

IMPACT OF CORONAVIRUS ON RETIREMENT PLANS

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The webinar will remain live for ten additional minutes after the conclusion of the presentation to provide the opportunity to submit follow up questions via the Q&A function. A summary of top questions will be provided to all attendees.

Additionally, all attendees will be emailed a link to a recording of the webinar, a pdf of the presentation, and speaker bios and contact information.

Today's presentation is not:

- Legal advice
- The final word on today's topics – updates will be continuously provided via herbein.com
- Qualified for continuing education credits (i.e. CPE)

Before taking any action, employers should review this material with internal and/or external counsel.

TODAY'S PANELISTS



Brian Jamnik, CPA
Herbein + Company, Inc.
Senior Manager
bdjamnik@herbein.com



Dan Tatomir, AIF
Fragasso Financial Advisors
VP, Retirement Plan Advisors
dtatomir@fragassoadvisors.com

Today's moderator:

Beth Bershok
Herbein + Company, Inc.
Regional Marketing Director
eabershok@herbein.com





Coronavirus-related relief for Retirement plans and IRAs

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Coronavirus Aid, Relief, and Economic Security Act (CARES Act) enacted on March 27, 2020, gives special provisions for distributions and expanded retirement loan limits from qualified retirement plans.

- Expanded distribution options and favorable tax treatment for up to \$100,000.
- Special rollover rules.
- Increases the borrowing limit from a plan (not including an IRA).
- Plan sponsors can provide individuals up to an additional year to repay their loans.
- The Treasury Department and the IRS will release guidance at a future date.

Who is a qualified individual under the CARES Act:

- Diagnosed with SARS-CoV-2 or with coronavirus disease 2019 (COVID-19).
- Spouse or dependent diagnosed with SARS-CoV-2 or with COVID-19.
- Adverse financial consequences from being quarantined, furloughed, laid off, reduced work hours.
- Adverse financial consequences due to lack of childcare.
- Adverse financial consequences due to closure/reduced hours of a business you own.
- Additional criteria is being considered by the Treasury.

Coronavirus-related distribution - distribution made from an eligible retirement plan to a qualified individual from January 1, 2020 to December 31, 2020, up to an aggregate limit of \$100,000 from all plans and IRAs. In addition:

- 10% early withdrawal penalty is waived.
- Not subject to mandatory withholding requirements.
- Income can be spread over three-year period or all income reported in 2020.
- Distribution is eligible to be repaid over three years.
 - Roll all or any portion back into the retirement account, and it will be treated as a tax-free rollover.
 - File an amended return.

Loan relief from eligible retirement plans (not including IRAs):

- Loan limit is increased to the lesser of \$100,000 or 100% of the vested benefit. This is an increase from \$50,000 or 50% of vested benefit.
- Applies to loans made within 180 days of enactment, or September 23, 2020.
- Existing loans
 - Scheduled repayments from March 27, 2020 through December 31, 2020, may be delayed for one year.
 - Interest accrues during the delay.

Employer considerations of the distribution and loan rules

- CARES Act distribution and loan provisions are optional. Plan sponsors who adopt these features need to amend plan document.
- Deadline for amending plans is the last day of the plan year on or after January 1, 2022.
- For a calendar year plan, the amendment must be made no later than December 31, 2022.
- Governmental plans have an additional two years; for a calendar year plan that would be December 31, 2024.

Additional distribution rights to participants or otherwise change the rules applicable to plan distribution

- CARES Act permits for coronavirus-related distribution as meeting the distribution restrictions.
- No changes to distribution limits on other distributions.

Eligibility to receive a coronavirus-related distribution

- The plan administrator can rely on an individual's certification that the individual is qualified for coronavirus-related distribution.

Reporting of coronavirus-related distributions

- Qualified individuals – coronavirus-related distributions up to \$100,000.
- Report on your federal income tax return for 2020.
- Must include the taxable portion of the distribution in income ratably over the three-year period – 2020, 2021 and 2022 or include all income in 2020.
- Retirement Plans and IRAs – Report coronavirus-related distributions on Form 1099-R.

Required minimum distribution (RMD)

- RMD's due to be paid in 2020 are waived.
- Applies to both original owners and inherited accounts.
- If you have already taken your 2020 RMD, you may have the ability to pay it back (known as the 60-day rollover rule).
- Taxpayers subject to the five-year rule can 'skip' 2020.



Employer Contribution Considerations

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Changing Employer Retirement Plan Contributions

- The flexibility of reducing or eliminating the employer contribution will depend on the type of contribution that is defined in the plan document.
 - Discretionary
 - Safe Harbor
 - Non-Safe Harbor Mandatory Contributions

Discretionary Contributions

- Plan amendment, or official participant notices, are not required.
- Primary concerns:
 - Communicating the change to employees.
 - Will nondiscrimination testing be impacted if employees change their contribution amounts?

Safe Harbor Contributions

- A plan that makes a safe harbor contribution is deemed to pass nondiscrimination testing. Generally, plans cannot change their safe harbor contribution mid-year, but there are two exceptions:
 - Companies that are operating at an “economic loss”.
 - Annual safe harbor notice to employees included language stating the plan may be amended in the upcoming year to reduce or suspend safe harbor contributions.

Safe Harbor Contributions – Continued

- In both scenarios, the plan needs to notify employees about the change.
- The plan must give employees an opportunity to change their contribution election.
- If the safe harbor contribution is removed, the plan is subject to nondiscrimination testing and employees deemed “highly compensated” may face a limitation of their ability to contribute.
- If your plan is Top Heavy, the plan may no longer rely on the safe harbor Top Heavy exemption.

Non-Safe Harbor Mandatory Contributions

- Some plans have a non-elective or matching contribution that is defined in the plan document.
- This can be modified with an amendment to the plan.
- Considerations of making a change:
 - Employer contribution must still be made until the plan amendment is effective.
 - Will nondiscrimination testing be impacted if employees change their contribution amounts?

Pending Legislation

- Several legislative proposals would waive required contributions without the need for a 30-day advanced notice including:
 - 2019 Safe Harbor or other employer contributions that have not been made yet.
 - Required contributions for 2020 including Safe Harbor contributions.
- Some would also waive the nondiscrimination testing for plans suspending Safe Harbor contributions.

What should employees do if the company cuts its matching contribution?

- If they are already contributing, keep doing so.
- Increase contributions to make up for the lost employer match.
- Change in employer contribution does not change the need and importance of saving for retirement.
- An employee education program can be especially helpful.
 - Plan sponsors do not want to appear to give advice to employees.
 - Education resources can be a great benefit for employees and offer plan sponsors fiduciary protections.

Partial Plan Termination

- Employers who have significant staff reduction or layoffs may become subject to IRS partial plan termination rules.
- In general, a partial plan termination is a 20% or greater decrease in plan participants during a 12-month period, normally the plan year.
- Partial plan termination rules are complex and subject to a facts and circumstances determination.
- If this occurs, all participants terminated during the 12-month period must become 100% vested in all employer contributions otherwise subject to a vesting schedule.

Partial Plan Termination – Continued

- Safe Harbor contributions would not be impacted since they are always 100% vested.
- If your company has significant employee turnover, work with your financial advisor and plan administrator.
- These rules may be modified in the near future for clarity and relief to plan sponsors.

Delaying Employer Contribution & 5500 Filing

- Plan Year 2019: April 15, 2020 deadline extended to July 15, 2020.
- Extension beyond July 15, 2020 can be requested.
- Does not impact calendar year 2019 Form 5500 filings originally due July 31, 2020.
- Plan Year 2020: April 15, 2021 or up to October 15, 2021 if an extension is filed.

Delaying Employer Contribution & 5500 Filing

- Employer may not defer its contribution if the plan document states the contribution will be made per payroll period.
- If plan document states the employer will make its contribution on a payroll-by-payroll basis, the employer must do so unless it amends the plan.
- The CARES Act gives the DOL flexibility to postpone any deadline up to one year due to a public health emergency, such as the COVID-19 pandemic.
- More guidance from the Department of Labor is needed.

Defined Benefit Plan Provisions

- Relaxes minimum funding rules.
- Due date for all contributions originally due in 2020 extended until January 1, 2021.
- Employers required to pay interest up to the date of actual payment.
- Plans may use the adjusted funding target attainment percentage (AFTAP) from the last plan year ending before January 1, 2020, in applying IRS Code Section 436 benefit restrictions.

Additional ESOP Relief Options

The CARES Act expanded the SBA Disaster Loan Program to specifically include ESOP owned companies with 500 or fewer employees as eligible borrowers.

- Loans available up to \$2,000,000, directly through the Federal Government, not SBA lenders.
- Not forgivable like PPP program loans.
- No restrictions on usage.
- Repayment can be delayed up to 1 year.



Retirement Plan Contributions Under Paycheck Protection Programs (PPP)

For small business, the pillar of the CARES Act is the Paycheck Protection Program (PPP).

Two Step Process:

- Loan application
- Loan Forgiveness

Clarification from the Small Business Administration (SBA) still needed.

Under PPP, eligible companies could apply for a loan based on a formula using a multiple of average monthly payroll costs (Step 1). Determine by using:

- Salary, wages, commissions, or tips (capped at \$100,000 annually for each employee).
- Employee benefits including vacation, parental, family, medical, or sick leave allowances for separation or dismissal; group health care benefits including insurance premiums; retirement benefits.
- State and local taxes assessed on compensation.
- For a sole proprietor or independent contractors: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 annually for each employee.

Upon receipt of loan proceeds, employers have an 8-week period to spend the money and then request forgiveness (Step 2).

- Under the loan forgiveness provision, the CARES Act refers to “costs incurred, and payments made during the covered period”.
- The “payments made” implies a cash basis of accounting. “Costs incurred” leaves open the possibility that Congress intended an accrual basis of accounting.
- This has led to much debate and uncertainty.
- More guidance is needed from the SBA.

Employer matching contributions

- Consider paying matching contributions for at least the eight-week covered period instead of waiting until later in the year.
- Matching contributions incurred to the portion of 2020 before the covered period but paid during the covered period are not likely allowable payroll costs.
- Prepaying matching contributions for the portion of 2020 after the end of the covered period are not likely allowable payroll costs.

Profit-Sharing Contributions

- Consider making discretionary profit-sharing contributions during the eight-week covered period instead of waiting until the end of the year.
 - Pro-rated for the covered period.
- Retirement plan contributions incurred in 2019 but not yet paid are not likely allowable payroll costs.

Fragasso Financial Advisors

www.fragassoadvisors.com

610 Smithfield Street, Suite 400
Pittsburgh, PA 15222

Herbein + Company, Inc.

www.herbein.com

Reading, PA (HQ)
2763 Century Boulevard
Reading, PA 19610

Allentown, PA
7010 Snowdrift Road
Suite 400
Allentown, PA 18106

Spring House, PA
727 Norristown Road
8 Spring House Innovation Park
Suite 300
Lower Gwynedd, PA 19002

Pittsburgh, PA
Gulf Tower
707 Grant Street
Suite 2900
Pittsburgh, PA 15219

Greensburg, PA
530 Pellis Road
Suite 7000
Greensburg, PA 15601

Pottstown, PA
1303 N Charlotte St.
Pottstown, PA 19464

Allison Park, PA
2858 Oxford Boulevard
Allison Park, PA 15101

Marlton, NJ
751 Route 73 North
Suite 15
Marlton, NJ 08053



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Thank you for attending our webinar!

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