CUNA MUTUAL RETIREMENT SOLUTIONS

CARES Act

What Plan Sponsors Should Know

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The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of CUNA Mutual Retirement Solutions.

Introduction

On Friday, March 27, 2020, Congress passed, and the President signed into law, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a massive relief bill for those suffering as a result of the Coronavirus pandemic. Besides the generalized financial relief afforded to individuals, as well as loans and other concessions for businesses, the bill includes the following provisions to help participants and plan sponsors of retirement plans.

Updated to reflect additional guidance published by the IRS on June 19 and June 23, 2020.

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What CARES Did to Help Participants

Coronavirus-Affected Individuals

CARES provides three types of financial relief to participants in retirement plans who have suffered from the pandemic, i.e., who are "Coronavirus-Affected Individuals" (CAIs). A CAI includes any individual:

- Who has been diagnosed with either the SARS-CoV-2 or COVID-19 virus as confirmed by a test approved by the Centers for Disease Control (including a test authorized under the Federal Food, Drug and Cosmetic Act);
- Whose spouse or dependent has been so diagnosed; or
- Who has suffered adverse financial consequences because one of the following has occurred as a result of the pandemic:
    - He or she was laid off, furloughed, quarantined, or had work hours reduced;
    - He or she cannot work due to the unavailability of childcare;
    - He or she owns a business that has had to close or reduce hours;
    - He or she has experienced a reduction in pay (or self-employment income), having a job offer rescinded or new employment start date delayed;
    - His or her spouse, or a member of the household* is quarantined, furloughed or laid off, or having work hours reduced, unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed; or
    - A business owned or operated by his or her spouse, or a member of household* has had to close or reduce hours.

CARES permits the Secretary of the Treasury to designate other situations that would cause a person to become a CAI, but no further additions are expected.

The Act permits the Plan Administrator to rely on the individual's certification that s/he qualifies for the distribution, unless the administrator has actual knowledge to the contrary.

**Member of household* defined as *someone who shares the individual's principal residence.*

1 The ability to take an in-service distribution at age 59½ from a pension plan (as opposed to a profit-sharing plan or 401(k) plan) was added to the law by the SECURE Act, passed at the end of 2019. Because of its recent enactment, very few plans have been amended at this time to so permit.

CARES Benefit #1: Coronavirus-Related Distributions

NORMAL DISTRIBUTION RULES

Customarily, retirement plans may allow participants to take distributions from the plan only in certain limited circumstances, including:

- Retirement;
- Disability;
- Death;
- Termination of employment; and
- Attainment of age 59½, even though still in service.[2]

If an employee participates in a profit-sharing plan or a 401(k) plan, the plan may permit distributions to occur in the event of a financial hardship. Rarely, profit-sharing plans (but not 401(k) plans) will permit the distribution of benefits to participants upon the attainment of a stated age lower than age 59½ or the passage of a stated number of years.

Distributions are taxed as ordinary income when paid. Furthermore, in most circumstances, there is an additional 10% tax applied if the participant is under age 59½ at the time of distribution. Some states have their own versions of the additional tax.

Both the ordinary income tax and the 10% additional tax may be avoided by the participant rolling over his or her distribution to another plan sponsored by an employer or to an individual retirement account (IRA). That rollover may be accomplished by having the trustee of the distributing plan transfer the rolled over funds directly to the trustee of the recipient plan (called a “direct rollover”). Alternatively, the participant may take a distribution from the plan and then roll over the distribution within 60 days of payment by depositing the distributed amounts into another employer plan or IRA.

CORONAVIRUS-RELATED DISTRIBUTIONS

The CARES Act included four changes for distributions during 2020 related to COVID that reduces the tax burden on participants.

1. Special Distribution Event for 401(k), 403(b), and Governmental 457(b) Plans

   CARES permits a 401(k) plan, 403(b) plan, or governmental 457(b) plan to be amended to permit a special Coronavirus-related distribution to CAIs. This provision permits CAIs who normally would not be able to take a distribution to do so. These distributions may be up to the lesser of the participant’s entire account or $100,000.

   This special event is not permitted for pension plans (such as defined benefit plans, cash balance plans, or money purchase pension plans). However, such plans may be amended to permit in-service distributions to participants at age 59½.

2. No 10% Pre-age 59½ Additional Tax on Coronavirus-Related Distributions

   Distributions to CAIs from a retirement plan (whether they are made under the special distribution rules discussed above or are normally permitted distributions under the plan) to those under age 59½ are not subject to the 10% premature distribution tax to the extent that they do not exceed $100,000. Ordinary income taxes still apply.

3. Taxes May Be Spread Ratably Over Three Years

   Although the Coronavirus-related distribution is still subject to ordinary income tax, the CAI may spread the taxes ratably over a three-year period, beginning with 2020.

2 Special loan suspension rules apply to those who enter military service while the loan is pending.

Example:

Mary, age 40, is temporarily furloughed by her company because of the COVID pandemic. Her current benefit in the plan is $50,000. She decides to take a Coronavirus-related distribution of $30,000.

If this were not a Coronavirus-related distribution, Mary would owe tax on the $30,000 in 2020, and would also owe an additional 10% tax ($3,000), because she is under age 59½.

Because of the new rules, however, Mary can claim $10,000 as income in 2020, $10,000 in income in 2021, and $10,000 as income in 2022. That way, she spreads her taxes over three years (and may be in a lower tax bracket than she would be if she had to claim the total amount in one year). Furthermore, she does not have to pay the $3,000 additional 10% tax.

4. Coronavirus-Related Distributions May Be Repaid Within Three Years and Treated as a Tax-Free Rollover

   The fourth and final special COVID provision permits CAIs who receive Coronavirus-related distributions to repay all or part of the distribution (without adjustment for earnings) within three years to the affected plan or any plan that can accept rollovers. Such repayment is treated as a tax-free rollover of the funds to the plan and is not adjusted for earnings. IRS guidance outlines that participants taking or repaying a Coronavirus-related distribution will file a new Form 8915-E with their personal tax returns. If the distribution is repaid to a plan after the tax year in which income was claimed, the participant will need to file an amended return to recoup the paid taxes.

   Example:

   Suppose Mary, from the prior Example, paid taxes on $10,000 in 2020 and $10,000 in 2021. In 2022, she deposits $30,000 into her IRA, representing a repayment of the $30,000 distributed to her in the Coronavirus-related distribution in 2020. Mary will be able to recoup the taxes paid on her 2020 and 2021 returns and will not need to claim the final one-third of the distribution as income in 2022. Form 8915-E will need to be filed for all three years.

5. Additional distribution-related rules.

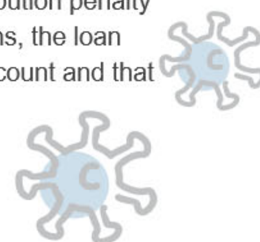
   The Coronavirus-related distributions are not "eligible rollover distributions," which means that they are not subject to the 20% mandatory withholding of such distributions. The withholding rules for such distributions provide for 10% withholding that is waivable by participants (while keeping in mind that taxes will ultimately be due within the three-year window, unless the distribution is repaid as permitted in the law). Remember to give participants a notice that they can waive the withholding, because failure to provide that notice after the SECURE Act is subject to a $100 penalty per participant, up to a maximum of $50,000. (Even though they are not "eligible rollover distributions," Coronavirus-related distributions may be rolled over within three years, as explained above.)

CARES Benefit #2: Loan Limits Increased and Repayments Delayed

NORMAL LOAN RULES

Normally, plans may permit participants to borrow from their benefits in the plan. The loans are limited to the lesser of 50% of the benefit or $50,000. Loans must be repaid on an amortized basis, at least quarterly, although most plans provide for repayment through payroll deduction on a payroll date basis. The maximum term of a loan is five years, unless the proceeds are used by the participant for the purchase of a primary residence.

Failure to repay loans pursuant to the above terms creates a taxable event – commonly called a “deemed distribution.” This causes the participant to be taxed on the remaining balance of the loan, plus a 10% premature distribution penalty if the participant is under age 59½. If the participant has not experienced an event that permits distributions, the loan stays “on the books” until such an event occurs. At that time, the loan is offset against the participant’s account and that part of the account is considered to be distributed.



If the plan or the plan's loan procedure permits, a participant who takes an unpaid leave of absence may suspend loan repayments during such leave (up to one year or, if shorter, the end of the five-year period beginning with the date the loan was originally taken).[2] At the end of the leave, the remaining balance on the loan, plus interest earned during the suspension period, is re-amortized over the remaining loan period or, if longer, the period ending five years after the loan was originally taken.

CORONAVIRUS-RELATED LOAN RELIEF

1. Larger Loans Available to CAIs.

   The CARES Act modified the above rules to permit CAIs to take out new loans between March 27, 2020, and September 23, 2020, equal to the lesser of 100% of the CAI's vested benefit or $100,000. These limits are reduced by existing loans.

   Example:

   Alex is a CAI. He has no outstanding loans from his employer's plan. His vested benefit in the plan is $125,000.

   Under normal circumstances, Alex could borrow 50% of his benefit, up to a maximum of $50,000. As 50% of his benefit is $62,500, he would be permitted to borrow the $50,000 maximum.

   Under the Coronavirus-related loan rules, however, Alex may borrow the lesser of his full account or $100,000. Therefore, Alex may take a Coronavirus-related loan for $100,000.

2. Suspension of Loan Payments by CAIs for One Year.

   Loan payments by CAIs due after March 27, 2020, and before December 31, 2020, whether on a new Coronavirus-related loan or on an existing loan, are delayed for one year. The five-year maximum loan repayment period is also extended for one year. Interest accrues on the loan during the delay period.

   The effect of this provision is to put existing loans on hold during the suspension period. IRS guidance permits someflexibility in the way that loans are repaid after the suspension period. However, the loan repayments must begin as scheduled after January 1, 2021. In general, the loan will be re-amortized at such time, with the repayment period running from that point to the original full repayment date plus one year. For example, if a loan was suspended in 2020 that was originally due to be fully repaid by March 31, 2022, the loan would be re-amortized so that the loan balance as of January 1, 2021 (including interest accrued during the suspension period) is paid ratably between that date and March 31, 2023 (one full year after the original repayment date).

3. Does a Plan Sponsor Have to Amend its Plan/Loan Procedure to Permit Coronavirus-Related Loans?

   A Plan Sponsor is not required to modify its plan to permit Coronavirus-related loans or to provide for the extended repayment period.

   However, regardless of whether the plan is amended, CARES provides that the failure of a CAI to repay the loan during the suspension period does not cause a deemed distribution. Therefore, the participant will not be taxed during the suspension period regardless of what the plan provides. In addition, the plan may not offset the loan against the participant's account during that period unless the participant has a distribution event under the plan – such as a termination of employment, retirement, attainment of age 59½ (if the plan so provides), or disability.

   Once a distributable event occurs, the plan may offset the loan and consider that portion of the participant's account to be distributed. That is a taxable event. It may also be a Coronavirus-related distribution, permitting the taxes on that distribution to be spread over three years for a CAI, and also permitting the offset amount to be repaid to the plan or an IRA within three years (thereby avoiding taxation).

4. Be on the Alert for Improper Issuance of Form 1099R to CAIs Who Have Borrowed from the Plan.

It is important that Plan Sponsors are vigilant to ensure that participant loans are not reported on Form 1099R as in default during this extended repayment period. It is likely that most recordkeeping systems are programmed to recognize when historical default events occur, and there may be a delay while this programming is modified.

CARES Benefit #3: Elimination of Required Minimum Distribution Requirements for 2020

NORMAL RMD RULES

Retirement plan and participants who are age 70½[3] or older and who either have terminated employment or who own more than 5% of the sponsoring company are required to take annual distributions from the plan. These annual distributions (called required minimum distributions or "RMDs") are paid in installments, based on the life expectancy of the participant and the presumed life expectancy of his or her spouse. Additionally, certain beneficiaries of deceased participants are required to take RMDs each year.

The first RMD for a living participant occurs for the year in which the participant turns age 70½. However, that distribution may be delayed until April 1 of the following year (called the employee's "required beginning date.") The distribution for the year that includes the required beginning date must be taken by December 31 of that year. Therefore, the participant who waits for his or her required beginning date before taking the first distribution will end up taking two payments in that year.

CARES WAIVES RMDS FOR 2020

1. How the CARES Rules Work

   CARES waives the requirement to take RMDs in 2020 for participants in defined contribution qualified plans (i.e., 401(k) plans, profit-sharing plans, and money purchase pension plans), 403(b) plans, IRAs, and governmental 457(b) plans. There is no waiver of the RMD requirement for defined benefit or cash balance plans.

   For a participant who attained age 70½ prior to 2019, this simply means that the individual does not need to take his or her RMD for 2020. RMDs must re-begin in 2021, with that year's payment due by December 31, 2021.

   A participant who turned age 70½ in 2019 who was waiting until April 1, 2020, to take the first RMD will not have to take that payment and is also excused from the 2020 distribution. That participant will begin taking RMDs in 2021, with the first such payment due by December 31, 2021.

   This waiver applies to all plan participants, not just those who are CAIs.

2. What If the Participant Already Took the 2020 RMD?

   If a participant already took his or her distribution in 2020, then he or she may roll over that amount back to the distributing plan, to another retirement plan, or to an IRA within 60 days of receipt or, if later, by August 31, 2020. If the participant is a CAI, however, s/he has three years to roll over the distribution, as it is a Coronavirus-related distribution. (See above.)

   If a participant who turned age 70½ in 2019 took the RMD in 2019, the distribution cannot be rolled over or otherwise replaced into the plan at this time.

3. Practical Impact of the RMD Delay

   Besides enabling participants to avoid taking income in 2020, the RMD delay should prevent affected participants from having to liquidate deflated investments during this period, permitting them time to recover value. Furthermore, the 2021 distributions will be based on the values at December 31, 2020, so that the RMDs at that time should be lower unless the market recovers.

3 For individuals born on or after July 1, 1949, RMDs are not required until they have attained age 72.

Practical Considerations for Participants

WHAT IS BETTER: A LOAN OR A DISTRIBUTION?

1. If the Participant Can Repay the Loan During the Extended Repayment Period, Taking a Loan Is a Better Option

   The advantage to taking a loan is that the amount will ultimately be repaid and available when the participant retires, as originally intended. Furthermore, the participant will pay no taxes on the borrowed amount if the loan is ultimately repaid. Last but not least, the repayment period for a Coronavirus-related loan is five years, rather than the three-year period for repaying a distribution.

   If the participant finds that he or she cannot afford to begin to repay the loan when the suspension period ends, s/he will recognize the loan balance as income in 2021, avoiding any taxation during 2020.

2. If Repayment Is Not Expected to Be Possible, a Distribution Is the Way to Go

   If the participant anticipates that s/he will not be able to repay the funds at all, taking them as a distribution instead of a loan permits the spreading of the taxes on the amount over a three-year period, possibly keeping the employee in a lower tax bracket. This would mean that the total taxes paid on the distribution are less than if the amount were income in one tax year. This treatment is not available after 2020, so will not be an option if a loan is defaulted in 2021. If a CAI who took a distribution finds that he or she is able to put together the funds to repay the distribution within the three-year period, it can be paid back to the plan and any taxes will be recouped.

3. Remember the Market Decrease

   Before liquidating any investments, a participant needs to consider the fact that the market has suffered a large decrease. This means that, if investments are sold now, the loss is “locked in,” and those funds will not participate in the value increase when the market recovers. The impact on the participant’s ultimate retirement savings is likely to be significant.

   If a participant has other assets that can be accessed for the financial challenges being faced, it may be a good idea to use those instead, leaving the retirement funds to recover and be there for when they are needed down the road.

What CARES Did to Help Plan Sponsors

Single Employer Funding Delay for Defined Benefit Plans

CARES extended the due date for any contributions required during 2020 to defined benefit plans and cash balance plans (including quarterly contributions) to January 1, 2021. The minimum amount is increased by the plan's rate of interest for the interim period.

This should enable employers that sponsor such plans to take more time to fund them, hopefully avoiding this obligation while the financial effects of the pandemic are at their worst.

Using Last Year's AFTAP

Actuaries are required each year to compare defined benefit plan assets to the benefits earned by plan participants. This ratio – called the Adjusted Funding Target Attainment Percentage (AFTAP) – is then considered for various plan purposes. If the plan is considered to be underfunded (generally, if the AFTAP, or the ratio of plan assets to participant benefits, is less than 80%), the earning of plan benefits may be frozen and certain plan distributions may become prohibited. Furthermore, required plan contributions increase.

It is expected that, due to the significant stock market decrease we have experienced, most plans' AFTAPs will similarly decrease, causing more plans to be considered in distress. This, in turn, will require additional contributions by Plan Sponsors. Accordingly, CARES permits actuaries to simply apply the 2019 AFTAP for 2020, thus delaying the funding impact of any change in this important indicator.

Recommended Plan Sponsor Considerations

Notwithstanding the CARES provisions that permit sponsors to delay recognition of funding issues, it is a good idea to have the actuary perform projections for the 2021 contribution and funding. If the impact of the stock market decrease is likely to increase funding requirements, the Plan Sponsor may want to take immediate action to "stop the bleeding." In particular, sponsors may want to consider freezing the plan to new benefits and participants until such time that the company knows that it will recover financially enough to properly fund the plan.

In most pension plans, participants must work 1,000 hours (roughly half the year for a full-time employee) during the plan year to increase their benefits for the year. This means that, once this has occurred for most participants, freezing the plan will have a much lower impact on the required contribution. Therefore, Plan Sponsors should seriously consider freezing their plans before the beginning of June this year to prevent these accruals for 2020.

It is possible that any action to freeze the plan may be reversed later in the year if the stock market and the Plan Sponsor are both in better shape.

Other Coronavirus-Related Issues

Even with the relief offered by the CARES Act and the financial measures for companies included in the legislation, quarantining is having a significant effect on the operations of many businesses. Therefore, it is valuable to discuss some of the additional retirement plan issues related to economic downturns.

REDUCING 401(K) AND PROFIT-SHARING CONTRIBUTION OBLIGATIONS OUTSTANDING FOR 2019 AND PREDICTED FOR 2020

The ability to reduce or avoid contribution obligations is of critical importance to companies suffering financial setbacks. This ability varies, depending on the kind of plan being sponsored. Defined benefit plan funding obligations, as well as the possibility of freezing plan accruals, were discussed in the last section. This section will deal with other plan types.

1. Contribution Requirements for Money Purchase Pension Plans and "Hard-Wired" Profit-Sharing and Matching Contributions

   When a plan, by its terms, requires certain contribution levels, those requirements may be altered only before the employees have earned the right to receive them. Therefore, once participants have fulfilled the requirements to get a contribution, the contribution – at least through such date – is required.

   This means that relief from 2019 plan year contributions, if any, must come from the government. So far, no such relief has been provided and there has been no indication that it is forthcoming.

   If the plan requires that an employee must work as minimum number of hours during the year or be employed on the last day of the year to get a contribution, the 2020 contribution can be cut back or eliminated before those requirements are fulfilled. As the maximum number of hours that can be required is 1,000 (roughly half the year for a full-time employee), employers that want to consider reducing the 2020 obligations should discuss this with their advisors as soon as possible.

2. Safe Harbor 401(k) Plan Suspension or Modification

   Safe harbor contributions normally can be suspended midyear if one of two conditions apply:

   - The plan provided a notice at least 30 days prior to the beginning of the plan year, advising participants that the safe harbor contribution might be suspending during the year (commonly referred to as the "maybe not notice"); or
   - The Plan Sponsor is operating at an economic loss for the plan year.

If the contribution is suspended, participants must be given a 30-day advance supplemental notice (so the contribution requirement continues until 30 days after the notice is given), and the plan must pass ADP nondiscrimination testing. In addition, safe harbor plans commonly are exempt from top-heavy minimum contributions (which are usually 3% of compensation for the plan year). A plan that suspends the safe harbor contribution is not able to take advantage of the top-heavy exemption for the year.

IRS guidance has provided somewhat more flexibility for employers who want to reduce or suspend the safe harbor contribution, particularly for those whose safe harbor requires a 3% of compensation employer contribution (called "nonelective contribution safe harbor"). Contributions may be suspended or reduced to such plans by an amendment adopted on or before August 31, 2020, without any required advance notice to participants. The contribution must be provided on compensation earned prior to the amendment, and the other requirements (i.e., passing nondiscrimination testing and providing top-heavy contributions) apply.

If the safe harbor plan provides instead for a matching contribution, the 30-day advanced notice requirement still applies, but amendments to reduce or suspend the matching contribution prospectively can be adopted on or before August 31, 2020, even if no prior notice was provided or if the sponsor is not operating at an economic loss.

Because of the need to pass the nondiscrimination testing and the possible top-heavy contribution, Plan Sponsors should request that the plan be evaluated before the safe harbor is suspended to determine whether the suspension would increase, rather than reduce, plan costs.

If the economic climate improves, can the employer reinstate the safe harbor during the same year in which it was suspended? There is no clear guidance on this, and it is likely to embody risk of IRS disapproval. However:

- If the safe harbor contribution prior to the suspension was a matching contribution, the safe harbor cannot be restarted later in the year.
- If the "economic loss" reason is what caused the suspension to begin with, it is likely unduly aggressive to restart the contributions later in the year. As the Treasury regulations discussing suspension provide that the company's economic loss must be for the plan year, it appears inappropriate to then take action that negates the full-year loss.
- If the plan had a 3% nonelective contribution safe harbor and the reason for the suspension was the "maybe not" notice, it may be possible to restart the safe harbor later in the year, so long as the safe harbor contribution is provided for the entire year. If the amendment to reinstate the nonelective contribution is adopted later than 30 days before the end of the year, the required safe harbor contribution is increased to 4% of compensation.

Whether to undertake the risk of restarting the safe harbor after it was suspended is the Plan Sponsor's decision.

OTHER DISTRIBUTIONS

If a participant does not qualify for the Coronavirus-related distribution options discussed above (or if the employer does not want to provide these distributions), then the participant must qualify for a hardship distribution or a termination distribution. This raises additional issues.

1. Distributions for Termination of Employment

   If a participant is not a CAI, if the employer does not amend the plan to provide for Coronavirus-related distributions, or if the plan is a pension plan, the participant may need to terminate employment to qualify for a distribution. In that situation, is there a difference between termination of employment and layoffs, furloughs, suspensions, or whatever other synonym for "you are not working here today" the employer uses?

   The answer is: the IRS has historically reviewed termination-related distributions on a facts-and-circumstances basis. Look for signs of actual employment termination, such as eligibility for unemployment, access to COBRA, removal from email or other systems, payment of amounts (such as accumulated sick or vacation pay) that are normally given to terminated participants, and no apparent guarantee of rehire. If a business says, "We are closing until April 15," that does not appear to give rise to a termination of employment. On the other hand, a business stating, "We are closing our doors and we don't know what will happen next," edges closer to bona fide terminations.

2. Hardship Distributions

   The regulations to section 401(k) were changed last year to permit safe harbor hardship distributions if the participant either lives or works in an area for which there is a declared FEMA emergency that permits individual assistance. The FEMA website shows where a disaster is declared and whether there is eligibility for individual assistance. At this time, not all states have been provided with the "individual assistance" eligibility. If the participant's state of residence or business has been given this individual assistance, then the plan can permit this type of hardship distribution (although an amendment is required to provide it).

   Most plans use the "deemed distribution" rules for hardships. Under these rules, a hardship is deemed to have occurred only if the reason falls within certain parameters: medical expenses, educational expenses, purchase of a primary residence, eviction from or foreclosure on one's home, funeral expenses, casualty expenses to one's home, and the FEMA-related disasters noted above.

   As an alternative, the plan may be amended to provide for a "facts-and-circumstances" determination of hardship. Under those rules, the Plan Administrator is required to evaluate the participant's situation – both as to events and to the participant's financial need – to determine whether a hardship event has occurred. This broader definition of "hardship" could enable participants who are not eligible for Coronavirus-related distributions but who are nonetheless suffering a financial impact during this time to obtain a distribution. Plans must be amended before the last day of the plan year to document the decision to modify the hardship criteria.

3. Partial Plan Termination Rules

   If the Plan Sponsor has terminated the employment of many of its personnel, there may be a partial termination of the plan. A partial plan termination generally is deemed by the IRS to occur when 20% of total plan participants are terminated for reasons other than routine annual turnover. For example, a large fast food operation may experience annual turnover of 30% historically. This would not necessarily trigger a partial plan termination. However, if more than 20% of total plan participants are terminated due to the current state of emergency caused by the Coronavirus, that presumably would trigger a partial plan termination.

   If there is a partial plan termination, affected plan participants – that is, those who terminate employment – must become 100% vested.

   What if the employer rehires the workers? The 20% test creates a presumption that a partial termination has taken place, but facts and circumstances can be used to show that a partial termination, in fact, has not occurred. The employer may want to wait until year end to determine whether a partial termination has occurred. Alternatively, if the employer wants to fully vest its employees, it may want to amend the plan to provide full vesting for participants terminating this year.

Pooled Plans That Are Not Daily-Valued

Some defined contribution plans do not permit participants to direct the investment of their accounts. In those situations, all plan investments are pooled, and the participants share ratably in the gain or loss of the plan. The plan is generally valued on an annual basis (although some plans are valued more often). Distributions during the year are based on the prior valuation – which may be nearly a year old.

These plans generally permit Plan Administrators to perform interim valuations when appropriate.

Because of the market decrease, accounts valued as of last December are likely to be inflated. If participants are paid out based on those inflated values, the accounts of the other participants will be required to absorb those losses. When there has been such a significant market shift, this is likely to be considered a fiduciary breach by the Plan Administrator (which could cause the Plan Sponsor to fund those losses to the affected participants' accounts).

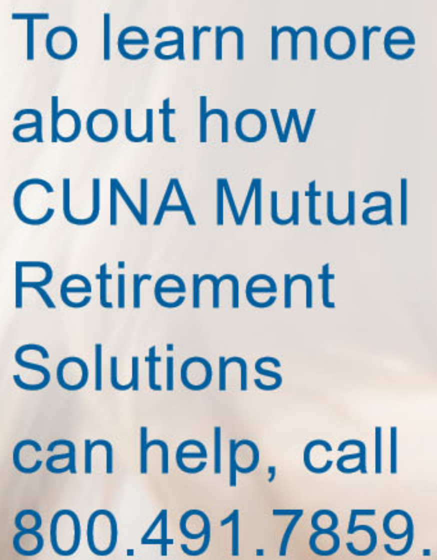
If it is likely that the pooled plan has suffered a significant market decrease, it is recommended that distributions not take place – or that the amount of the distribution be limited to a percentage of the total account – until an interim valuation can take place. Plan Sponsors should discuss this with their plan advisors or legal counsel.

CARES Amendments

Plans may need to be amended in relation to the changes discussed above for Coronavirus-related distributions and loans, the waiver of RMDs, or some of the suggested modifications.

Amendments related specifically to CARES – i.e., the addition of Coronavirus-related distribution provisions, the modification of loan rules to accommodate the Coronavirus-related loans, and the waiver of RMDs – do not need to be adopted until the end of the plan year beginning in 2022.

Other plan modifications discussed above do not have special effective dates under CARES; therefore, the normal amendment rules apply. Most amendments are required by the end of the year in which the amendment is effective (i.e.,12/31/2020 for most of the items discussed above), but some amendments are required sooner. You should discuss this with your retirement plan advisors.



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