

CARES Act Operational Checklist

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law. The CARES Act, often referred to as the Stimulus Package, includes several provisions that affect retirement plans. The CARES Act makes it easier for plan participants to access retirement savings through tax-favored distributions, relaxes certain participant loan limitations, allows a temporary waiver of required minimum distributions for certain plans, delays payments of minimum required contributions for defined benefit plans and provides relief for defined benefit plan sponsors for benefit restriction purposes.

We expect that the Internal Revenue Service (IRS) and the Department of Labor (DOL) will provide guidance on the provisions of the CARES Act. Based on this guidance, First Midwest Bank will provide an interim amendment for its plans prior to the amendment deadline, which is the last day of the 2022 plan year. In the meantime, to assist plan sponsors in documenting operational implementation of the CARES Act changes, we have developed the attached CARES Act Checklist.

Completion of the Checklist will assist you, as the plan sponsor, when plans are amended for the CARES Act.

Explanation of CARES Act

The following provides a brief explanation of the CARES Act. We recommend reading the provisions of the CARES Act for a complete understanding of the law. At this time, we need guidance from the IRS and DOL on numerous issues presented by the CARES Act. Different interpretations of the requirements are possible. This explanation provides our current interpretation of the provisions and is intended to be accurate. Future guidance may clarify the proper interpretation of the law. You should consult a legal, tax or other professional advisor when making decisions relating to interpretation of CARES Act provisions.

The explanation will note those changes that may require plan amendments.

Tax-favored distributions from retirement plans (checklist item #1)

The CARES Act waives the 10% early withdrawal tax under Code §72(p) and allows retirement plans to make "coronavirus-related distributions" (CRDs) without violating in-service distribution restrictions. To qualify for this special treatment, the plan must make the CRD on or after January 1, 2020 and before December 31, 2020 and the aggregate distribution cannot exceed \$100,000 (including all plans maintained by members of the same related employer group. A CRD is a distribution to an individual (1) diagnosed with the COVID-19 virus, (2) whose spouse or dependent is diagnosed with the COVID-19 virus, or (3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease or other factors as determined by the Secretary of the Treasury. A plan administrator may rely on a participant's certification that he/she qualified for a CRD.

An individual receiving a CRD may spread the income tax ratably over a 3-year period or may elect to have the entire amount included in income in the year of distribution. In addition, the individual may repay the CRD (or a portion) back to the plan (or any plan the participant is eligible to roll money into) or to an IRA as a rollover at any time within three year period beginning on the date of the distribution.

These CARES Act provisions are very similar to disaster-related relief provisions enacted through previous laws (e.g., the Taxpayer Certainty and Disaster Tax Relief Act of 2019, the Bipartisan Budget Act of 2018, the Tax Cuts and Jobs Act of 2017, and the Disaster Tax Relief and Airport and Airway Extension Act of 2017).

- This provision is effective for CRDs made on or after January 1, 2020 and before December 31, 2020.
- This provision is applicable to all defined contribution plans (with restrictions for money purchase plans), defined benefit plans (with restrictions), 403(b) plans and governmental 457(b) plans.
- Plans will need to be amended to reflect this provision.

Relaxation of participant loan requirements (checklist item #2)

For the 180 day period beginning on the enactment of the CARES Act (i.e., until October 23, 2020), a participant who is eligible to receive a CRD may receive plan loans in an amount not to exceed the lesser of \$100,000 (rather than \$50,000) or 100% (rather than 50%) of the participant's vested account balance (accrued benefit). Also, a participant who is eligible to receive a CRD who has an outstanding participant loan or obtains a loan may defer any loan payments due between the date of enactment of the CARES Act and December 31, 2020.

These CARES Act provisions are very similar to disaster-related relief provisions for plan loans enacted through previous laws (e.g., the Taxpayer Certainty and Disaster Tax Relief Act of 2019, the Bipartisan Budget Act of 2018, the Tax Cuts and Jobs Act of 2017, and the Disaster Tax Relief and Airport and Airway Extension Act of 2017).

- This provision is effective on the date of enactment (March 27, 2020) and ends 180 days after enactment.
- This provision is applicable to all defined contribution plans, defined benefit plans, 403(b) plans and governmental 457(b) plans.
- Plans will need to be amended to reflect this provision.

Temporary waiver of required minimum distributions for certain plans (checklist item #3)

The required minimum distribution rules under Code §401(a)(9) are waived for the 2020 calendar year for certain plans. These plans include defined contribution plans, including §401(a) plans, §403(a) plans and §403(b) plans, governmental Code §457(b) plans and IRAs.

The temporary waiver may include distributions required to be made by April 1, 2020 for individuals that attained age 70 ½ in 2019. If an individual receives a distribution after December 31, 2019 that is eligible for waiver, the individual may rollover the distribution. Please note, however, that, if all or a portion of a distribution during 2020 is an eligible rollover distribution because it is no longer a required minimum distribution under this provision, the distribution shall not be treated as an eligible rollover distribution for purposes of the direct rollover requirement under Code §401(a)(31), the notice and written explanation of the direct rollover requirement under Code §402(f), as well as the mandatory 20-percent income tax withholding for eligible rollover distributions under Code §3405, to the extent the distribution would have been a required minimum distribution for 2020 absent this provision.

This temporary waiver of required minimum distributions is similar to the waiver granted under the Worker Retiree and Employer Recovery Act of 2008 (WRERA) after the 2008 recession. The waiver allows participants to not take required distributions at a time when their account balances may be significantly reduced due to poor economic conditions.

- This provision applies to required minimum distribution otherwise required in the 2020 calendar year.
- This provision is applicable to all defined contribution, 403(b) and governmental 457(b) plans. The provision is not applicable to defined benefit plans.
- Plans will need to be amended to reflect this provision.

CARES Act Operational Checklist

Plan name: _____

1. [Optional] Tax-favored distributions from retirement plans.

This provision is effective for coronavirus-related distributions (CRDs) made on or after January 1, 2020 and before December 31, 2020.

Plan sponsors may operationally decide to apply this provision and amend the plan to conform to operation. Please note restrictions on money purchase plans

Plan options:

CRDs are available from the following sources:

- Pre-tax salary deferral accounts
- Roth deferral accounts
- Matching contribution accounts
- Employer contribution account
- Safe harbor contribution accounts
- Rollover accounts
- After-tax employee contribution accounts
- Money purchase accounts
- Specify: _____

CRD limit:

- \$100,000
- Specify [*Must be less than \$100,000*]: _____

2. [Optional] Relaxation of participant loan requirements.

This provision is effective on the date of enactment (March 27, 2020) and ends 180 days after enactment.

Plan sponsors may operationally decide to apply this provision and amend the plan to conform to operation.

Plan options:

The loan policy is updated for participants who are eligible to receive a CRD as follows:

- Add a participant loan provision to plan (applicable to plans that currently do not allow participant loans)
- Number of outstanding loans at any time is increased to _____
- Participants eligible to receive a CRD may defer any loan payments due between March 27, 2020 and December 31, 2020.
- The loan limit for a participant who is eligible to receive a CRD is increased to the lesser of \$100,000 or 100% of the participant's vested account balance.
- Specify: _____

3. [Optional] Temporary waiver of required minimum distributions for certain plans.

This provision applies to required minimum distribution otherwise required in the 2020 calendar year.

Plan sponsors may operationally decide to apply this provision and amend the plan to conform to operation.

Plan options:

A Participant who is eligible to receive a required minimum distribution for the 2020 calendar year may elect whether or not to receive the 2020 required minimum distribution (or any portion of such distribution).

- If a Participant does not make an election regarding his/her 2020 required minimum distribution, such distribution will be made for the 2020 calendar year.
- If a Participant does not make an election regarding his/her 2020 required minimum distribution, such distribution will **not** be made for the 2020 calendar year.
- Specify: _____

Plan Sponsor Signature: _____

Date: _____