EQUITABLE

The Coronavirus Aid, Relief and Economic Security Act (CARES Act)

Relief in a time of great need

In these unprecedented times, we at Equitable share your concerns about the financial impact of the current economic environment resulting from the COVID-19 pandemic.

We know many business owners are handling urgent business issues as they struggle to continue daily operations.

Many have been forced to lay off, temporarily furlough or reduce work schedules of their employees, creating an immediate need for financial assistance so impacted individuals can meet current living expenses.

We believe it is important you are aware of the potential sources of economic relief as you make critical decisions that may impact your retirement future, as well as your employees.

While dipping into retirement accounts may seem to be the path of least resistance to "make ends meet," there are other resources available that can ease the financial burdens of today so current retirement savings you and your employees have worked so diligently to accumulate can be preserved for their intended purpose — a dignified retirement. We certainly don't have all the answers, but we are here to provide you with timely and relevant information.

Relief for businesses and individuals

On Friday, March 27, in response to the current COVID-19 pandemic, the President signed the **Coronavirus Aid, Relief and Economic Security Act (CARES Act or the Act)** into law. It is the third such bill and includes approximately $2 trillion in emergency relief funds to address the economic effects of the COVID-19 pandemic. It has also been reported additional measures are under consideration by Congress. Below are some highlights of the CARES Act. Please refer to Parts 1-4 for additional details.

Expanded unemployment compensation benefits

One of the primary goals under the CARES Act is to provide support to U.S. workers who are negatively impacted by the current efforts to minimize the spread of the COVID-19. Reduced hours, layoffs and furloughs due to mandated business closures have led to loss or reduction of wages for many. In order to provide financial assistance and protect workers from having to access funds designated for retirement or other needs, the CARES Act expands the unemployment compensation available to eligible workers at the state and federal levels. Specific details may be obtained through the applicable state Department of Labor. Please refer to the summary provided below.

Small business assistance

The CARES Act provides $349 billion in loans, guarantees and investments through the Treasury Department. For example, the Paycheck Protection Program makes loans available to businesses with fewer than 500 employees and those in certain industries with gross receipts that are less than a certain threshold. Loan eligibility is also expanded to include 501(c)(3) organizations, sole proprietors and independent contractors. Full details, including local assistance, are available at **www.SBA.gov**.

Individual tax rebates

The CARES Act includes provisions for individual tax rebates of $1,200 per individual, $2,400 for joint filers plus $500 per qualifying dependent child. The rebate amounts are subject to phase-out based on annual income ($75,000 for individuals, $112,500 for heads of household and $150,000 for joint filers). For details, check **www.IRS.gov**.

Retirement plan access

The Act also temporarily suspends certain distribution and loan restrictions and eases tax consequences, allowing greater access to retirement plan withdrawals for a specified period for impacted individuals. ***As with past disaster relief, the provisions outlined below are optional for plan sponsors and will eventually require plan amendments***. Please refer to the summary provided below.

IRS and DOL guidance requested

In addition to the CARES Act relief, retirement industry advocacy organizations, as well as the service provider community, have requested regulatory compliance relief and guidance from the Internal Revenue Service (IRS) and U.S. Department of Labor (DOL).

What can you do today?

Talk with your trusted financial professional to:

- Review current financial circumstances.
- Learn about available state and federal resources designed to help business owners and employees.
- Review options for temporary modification of retirement plan employer contribution levels, if necessary.
- Review current retirement plan withdrawal provisions and assess potential financial needs of employee/participants based on their employment status.
- Review options to temporarily expand the availability of plan withdrawals and/or loans in this time of need.

Please refer to the following additional details of the CARES Act and other requested relief. If you have questions, contact your financial professional.

Summary of unemployment compensation provisions[1]

Supplemental federal pandemic unemployment compensation (FPUC)	• $600 per week for any worker eligible for state or federal unemployment compensation (UC) benefits. • In addition to regular state or federal UC benefits. • Combined with state UC, intended to replace 100% of wages for average U.S. worker. • Will not impact eligibility for Medicaid or Children's Health Insurance Program. • State UC programs will be fully reimbursed for costs (including administration).	Through July 31, 2020
Emergency unemployment compensation	• Available in all states for workers who exhaust regular UC benefits. • To address needs beyond what is provided for in state and federal law.	13 additional weeks
Pandemic unemployment assistance	• Permits states to expand UC eligibility. • Unemployment must be connected to COVID-19 as determined by state and U.S. DOL. • Covers self-employed, gig workers and individuals who were unable to start a new job due to the pandemic.	Per applicable state guidelines
Expanded work-sharing programs	• Employers who agree with state UC office to prevent layoffs by reducing employee hours. • Workers with reduced hours are eligible for partial state UC benefits. • State must have established and approved program. • Federal assistance will be provided for program promotion, enrollment of employers, and implementation or improved administration.	Per state UC program guidelines
UC support for nonprofit organizations, and state, tribal and local governments	• Most nonprofit organizations, state, tribal and local governments do not pay "per-worker" unemployment taxes. • Current UC arrangements for nonprofits, state, tribal and local governments require 100% reimbursement to states. • During period of a national emergency, the federal government will pay 50% of required reimbursement to states. • Workers are also eligible for FPUC (see above).	Per current UC program guidelines

1 **Source:** https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/UC%20FAQ%20CARES%20Act.pdf.

Summary of CARES Act small business assistance programs

Paycheck protection program loans	Provide cash-flow assistance through federally guaranteed loans to employers who maintain their payroll during this emergency. If employers maintain their payroll, the loans will be forgiven.
Economic injury disaster loans and emergency injury grants	An emergency advance of up to $10,000 to small businesses and private nonprofits harmed by COVID-19 within 3 days of applying for an SBA economic injury disaster loan. Grants and loans may be used to keep employees on payroll, pay for sick leave, meet increased production costs due to supply chain disruptions or pay business obligations, including debts, rent and mortgage payments.
Small business debt relief program	Provides immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504 and microloans. Under this program, the Small Business Administration will cover all loan payments on previously secured SBA loans, including principal, interest and fees for 6 months.
Employee retention credit for employers subject to closure or experiencing economic hardship	A refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis.
Delay of payment of employer payroll taxes	Allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments — one at the end of 2021, the other at the end of 2022.

Summary of CARES Act retirement plan and account provisions

Eligibility requirements for relief

CARES Act relief is available to a qualifying individual, defined as an individual:

- Who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention.
- Whose spouse or dependent is diagnosed with such virus or disease.
- 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 may rely on a participant's self-certification of eligibility.

New Coronavirus-related distributions, or CRDs

The distribution must be made on or after January 1, 2020, and before December 31, 2020, to a qualifying individual. The maximum amount for an eligible individual from all plans and IRAs is $100,000. The distribution must come from an "eligible retirement plan," meaning a 401(a) plan, 401(k) plan, 403(a) plan, 403(b) plan, governmental 457(b) plan or IRA. A plan does not need to verify the participant had no other distributions (except for other plans in the same controlled group of companies, where applicable).

Penalty relief

For CRDs, the 10% early withdrawal penalty that otherwise applies would be waived. Unless the individual elects otherwise, the distribution will be included in gross income ratably over 3 years.

In-service distribution

A plan may allow this distribution notwithstanding the restrictions that otherwise apply to in-service distributions (e.g., restrictions on withdrawals of salary deferrals for 401(k), 403(b) and 457(b) plans). A plan is not required to currently offer in-service distributions. However, as with prior disaster provisions, it appears the offering of CRDs is optional for the plan.

Withholding, etc.

The mandatory 20% withholding would be waived, as well as the requirement to provide a 402(f) Special Tax Notice and offer a direct trustee-to-trustee transfer. CRDs are not treated as eligible rollover distributions.

Repayment

As with prior disaster relief provisions, the CARES Act allows the distribution to be repaid during the 3-year period beginning on the day after the date the distribution is made, back into the plan or IRA. Solely for purposes of this provision, the distribution repayment is treated like a rollover contribution.

Loan relief for eligible participants

For plans including loan provisions, the maximum loan amount may be increased from $50,000 or 50% of the vested account balance to $100,000 or 100% of the vested account balance. This increased limit is available for the 180-day period beginning on the date of enactment. The bill also provides that for any repayment on a loan due between enactment (March 27, 2020) and December 31, 2020, the due date for such payment is delayed for 1 year, automatically extending the 5-year maximum loan period.

It is not expected that many plans will take advantage of these loan provisions since distributions tend to be more frequently requested and the option to repay over 3 years is essentially a 3-year loan without interest.

Additional CARES Act retirement plan compliance relief

RMD waiver
Waiver of the 2020 required minimum distributions (RMD) for defined contribution plans (i.e., 401(a), 401(k), 403(b), 457(b)) and IRAs (but not defined benefit plans). This waiver also applies to a 2019 RMD that is due by April 1 (for individuals who attained 70½ or retired in 2019 and have not yet taken their 2019 RMD as of March 27).

Delay in DB plan funding and benefit restrictions
All single-employer funding obligations due during 2020 are not due until January 1, 2021, with interest for late payments. Additionally, for purposes of mandatory benefit restrictions based on a plan's funded status, a plan sponsor may elect to use the plan's funded status for 2019 in determining the applicability for 2020.

Plan amendments
If a plan sponsor chooses to implement the CRD, loan and/or RMD waiver provisions outlined above, plan documents must be amended by the end of the 2022 plan year (or a later date that Treasury may provide). Governmental plans have an additional 2 years to amend. Providers of IRS preapproved plans will provide the interim amendment.

DOL authority regarding deadlines
Under current law, the Department of Labor can delay compliance deadlines under the Employee Retirement Income Security Act of 1974 (ERISA) by up to 1 year in the case of a disaster declared by the president, or a terroristic or military action. The CARES Act expands DOL's authority to include a public health emergency declared by the Secretary of Health and Human Services. However, extensions under this provision are not automatic and DOL would need to formally act.

Student loan payments
The CARES Act expands the tuition reimbursement provisions of Internal Revenue Code Section 127 to include student loan payments made on behalf of employees. A total of $5,250 may be reimbursed without tax consequences for the employee.

Examples of relief and guidance requested from IRS and DOL

The following provisions are NOT part of the CARES Act, but are issues and requests raised directly with IRS and DOL. Some of the issues, as indicated below, have been addressed via the CARES Act, as well as IRS guidance. Additional guidance is expected during the coming weeks.

Clarification on the existence of a “federally declared disaster” under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which triggers a series of automatic delays in deadlines applicable to retirement and other benefit plans, as well as discretionary relief from the Secretary of the Treasury and parallel relief from the DOL.

Examples of some of these deadlines include, but are not limited to:

- Level amortization repayment requirements for existing plan loans (included in CARES Act).
- 60-day period for rollovers.
- RMD requirements (included in CARES Act).
- Distribution of excess elective deferrals by April 15.
- Permissible withdrawals from eligible automatic contribution arrangements within 90 days.
- Deadline for IRA contributions, related disclosures and filing deadlines (IRA contribution deadline extended to July 15).
- ADP/ACP test-corrective distributions.
- Form 5500 filing deadline.
- Deadline for self-correction under EPCRS.

Relief from other deadlines, such as:

- March 31, 2020, deadline to adopt 403(b) plan restatements.
- April 30, 2020, deadline to adopt preapproved defined benefit plan restatements.
- IRS-granted extension until June 30, 2020, for 403(b) plans and July 31, 2020 for pre-approved defined benefit plans on Friday, March 27.

General relief for hardship distributions

- Allow distributions under a plan’s existing hardship or unforeseeable emergency distribution provisions without the need for immediate documentation or verification.
- Provide a new safe harbor for distributions for those affected by COVID-19.
- Clarification of FEMA disaster declaration and relief as it relates to this pandemic.

Guidance on whether a temporary layoff or furlough is considered a severance from employment.

DOL relief/non-enforcement for temporary delays in forwarding contributions to the plan’s trust to the extent employers and service providers act reasonably, prudently and in the interest of employees to comply as soon as practicable under the circumstances.

Employer flexibility in the amount and timing of employer contributions, as well as the ability to suspend contributions due to cash flow problems.

For more information,
visit equitable.com.

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