

EDITO

The USA's Government Response to the regulation of Financial Participation Plans in the COVID-19 Pandemic: Is it helping Plan participants?

Effective March 27, 2020, the US "Coronavirus Aid, Relief, and Economic Security Act" ("CARES Act") provided immediate changes and relief to US financial participation plans known as "401(k)" plans. The relief was similar to natural disaster relief programs issued in the past. * The changes included:

- 1. Plan Distributions** For distributions from January 1, 2020 through December 30, 2020, a qualified plan participant can elect to treat a 401(k) plan distribution as a "Coronavirus-related distribution," which has the following benefits:
 - Not subject to the 10% early withdrawal tax for distributions prior to age 59-1/2
 - Not subject to mandatory 20% withholding (rather 10% voluntary withholding applies)
 - Not treated as an eligible rollover distribution (and therefore no 402(f) rollover notice)
 - Taxed pro rata over a three year period (2020-2022), unless the individual elects otherwise
 - Eligible for re-contribution back into a plan or IRA within three years from the date of distribution
 - Up to \$100,000 can be taken by the individual (with the plan sponsor obligation to ensure that the \$100,000 distribution cap is not exceeded for plans within the employer's controlled group). The limit is a personal limit for each individual that includes both plan and IRA distributions.
 - Unlike a hardship distribution, there is no requirement to show documentation of losses or expenses to justify the distribution.
- 2. Loan Limit Increase.** Increase in the loan limit under Code section 72(p) from \$50,000 to \$100,000 (or 100% of the participant's account balance, if less) for loans made from March 27, 2020 through September 22, 2020.
- 3. Loan Repayment Suspension.** Suspension of loan payment due March 27, 2020 through December 31, 2020 for up to one year.
- 4. RMD Relief.** Suspension of 2020 required minimum distributions.

*See- <https://www.groom.com/resources/cares-act-brings-immediate-changes-for-401k-plans/>

The US “Plan Sponsor Council of America” conducted a snapshot survey of plan sponsors in early June to determine what changes they have made regarding the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the COVID-19 pandemic. The survey received responses from 137 organizations that sponsor a defined contribution plan for employees. See https://www.pasca.org/research/cares_snapshot2

The PSCA survey was an early review, but showed that most US plan sponsors had implemented some provisions of the CARES Act, but that few participants were using them.

Here are some highlights of the survey:

1. While most organizations made a decision about implementing the optional provisions of the CARES Act, one in five (19.7 percent) were still taking a wait-and-see approach, and though they are not currently implementing them, they may in the future. Fewer than 10 percent have already determined they will not implement any CARES Act features.
2. Nearly two-thirds (63.5 percent) of respondent plans are allowing participants to take CRDs (Corona Virus Related Distribution). Usage is size-correlated, with nearly 85 percent of plans with 5,000 or more participants allowing them compared with fewer than 40 percent of plans with less than 200 participants.
3. Plan sponsors have been significantly more likely to adopt the CRD option than the expanded participant loan provisions. In fact, only about half as many plan sponsors have opted to embrace the expanded plan loan amounts (36.5 percent) than are allowing CRDs.
4. Nearly 90 percent of respondent organizations are making no changes to employer contributions. Five percent of respondents have suspended matching contributions, and fewer than 1 percent have suspended non-matching (profit-sharing) contributions. Larger organizations are slightly more likely to have suspended the match — 11.6 percent.
5. No responding organizations indicated that they are now considering terminating the plan as a result of the ongoing pandemic and economic conditions. In fact, few are considering any plan design changes at the time of the survey.

6. Communicating the impact of plan loans and distributions on retirement savings to participants is likely— a third are already doing so and nearly 20 percent are creating communications at the time of the survey.

CONCLUSION:

The full impact of the Covid-19 Pandemic on global businesses is still evolving. Small businesses and certain business segments, such as hospitality and travel are more severely impacted. There is little question that the economic impact of Covid-19 on global business will be severe and long lasting. The PSCA survey was an important first response, but likely too early in the epidemic to be of significant impact to global financial participation programs. Further, the PSCA survey was specifically targeted to the US CARES act for 401k plans.

IAFP, the International Association for Financial Participation, is monitoring the situation for other types for financial participation programs such as ESOPs and stock participation plans among its global members. IAFP will continue to advise its members and the public about developments and the impact of the COVID-19 pandemic on global financial participation.