants may be able to get access to their retirement accounts. However, under the CARES Act, those participants would now be qualified individuals and could take advantage of the Act's provisions.

Q: If my plan allows for employer base contributions, are those required to be made?

A: If your employer base contributions are discretionary, you can decide to give no base contribution at the end of the plan year (or whatever determination period your plan defines). If the base contribution is not discretionary, the contributions are mandatory, unless the plan is amended prospectively to remove the employer contribution. If the plan is a safe harbor plan, there are certain rules that you must follow to be able to remove the employer contribution midyear.

Generally, 401(a) defined contribution money purchase pension plan contributions are mandatory.

Q: Are employer base contributions required for furloughed employees if they are not getting paid?

A: Employer base contributions are generally based in part on participants' compensation, which is, generally, W-2 earnings. To the extent, therefore, that furloughed employees are not being paid while on furlough, employer base contributions could be reduced from what they otherwise would have been.

Q: For furloughed employees who are in a defined benefit plan, will they continue to accrue benefit accrual service?

A: Whether a defined benefit plan participant will continue to accrue benefit accrual service will depend on how the plan defines that term. If the plan uses the "counting-hours" method of accrual service, time spent away from work will not count toward accrual service.

F. Partial Plan Terminations

Q: How do I know if I have a partial plan termination?

A: The Internal Revenue Service (IRS) defines a partial plan termination as a situation in which more than 20% of plan participants are laid off in a particular year. An affected employee in a partial termination, as described by the IRS, is generally anyone who left employment for any reason during the plan year in which the partial termination occurred and who still has an account balance under the plan.

The plan does not cease to exist. For the remaining participants, the plan continues as an ongoing plan; the participant must continue to comply with qualification rules; and, if covered by ERISA, the participant must file Form 5500 and adhere to ERISA's fiduciary rules.

Q: What happens when a plan has a partial plan termination?

A: The law requires all affected employees to be fully vested in their account balance as of the date of partial (or full) plan termination. **This can be costly to plan sponsors.**

You also may want to file IRS Form 5300, which is generally the form used to file for determination letters, to request a ruling as to whether the plan has experienced a partial termination. Employers who may not be sure if a partial termination has occurred, and do not want to risk litigation or plan audit, may request a ruling from the IRS.

Q: Can Mutual of America help me with my partial plan termination?

A: While we cannot tell you whether a partial plan termination has occurred or whether you should file Form 5300, we can assist with the preparation of any plan amendments and employee communications (like SPDs or SMMs). If you think you have a partial plan termination, please contact your local Mutual of America office.

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