EGPS
ECONOMIC GROUP
PENSION SERVICES, INC.

CARES ACT FOLLOW-UP Q AND A

Updated as of 5/12/2020

CONTENTS

QUALIFIED INDIVIDUAL FOR DISTRIBUTIONS AND LOANS

You indicated that almost anyone can be defined as an "affected participant", eligible for the expanded provisions. Exactly who will not be eligible? If someone is still employed, does not have the virus and their spouse or dependents do not have the virus, is that person an affected person?

That is correct – if someone is not affected by the virus and their income is not affected, nor do they have additional expenses due to child care, etc., they are not eligible to take a distribution or loan from their plan for this purpose.

If a participant is still working and no one was diagnosed with COVID-19 in the family, but their spouse was laid off or terminated, can the participant take a CRD or expanded loan due to the family's loss of income?

It appears not, this is not included in the language defining a qualified individual. We believe this to be an oversight and will update this if additional guidance is provided regarding this situation.

DISTRIBUTIONS

Is it mandatory to adopt these new distribution options or each client needs to make a decision whether to offer them to their participants?

No, these are optional provisions the employer can choose to offer. Some recordkeepers are automatically adding these to their plans unless the employer "opts out" however so the employer may need to take action if they decide not to offer these distributions or loans.

Are the new distribution options stated in the CARES Act only allowed up until 12/31/2020?

Yes. That is the deadline to take advantage of this special distribution trigger, with special tax and repayment options.

Can you repay part of the COVID distribution, or does it have to be all of it?

You can repay part or all to any IRA or qualified plan. There is no guidance how to designate it as a "COVID Repayment". Any amount repaid is considered nontaxable.

If someone takes a hardship distribution, are they subject to 10% early withdrawal penalty whereas they would not be with a COVID distribution?

Yes, unless another exception to the 10% penalty applies. Only the CARES Act "CRDs" are exempted from the penalty. However, a qualified individual will qualify for the penalty exception regardless of the type of distribution taken. In other words, the employer does not have to make CRDs available to take a penalty free distribution.

The defined benefit document we use has in-service hard coded at age 62.

This is because the SECURE Act only recently made in-service available at 59 ½ in defined benefit and pension plans. An amendment for the SECURE Act will be forthcoming, in addition to an amendment for the CARES Act. Plans can take advantage of these options in advance of amending.

How will the 3-year taxation work for a CRD?

The guidance reflects the assumption that the tax will be paid over a 3-year period, evenly in each year, unless the taxpayer elects to pay it all in the year of the distribution. We believe this will be handled on the individual's tax return.

If the participant repays the distribution, will they need to go back and amend their tax return?

There is not guidance on how this will be handled, but presumably yes

If a participant is terminated now or in the future, do/will they qualify for any CARES Act relief with regards to distributions?

Yes, any participant can meet the requirements to take a CRD and therefore pay the taxes over 3 years, waive the withholding, etc. This is true even if the employer doesn't allow CRDs in the plan. A terminated participant can take a distribution due to severance and receive the tax benefits if they are a qualified individual.

How is it handled when a plan doesn't have immediate distributions and an employee is laid off or terminated? Does the Cares Act cover this or do we follow the plan document?
If the employer decides to implement CRDs I believe they could process immediate distributions for those who qualify. Otherwise, their normal plan rules will continue to apply.

Using a hardship due to disaster: How do we handle these distributions in relationship to hardships requested in future years. Are these counted in with normal hardships for amounts that are now available?
With the new hardship regulations, we no longer need to look at the amount of hardships taken in the past to see what is available. The participants full balance in their deferral account is now available.

LOANS

Can a plan use the new COVID loan rules without amending to add loan provisions?
No. If the plan does not permit loans, an amendment to add loans is required. However, an amendment to add loans can be adopted anytime before the end of the year. Administratively, we are recommending the amendment take place now to follow our standard process of updating the document and the platform for this purpose at once.

If a new loan is taken now, should the amortization schedule not start for a year?
No, I think it should still start now, knowing that any missed payment can be delayed for up to one year. If they choose to delay it for less time, the interest will accrue for a shorter period of time.

When must payments resume if delayed?
This is not yet clear. The Act is being interpreted in various ways in the industry. The earliest a payment will be due is January 2021. We are hoping for more guidance on this.

How is interest paid when loans are extended?
Interest is added to each loan payment.

Is the $100,000 limit impacted by existing loans?
Yes. The limit is an increase in the section 72 nontaxable loan dollar limit. The $100,000 would be offset by the highest outstanding loan balance within the prior 12 months.

If the plan currently limits to one loan at a time, does it need to be amended to provide for COVID loan to a person with one loan already outstanding?
Yes. If the plan permits only one loan at a time, the plan must be amended to permit more than one, even if limiting the 2nd loan only for this purpose.

If a participant is terminated now or in the future, do/will they qualify for any CARES Act relief with regards to loans?
Yes, for any outstanding loan, they will have one-year reprieve on making repayments.
They cannot take a new loan if they are no longer an employee unless the plan chooses to amend to permit non-employee participants this option.

If the plan does not currently permit loans, what interest rate will be applied? Are they interest free?
They are not interest free—a reasonable rate of interest must still be applied. Like prime rate plus one percent for example. See the next question…the interest will be selected or defaulted when a loan provision is added to the plan.

If the plan does not already have loans, do they need to amend to add loans before expanding the loan options under CARES?
Yes, this is what our RK platform partners are requiring. If this is the case, use PensionPro to initiate an amendment request to add loans first.

Participant in one of my plans was terminated last quarter. We gave her up until the end of the following calendar quarter to pay off her outstanding loan balance (as prescribed in the plan document). She is asking us now whether she can delay her loan repayment up to one year and ultimately pay it into her IRA account once she initiates a rollover.
Yes, under the current rules (outside of the CARES Act) a terminated participant can make up the outstanding loan balance after termination until their tax return due date for that year. Therefore, if the loan was offset in 2020, they have until 4/15/2021 to make up the amount by rolling it over. This is then reported on their taxes. Under the new rules in the CARES Act, payments due between March 27-December 31 can be delayed up to one year. Payments due before then cannot be delayed. I think we will need more guidance to really understand how this could be applied in this situation. I suspect the payments due before then still need to be made up by the end of the following quarter to avoid default, but payments that were due after that time can be delayed.

RMD WAIVER

What about participants who previously took an RMD with tax withholding? How do they rollover the RMD?
They do this the same was as any indirect rollover. They deposit the proceeds into an IRA or qualified plan as a rollover. If they want to avoid taxation entirely, they will need to come up with the withholding amount from personal funds.

Does the RMD waiver apply to IRAs?
Yes.

RMD for beneficiary using oldest beneficiary date of birth for distributions – is this eligible for waiver or rollover?
Yes. Beneficiary required distributions also waived for 2020 and any distributions can be rolled to an inherited IRA (or if a spouse, to their own IRA).

Which plans get an RMD waiver in 2020?
The RMD required for calendar year 2020 is waived under "defined contribution" plans an IRAs. A "defined contribution" plan is any plan that is not a defined benefit plan (traditional or cash balance).

What if the person's Required Beginning Date is in 2020, and they are supposed to take two distributions this year?

A person in this situation will have both distributions waived. If they took their 2019 required distribution during 2019, there is no option to put it back in or roll it over. They are just unlucky.

What do plan sponsors need to do now?

Effective immediately, they should not force participants to take RMDs. However, if an RMD is paid, that is okay.

What if someone took an RMD already in 2020?

That payment is now eligible for rollover. Under the normal rollover rules, they have 60days to deposit it into an IRA or qualified plan and avoid taxation. Alternatively, if they are a "qualified individual" under the CARES Act, they can "repay" it into an IRA or qualified plan within three years to avoid taxation.

Can someone who was required to take an RMD in 2020 prior to the CARES Act take an inservice distribution voluntarily?

Yes. Most plans permit someone of this age to take an in-service distribution if still employed. Also, the right to take an RMD is protected so we feel the plan would need to permit the amount of the RMD to be distributed if requested. The CARES Act indicates that the RMD amount will not be treated as an eligible rollover distribution for purposes of withholding so the 20 percent mandatory withholding requirement will not apply to the RMD amount even though they can roll this amount over.

Is an amendment required to waive the 2020 RMDs?

Yes. This will be part of a required amendment in 2022. However, plans should operationally comply with the law change immediately and stop forcing participants to take RMDs in 2020.

SAFE HARBOR MID-YEAR CHANGES AND RELIEF

If the employer wants to amend mid-year to remove safe harbor, what are the steps and considerations?

They are operating at an economic loss (Or the option for a mid-year suspension was included in their annual SH notice (for many it is). They provide the employees a new notice 30 days before the amendment is effective and give employees reasonable opportunity to change their deferral election. ADP/ACP testing is completed for the full plan yearolf top heavy, plan must meet top heavy minimum requirements. Safe harbor contributions are made through the amendment effective date. The earliest safe harbor can be reelected is for the next plan year.

If an employer notifies employees, they will cease the safe harbor in 2020, are we recommending the HCEs stop deferring for the time being to receive potential relief requested by ASPPA for ADP/ACP and top-heavy testing?

No, the ARA requested that required contributions are not required and that there is no impact on testing. However, without this relief, testing will apply so they may choose to stop contributing to avoid a situation of excess, if possible.

Can the employer take back 2020 safe harbor contributions already funded?

Absent guidance that would permit this—no. At this time there is no relief on contributions and taking money out of the plan could be seen as a reversion of benefits subject to a penalty of up to 50%. The ARA asked for relief for 2020 contributions, but this has not been granted.

POOLED PLAN/BALANCE FORWARD VALUATION

If participant terminated in 2019, they are entitled to account balance as of 12/31/19 valuation. Now client is asking if they can do an interim valuation now in 2020—only a couple people but client doesn't want to pay based on year end valuations. Is this discriminatory?

A participant is not "entitled" to a value as of a specific date—the valuation timing is not a protected benefit. Therefore, the employer should make this decision based on the best interest of all participants in the plan. Consider the amount of the distribution request relative to the balance in the plan as well as the cost to do the valuation.

Pooled plan interim valuation – can we do this without express language in the plan document to do an interim val? I think there would be kickback from terminated participants if the interim val is the lowest point in the market. Who knows?

As long as the document doesn't prohibit this, it should be an available option. I am not aware of document language that would prevent an interim val from occurring. A participant can choose to wait on a distribution too—a distribution will not be required at this time.

PARTIAL PLAN TERMINATIONS

What are we doing about partial plan terminations without guidance on this?

The ARA has asked for relief on this, but no guidance yet. At this time, proceed with assumption there is not a partial plan termination and at year end this can be revisited to see if guidance changes situation, and if employees are rehired, etc.

AMENDMENTS

Is there an amendment that a company needs to sign to implement the CARES Act into their plan?
There will be yes, but nothing is required until 2022. They can operationally comply with the new options and amend later to document their operations. Our document provider will be working on writing an amendment that we will make available to our clients in the future.

Plan Sponsor does not "opt out" of these provisions at recordkeeper level. Plan Sponsor never uses CARES distribution or loan. Will plan sponsor have to amend plan by virtue of not opting out, (or if they opted in and didn't utilize, depending on the recordkeeper set up)?
If the provisions were never applied or used, I would see no reason the amendment would be required. However, how this could be tracked and handled at the time of the amendment would be the issue. It is likely they would get pulled in for amendment if they didn't opt out because that is what the tracking would suggest is required.

Can the plan amend to add the in-service option even if not normally allowed under the plan?
Yes, they just need to amend by the end of their plan year in 2022 to add any of these provisions. No amendment is required before then to take advantage of the new options.

Will there be a fee for the plan document amendment?
We don't expect there to be any additional cost for this amendment because the CARES provisions can be combined with an amendment that is already required in 2022, for the SECURE Act that was passed in December 2019. There will be an amendment fee, but itwon't be any more or less based on what they decide to do now. Of course, future legislation and IRS guidance may change this, but this is what we expect based on what we know today.

If the plan does not already have loans, do they need to amend to add loans before expanding the loan options under CARES?
Yes, this is what our RK platform partners are requiring. If this is the case, use PensionPro to initiate an amendment request to add loans first.

If a plan terminates after March 27 but before the deadline to adopt the amendment, is an amendment required?
It is recommended that an employer sign a good-faith termination amendment to bring their document into compliance before terminating the plan. If none of the provisions provided for under CARES then terminating without this amendment should not create an issue. Ft. William is providing both CARES and SECURE amendment language in one amendment and we recommend all plans receive this to sign before termination, to be safe.

Is there a required participant notice to distribute now, before the amendment is due?
No, however, we have created a participant notice for the employer to use to communicate the new options with employees. Transactions will provide this notice to employers who inform us they are going to add CRDs, expanded loan options, or both.

RESTATEMENT DEADLINE FOR DB PLANS EXTENDED

Since the deadline for the DB restatements has been extended until 7/31/2020 does that mean that a terminated defined benefit plan has until 7/31/2020 to fully liquidate their plan without needing to have their plan restated for PPA? They were going to make distributions by 4/30/2020 to avoid the fee for the PPA Restatement.

Yes, if they fully liquidate by July 31 then no restatement will be required.

SMALL BUSINESS LOAN APPLICATIONS

Pension contributions are required to be included in applications for SBA loans under the CARES Act—what is supposed to be reported?

This question should really be directed to the bank, not their retirement plan provider. However, we are looking into this so that we can help our clients if needed. We hope to have a short-written piece created to provide additional information. The EGPS website has resources for COVID-19 including a one-page info sheet on the paycheck protection program loans. This can be provided to clients.

FURLOUGHED/LAID-OFF EMPLOYEES

Does a furloughed or laid off employee get credit for hours they would have worked towards vesting?

Generally, no, unless they are paid or entitled to payment for hours during this time. If they are credited hours based on non-working pay, the cap is 501 hours for this purpose.

5500s

Is the deadline automatically extended for 5500 filings?

Filings due between April 1 and July 15 were automatically extended to July 15. There has been no relief provided for filings due July 30, so at this point, a request for an extension would need to be prepared to extend to Oct 15. We do anticipate that relief will be coming however as the ARA has requested this.