

Tips for Managing Cash Flow & Helping Participants During COVID-19



March 24, 2020 (updated as of March 30, 2020)

As our country continues working through the COVID-19 pandemic, we expect you may have a number of questions about how the situation with COVID-19 may impact your retirement plans. This brief is a summary of what we know to date, including options for helping you manage cash flow related to your plan contributions and what options you have to provide short-term relief to participants. **The CARES Act was signed into law on March 27, 2020.**

If you have any questions, or if you would like more information, please contact Nicole Pond, npond@tpgrp.com or Kent Smothers, ksmothers@tpgrp.com.

<p>Has IRS or DOL issued new guidance impacting retirement plans?</p>	<p>Not yet; however, both agencies could. Similar to IRS recently extending the time for individuals to file their tax returns and paying 2019 taxes from April 15 to July 15, IRS and DOL can issue new guidance to provide relief on issues impacting retirement plans.</p> <p>At this point, neither IRS nor DOL has taken action to provide guidance on relief, although both are said to be considering doing so.</p> <p>On March 27, 2020, the IRS issued guidance extending the deadlines to adopt 403(b) plan documents and pre-approved defined benefit plan documents.</p>
<p>Has Congress passed new legislation impacting retirement plans?</p>	<p>Again, not yet. A bill in the Senate, the CARES Act, includes provisions to raise the maximum amount a participant can take from a plan loan, and provisions to remove the additional 10% excise tax on hardship distributions that meet conditions related to COVID-19. The CARES Act was signed into law on March 27, 2020.</p> <p>On March 23, it was reported in BenefitsPro that trade groups are asking Congress to implement additional relief measures, including:</p> <ul style="list-style-type: none"> • Temporary waiver of Required Minimum Distribution (RMD) rules; • Extending filing, notification and payment deadlines beyond that already announced by IRS; • Relief for defined benefit plans; • Relief from single-employer PBGC premiums. <p>Please note, as of this writing, none of the changes on this page have been implemented.</p>
<p>Are plan sponsors liable for investment losses associated with the COVID-19 virus?</p>	<p>It depends. Plan fiduciaries are required under ERISA 404 to be prudent in the selection and monitoring of investments. Merely incurring losses as a result of COVID-19 does not necessarily create liability; however, not continuing to monitor investments or limiting participants' ability to change investments may incur liability.</p> <p>That said, plans that allow participant direction but limit the frequency of changes may need to consider waiving the frequency limitations so that participants are not limited from moving assets in their account.</p> <p>Additionally, plans that are considering fund line-up changes should consider whether the current market is appropriate to continue a black-out period or start a new black-out period which may constitute a fiduciary breach.</p> <p>Particular attention should be given to investments in stable value funds or group annuity contracts. As to the former, the status of the funds should be monitored as well as any wrap insurance protection in light of decreasing interest rates.</p> <p>As to the latter, be cognizant of any restrictions on withdrawals and additional fees that may be imposed in the event of a large volume of withdrawals.</p>



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	<p>Sponsors should also inquire whether their recordkeeper has adapted to the issues created by COVID-19, such as requiring employees to work remotely, to assure that plan services will not be affected.</p>
<p>What can plan sponsors do now to free up cash?</p> <p>Update: the CARES Act contains relief for single-employer defined benefit plans.</p>	<p>One of the biggest issues impacting plan sponsors is meeting plan contribution requirements, as businesses are impacted by the response to the pandemic.</p> <p>In the current business climate, engaging service providers in plan design conversations could be timely and valuable. Among the amendments that plan sponsors could consider implementing include:</p> <ul style="list-style-type: none"> • Reducing or eliminating matching contributions and/or profit-sharing contributions,¹ which could help the employer reduce plan funding requirements; or • Freezing defined benefit (including cash balance) or money purchase plans to limit required contributions.² <p>Either of these provisions could potentially help plan sponsors manage cash flow differently, which may help them meet other business priorities during this difficult economic climate.</p> <p>Plan sponsors who are interested in reducing employer contributions may consider contacting service providers to:</p> <ul style="list-style-type: none"> • Determine what is required to reduce employer matching and/or profit-sharing contributions in 401(k) plans; • Discuss options for reducing funding requirements in defined benefit and money purchase plans. <p>Changes to contributions in some defined contribution and defined benefit plans require an amendment to the plan.³ Defined contribution plans that provide for discretionary employer contributions may require plan sponsor action and notification to employees. Some changes may also accelerate vesting provisions which may have an impact on costs.</p>
<p>How can plan sponsors help participants?</p>	<p>To help participants who may be facing financial difficulty, sponsors could amend their plans to offer loans and/or hardship distributions, if the plan does not currently permit them. Plan sponsors can contact their consultant or service providers to determine how to amend the plan properly. Update: the CARES Act contains provisions for Coronavirus Related Distributions and plan loans.</p> <p>Plan loans and hardship withdrawals come with unique compliance requirements. Any changes to requirements due to COVID-19 legislation or regulation will need to be understood, implemented properly and monitored.</p> <p>Plan sponsors may wish to take the following actions:</p> <ul style="list-style-type: none"> • Review their procedures for approving loans and hardship distributions to see if there are ways to streamline without sacrificing compliance; • Make sure there is clear understanding between the sponsor, the TPA, and the recordkeeper regarding roles and responsibilities of each for these transactions. Document those procedures in writing to streamline operations

¹ These changes could impact safe-harbor plan design. Please contact your consultant or service providers prior to amending the plan to understand the impact on plan design.

² Freezing these types of plans may require advanced notification to participants prior to the change being effective.

³ As noted in an earlier footnote, some changes may require advanced notice to participants prior to becoming effective.



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	<p>and in the event of questions later;</p> <ul style="list-style-type: none"> • Although it may be tempting to do so to help participants, sponsors should not approve loans or hardship withdrawals that do not conform to the plan terms and to the documented procedures outlined among the parties; • For plan loans, sponsors should understand their role, if any, in making sure plan loans are repaid timely.⁴ <p>Failure to administer hardship withdrawals and plan loans can create adverse tax consequences for the plan sponsor, plan administrator and/or participants. Having a clear understanding of the procedures now not only promote compliance today but will also better position sponsors to comply with any new guidance that may come from IRS, DOL and/or legislation from Congress.</p>
<p>Have participants' rights to distributions changed?</p>	<p>No. There have been no changes to the current rules requiring separation from service, death, disability or certain in-service distributions in order to receive a distribution. However, plans could be amended to allow distribution of rollover accounts without such requirement. The CARES Act created a new type of distribution, the Coronavirus Related Distribution.</p> <p>A key issue with the potential for businesses being impact is whether individuals are being furloughed, laid off, terminated or any other employment action which must be evaluated on the ability to make plan distributions and the possible impact on the vesting of participant accounts.</p>
<p>Next steps?</p>	<p>Given how the fluid the situation with the pandemic has been, it is difficult to be certain. We are expecting IRS and/or DOL to issue guidance relating to retirement plans, and it is possible Congress may act as well. We will continue to monitor developments and update you as we know more.</p> <p>The CARES Act was signed into law on March 27, 2020.</p> <p>We are also continuing to update our COVID-19 Client Resource Hub, please check back regularly.</p> <p>In the meantime, please contact Nicole Pond, npond@tpgrp.com or Kent Smothers, ksmothers@tpgrp.com with any questions.</p>

⁴ As of this writing, Congress is considering legislation regarding distributions from qualified plans.

