

2020 CARES ACT

Small Business Employer FAQ – Key Provisions

During this stressful and uncertain time, LPL Financial is here to help you with understanding all the new resources and financial assistance available for small businesses, as well as certain non-profits and other employers. The following FAQ provides information about the major programs and initiatives available from the Small Business Administration (SBA) to address needs your organization may have, as well as some additional tax provisions that may be of interest. At the end of this document, you will also find a state-by-state list of Small Business Administration guides, with an individual link to a PDF of each guide.

The CARES Act also contains provisions that affect qualified retirement plan benefit programs and plan participants. We have included a set of frequently asked questions on these provisions as well as considerations for plan sponsors and human resources departments.

Should you have any immediate worries or concerns, please don't hesitate to reach out to your team at LPL Financial. We are here to support you and your employees in any way we can.

Paycheck Protection Program Loans

Q: What types of businesses and entities are eligible for a PPP loan?

- Businesses and entities must have been in operation on February 15, 2020.
- Small business concerns, as well as any business concern, a 501(c)(3) nonprofit organization, a 501(c)(19) veterans organization, or Tribal business concern described in section 31(b)(2)(C) that has fewer than 500 employees, or the applicable [size standard](#) in number of employees for the North American Industry Classification System (NAICS) industry as provided by SBA, if higher.

- Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals.
- Any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72, for which the affiliation rules are waived.
- Affiliation rules are also waived for any business concern operating as a franchise that is assigned a franchise identifier code by the Administration, and company that receives funding through a Small Business Investment Company.

Q: What are affiliation rules?

Affiliation rules become important when SBA is deciding whether a business's affiliations preclude them from being considered "small." Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Please see [this resource](#) for more on these rules and how they can impact your business's eligibility.

Q: What types of non-profits are eligible?

In general, 501(c)(3) and 501(c)(19) non-profits with 500 employees or fewer as most non-profit SBA size standards are based on revenue, not number of employees. You can check [here](#).

Q: How is the loan size determined?

Depending on your business's situation, the loan size will be calculated in different ways (see below). The maximum loan size is always \$10 million.

- If you were in business February 15, 2019 – June 30, 2019: Your max loan is equal to 250 percent of your average monthly payroll costs during that time period. If your business employs seasonal workers, you can opt to choose March 1, 2019 as your time period start date.
- If you were not in business between February 15, 2019 – June 30, 2019: Your max loan is equal to 250 percent of your average monthly payroll costs between January 1, 2020 and February 29, 2020.

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- If you took out an Economic Injury Disaster Loan (EIDL) between February 15, 2020 and June 30, 2020 and you want to refinance that loan into a PPP loan, you would add the outstanding loan amount to the payroll sum.

Q: What costs are eligible for payroll?

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees

Q: What costs are not eligible for payroll?

- Employee/owner compensation over \$100,000
- Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code
- Compensation of employees whose principal place of residence is outside of the U.S.
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the [Families First Coronavirus Response Act](#)

Q: What are allowable uses of loan proceeds?

- Payroll costs (as noted above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Employee salaries, commissions, or similar compensations (see exclusions above)
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period

Q: What are the loan term, interest rate, and fees?

For any amounts not forgiven, the maximum term is 10 years, the maximum interest rate is 4 percent, zero loan fees, zero prepayment fee (SBA will establish application fees caps for lenders that charge).

Q: How is the forgiveness amount calculated?

Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages (excluding compensation over \$100,000):

- Payroll costs plus any payment of interest on any covered mortgage obligation (not including any prepayment or payment of principal on a covered mortgage obligation) plus any payment on any covered rent obligation plus and any covered utility payment.

Q: How do I get forgiveness on my PPP loan?

You must apply through your lender for forgiveness on your loan. In this application, you must include:

- Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings.
- Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities.
- Certification from a representative of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use.

Q: What happens after the forgiveness period?

Any loan amounts not forgiven are carried forward as an ongoing loan with max terms of 10 years, at a maximum interest rate of 4%. Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the loan. The clock does not start again.

Q: Can I get more than one PPP loan?

No, an entity is limited to one PPP loan. Each loan will be registered under a Taxpayer Identification Number at SBA to prevent multiple loans to the same entity.

Q: Where should I go to get a PPP loan from?

All current SBA 7(a) lenders (see more about 7(a) below) are eligible lenders for PPP. The Department of Treasury will also be in charge of authorizing new lenders, including non-bank lenders, to help meet the needs of small business owners.

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Q: How does the PPP loan coordinate with SBA's existing loans?

Borrowers may apply for PPP loans and other SBA financial assistance, including [Economic Injury Disaster Loans](#) (EIDLs), 7(a) loans, 504 loans, and microloans, and also receive investment capital from Small Business Investment Corporations (SBICs). However, you cannot use your PPP loan for the same purpose as your other SBA loan(s). For example, if you use your PPP to cover payroll for the 8-week covered period, you cannot use a different SBA loan product for payroll for those same costs in that period, although you could use it for payroll not during that period or for different workers.

Q: How does the PPP loan work with the temporary Emergency Economic Injury Grants and the Small Business Debt Relief program?

Emergency Economic Injury Grant (more details below) and Economic Injury Disaster Loan (more information also below) recipients and those who receive loan payment relief through the Small Business Debt Relief Program may apply for and take out a PPP loan as long as there is no duplication in the uses of funds. Refer to those sections for more information.

Small Business Debt Relief Program

This program will provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans. Under it, SBA will cover all loan payments on these SBA loans, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out loans within six months of the date the CARES Act was enacted (March 27, 2020).

Q: Which SBA loans are eligible for debt relief under this program?

7(a) loans not made under the Paycheck Protection Program (PPP), 504 loans, and microloans. Disaster loans are not eligible (there is more information on this later in this document).

Q: How does debt relief under this program work with a PPP loan?

Borrowers may separately apply for and take out a PPP loan, but debt relief under this program will not apply to a PPP loan.

Q: How do I know if I'm eligible for a 7(a), 504, or microloan?

In general, businesses must meet [size standards](#), be based in the U.S., be able to repay, and have a sound business purpose. To check whether your business is considered small, you will need your business's 6-digit North American Industry Classification System (NAICS) code and 3-year average annual revenue. Each program has different requirements, see <https://www.sba.gov/funding-programs/loans>.

Q: What is a 7(a) loan and how do I apply?

7(a) loans are an affordable loan product of up to \$5 million for borrowers who lack credit elsewhere and need access to versatile financing, providing short-term or long-term working capital and to purchase an existing business, refinance current business debt, or purchase furniture, fixtures and supplies. In the program, banks share a portion of the risk of the loan with SBA. There are many different types of 7(a) loans, you can visit this [site](#) to find the one that's best for you. You apply for a 7(a) loan with a bank or a mission-based lender. SBA has a free referral service tool called [Lender Match](#) to help find a lender near you.

Q: What is a 504 loan and how do I apply?

The [504 Loan Program](#) provides loans of up to \$5.5 million to approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. It is a good option if you need to purchase real estate, buildings, and machinery. You apply through a Certified Development Company, which is a nonprofit corporation that promotes economic development. SBA has a free referral service tool called Lender Match to help find a lender near you.

Q: What is a microloan and how do I apply?

The [Microloan Program](#) provides loans up to \$50,000 to help small businesses and certain not-for-profit childcare centers to start up and expand. The average microloan is about \$13,000. These loans are delivered through mission-based lenders who are also able to provide business counseling. SBA has a free referral service tool called [Lender Match](#) to help find a microlender near you.

Q: I am unfamiliar with SBA loans. What resources are available to help me apply?

SBA resource partners are available to help guide you through the loan application process. You can find your nearest Small Business Development Center (SBDC) or Women's Business Center [here](#).

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Economic Injury Disaster Loans & Emergency Economic Injury Grants

These grants provide an emergency advance of \$1,000 per employee up to a maximum of \$10,000 to small businesses and private non-profits harmed by COVID-19. In general, the emergency advance should be available with three days of applying for an SBA Economic Injury Disaster Loan (EIDL). To access the advance, you first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.

Q: Are businesses and private non-profits in my state eligible for an EIDL related to COVID-19?

Yes, those suffering substantial economic injury in all 50 states, DC, and the territories may apply for an EIDL.

Q: What is an EIDL and what is it used for?

EIDLs are lower interest loans of up to \$2 million, with principal and interest deferment at the Administrator's discretion, that are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

Q: Who is eligible for an EIDL?

Those eligible are the following with 500 or fewer employees:

- Sole proprietorships, with or without employees
- Independent contractors
- Cooperatives and employee owned businesses
- Tribal small businesses

Small business concerns and small agricultural cooperatives that meet the applicable size standard for SBA are also eligible, as well as most private non-profits of any size. See below for more info on size standards.

Q: My private non-profit is not a 501(c)(3). Is it still eligible for an EIDL and a grant?

Yes, if you are a private non-profit with an effective ruling letter from the IRS, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or if you can provide satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law. However, a recipient that is principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious

beliefs, whether in a religious or secular setting, or primarily engaged in political or lobbying activities is not eligible to receive an EIDL. If you are uncertain whether you qualify, please consult with legal counsel to determine whether your organization meets program criteria.

Q: Who is eligible for an Emergency Economic Injury Grant?

Those eligible for an EIDL and who have been in operation since January 31, 2020, when the public health crisis was announced.

Q: How long are Emergency Economic Injury Grants available?

January 31, 2020 – December 31, 2020. The grants are backdated to January 31, 2020 to allow those who have already applied for EIDLs to be eligible to also receive a grant.

Q: If I get an EIDL and/or an Emergency Economic Injury Grant, can I get a PPP loan?

Whether you've already received an EIDL unrelated to COVID-19 or you receive a COVID-19 related EIDL and/or Emergency Grant between January 31, 2020 and June 30, 2020, you may also apply for a PPP loan. If you ultimately receive a PPP loan or refinance an EIDL into a PPP loan, any advance amount received under the Emergency Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP. However, you cannot use your EIDL for the same purpose as your PPP loan. For example, if you use your EIDL to cover payroll for certain workers in April, you cannot use PPP for payroll for those same workers in April, although you could use it for payroll in March or for different workers in April.

Q: How do I know if my business is a small business?

Please visit <https://www.sba.gov/size-standards/> to find out if your business meets SBA's small business size standards. You will need the 6-digit North American Industry Classification Code for your business and your business's 3-year average annual revenue.

Q: How do I apply for an economic injury disaster loan?

To apply for an EIDL online, please visit <https://disasterloan.sba.gov/ela/>. Your SBA District Office is an important resource when applying for SBA assistance.

Q: I am unfamiliar with the EIDL process, is there anyone who can help me apply?

Yes, SBA resource partners are available to help guide you through the EIDL application process. You can find the nearest Small Business Development Center (SBDC), Women's Business Center, or SCORE mentorship chapter at <https://www.sba.gov/local-assistance/find/>.

Small Business Tax Provisions

Q: Are there any major tax provisions in the CARES Act designed to help aid small businesses?

The following are three of the key tax provisions offered as part of the CARES Act. Please check with your accounting professional for any other tax benefits available during this crisis that may be applicable to your business.

Employee Retention Credit for Employers Subject to Closure or Experiencing Economic Hardship

This provision would provide a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).

Please note that the credit is not available to employers receiving assistance through the Paycheck Protection Program. The credit is provided through December 31, 2020.

Delay of Payment of Employer Payroll Taxes

This provision would allow 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. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

The deferral is provided to employers who are also receiving assistance through the Paycheck Protection Program. However, once an employer's loan is forgiven, they are no longer eligible to defer deposit and payment of the employer's share of social security tax due after that date. Please note that the amount of the deposit and payment of the employer's share of social security tax that was deferred through the date that the PPP loan is forgiven

continues to be deferred and will be due in the two equal installments at the end of 2021 and 2022.

Business Tax Relief

The CARES Act also provides assistance to businesses through the modification of rules related to net operating losses ("NOLs"), interest expense deductions, alternative minimum tax credits and trade or business losses of non-corporate taxpayers. Many of these modifications are designed to provide critical cash flow and liquidity to businesses during the COVID-19 emergency, including through amending prior tax returns to obtain tax refunds. What this means to you is that employers have several tools available to them to help with cash flow, claim tax refunds, or reduce upcoming tax payments.

Qualified Retirement Plan Programs

Your LPL financial professional is available should you want to talk through any of these retirement plan-related provisions and considerations, along with any implications they may have for your plan.

Q: Does the CARES Act affect hardship distributions?

Yes. For a qualified individual, the CARES Act waives the Code Section 72(t) additional 10% penalty tax on early (pre-age 59 ½) withdrawals up to \$100,000 from a retirement plan or IRA.

Q: What determines if an individual qualifies for the penalty exemption?

An individual qualifies for the exemption in the following circumstances:

- They are diagnosed with COVID-19
- Their spouse or dependent is diagnosed with COVID-19
- They are experiencing adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

While there are no specific details in the CARES Act, several industry sources state that given the extensive list of potential individuals who may qualify for relief under the Act, it seems that the Congressional intent was to make relief available as broadly as possible. The IRS will likely operate in kind, and take a liberal view of who has been impacted by the coronavirus enough to qualify for a coronavirus-related distribution or loan request. Plan and account administrators can rely on an individual's self-certification that they meet the requirements of a coronavirus-related hardship distribution at the time they make the request.

Q: Are hardship distributions still subject to income taxes?

Yes. However, a coronavirus-related distribution under the Act can be included proportionally in the qualified individual's taxable income over a three-year period, unless the individual elects to have it taxed in the year of distribution. In addition, the distribution will not be treated as an eligible rollover distribution, so the mandatory 20% withholding will not apply.

Q. Can the hardship distribution be paid back at some point to avoid income taxes?

Yes. The Act also allows a qualified individual who takes a coronavirus-related distribution to repay that amount tax-free back into the plan within three years of taking the distribution. Such repayment will be treated as a rollover contribution and not be subject to annual maximum contribution limits.

Q. Does the CARES Act affect retirement plan loans?

Yes. The CARES Act doubles the current retirement plan loan limits to the lesser of \$100,000 or 100% of a qualified individual's vested account balance in the plan. This increased loan amount is available for loans made during the 180-day period beginning on the date of enactment. In addition, the Act extends the due date of any qualified individual's loan repayment that would otherwise be due during 2020 (but on or after the date of enactment) to one year after the otherwise applicable due date.

Q. What determines if an individual qualifies for the increased plan loan limits?

The qualification requirements for an increased loan limit distribution are the same as those for a hardship distribution penalty exemption. Plan and account administrators can rely on an individual's self-certification that they meet the requirements of a coronavirus-related loan request at the time they make the request.

Q: How do the coronavirus-related distribution and loan provisions affect retirement plan amendments?

Retirement plans may choose (but are not required) to adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans. The plan amendment deadline for adopting these new rules would be no earlier than the last day of the first plan year beginning on or after Jan.1, 2022, or later as prescribed by the Treasury Secretary.

Many employers are likely to see increased interest from participants in taking loans or other in-service distributions from 401(k) plans, so it is important to review what options are currently permitted under the plan, and the

requirements that must be met to allow those distributions. Here is a general review of these plan features:

- In-Service Distributions. Some plans permit in-service distributions once participants reach age 59½.
- Hardship Distributions. Some plans permit hardship distributions to employees under limited statutory circumstances that constitute an "immediate and heavy financial need," including medical costs, payments required to prevent eviction or foreclosure, or costs attributable to qualifying federal disasters (the COVID-19 pandemic has been declared a qualifying FEMA disaster in about half of states as of March 30, 2020). Some plans also permit a "facts and circumstances" analysis to permit distributions for hardships other than the statutory list.
- Loans. Some participants may opt to take loans instead of distributions. Loans must be expressly permitted under the plan, and the employer will likely have a separate loan policy in place that would govern the terms of loans from the plan. Loans are limited to \$50,000 or 50% of the participant's vested account balance, whichever is less.

Plan loans or in-service distributions must be expressly permitted by the plan, and the plan will likely outline any requirements or limitations applicable. If the plan does not expressly provide for loans or distributions, the employer can generally amend the plan at any time to permit them. Employers may also be able to expand the availability of distributions or loans already available under their plans, but should seek legal counsel to ensure any expansion would be permitted under the law. For example, for furloughs, applicable tax laws permit suspension of plan loan repayment for up to one year, and the loan can be re-amortized over the original term once the employee returns to work.

Q: Does the CARES Act affect Required Minimum Distributions (RMDs) that need to be taken in 2020?

Yes. The CARES Act suspends RMDs during 2020. This applies to Traditional IRAs, SEP IRAs, and SIMPLE IRAs, as well as 401(k), 403(b) and Governmental 457(b) plans. Furthermore, the relief applies to both retirement account owners, themselves, as well as to beneficiaries taking stretch distributions.

The CARES Act not only eliminates RMDs for 2020, but any RMD that otherwise needed to be taken in 2020. More specifically, individuals who turned 70 ½ in 2019, but did not take their first RMD in 2019 (and thus, would have normally been required to take such a distribution by April 1st, 2020, as well as a second RMD for 2020 by the end of 2020) do not have to take either their 2019 RMD or their 2020 RMD.

Q: Does the CARES Act provide any relief for those retirement plan or IRA participants that have already taken their RMD for 2020?

In April, the IRS extended a number of deadlines for certain actions that are otherwise due to be performed on or after April 1, 2020 and before July 15, 2020, to July 15, 2020. This extension indirectly provides a way for individuals who already took an RMD to put it back into their IRA or plan and eliminate the tax bill. Here's how it works:

Normally, anyone who takes a distribution from their IRA or plan can roll those funds over within 60 days. This IRS extension to July 15, 2020 means that anyone who took an RMD between February 1, 2020 and May 15, 2020 can still put the money back into their IRA or plan. Unfortunately, if you took an RMD in January, you do not appear to qualify for any relief (based on what is known as of late April 2020).

Please note that this relief does not include relief from the once-per-year IRA rollover rule. Only one IRA-to-IRA or Roth IRA-to-Roth IRA rollover per 365 days (not a calendar year) is permitted. If anyone has done one of these rollovers within the 365 days preceding the date they received their RMD, then they are disqualified from taking advantage of this 60-day extension. This rule only applies to IRA-to-IRA rollovers, and not to company retirement plans. For example, rollovers from company plans to IRAs or vice-versa are not subject to the once-per-year rule. Neither are Roth conversions.

One final thing to note: Under the CARES Act, 2020 RMDs were also waived for beneficiaries. However, non-spouse beneficiaries don't qualify for this 60-day extension because, under the law, a non-spouse beneficiary cannot do a 60-day rollover.

There is always a chance that the IRS may address providing additional relief on all of these RMD issues and rules at a later date.

Q: Does the CARES Act allow for any extensions to 2020 retirement plan filing deadlines?

The CARES Act expands the Department of Labor's authority to postpone certain deadlines under ERISA. In general, the legislation expands the circumstances to go beyond a terroristic or military action to also include a public health emergency declared by the Secretary of Health and Human Services under the Public Health Service Act.

The DOL and Treasury Department may choose to provide relief from various filing requirements, such as an automatic extension of the Form 5500 series for retirement plans, an extension to the deadline for correcting a failed ADP or ACP

test and an extension of the period for distributing excess contributions and excess aggregate contributions under a plan, among others. As of March 27, 2020 the agencies have not yet granted specific extensions to any plan filing requirements.

Q: Does the CARES Act provide any relief to single-employer DB Plan funding?

Yes. The Act provides single-employer defined benefit plan funding relief by giving companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until Jan. 1, 2021. At that time, contributions due earlier would be due with interest. The provision also provides that a plan's status for benefit restrictions as of Dec. 31, 2019 will apply throughout 2020, such that a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020.

Q. Because of the financial hardship we are experiencing due to the COVID-19 virus, our company is considering reducing or suspending employer contributions to our plan. What we need to know if we want to proceed with this?

During this tough economic time, many employers are considering reducing or suspending employer matching, nondiscretionary, or profit sharing contributions to their 401(k) plans. For non-safe harbor plans, employers have a great deal of flexibility to reduce or discontinue matching or non-elective contributions. Generally, non-safe harbor plans that specify a certain matching or non-elective contribution formula can be amended at any time to reduce or suspend these employer contributions prospectively, although participants are still entitled to any contributions they have earned under the terms of the plan prior to the amendment. For plans that permit entirely discretionary employer contributions, a plan amendment may not be necessary, although a formal employer approval (i.e., a board or committee consent) is recommended to document the change.

On the other hand, safe harbor contributions can be suspended only if the employer is operating at an economic loss for the plan year, or if the annual safe harbor notice provided to participants before the start of the current plan year contained a disclosure that the employer might reduce or suspend the safe harbor contributions. To suspend safe harbor contributions, the employer must also take the following steps:

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- The employer must provide a notice to employees at least 30 days before the change is made, explaining that the safe harbor contributions are being reduced or suspended.
- The employer must amend the plan to provide for the reduction or suspension of these contributions prior to the effective date of the change. The employer is still obligated to pay any contributions earned under the terms of the plan prior to the effective date.
- Because the plan loses its safe harbor protections, the employer will be required to perform ADP, ACP, and top heavy testing for the plan for the entire plan year.

Q: Because of the financial hardship we are experiencing due to the COVID-19 virus, we are considering temporarily laying off employees or possibly implementing a furlough program. How would these actions affect our retirement plan benefit program?

Retirement plan sponsors having to furlough and lay off employees should definitely consider how such actions will impact plan benefits, and may want to consult with legal counsel to ensure all potential issues and costs are considered. A furlough is typically not considered a termination from service, so furloughed employees may continue to accrue vesting service or even additional benefits under the plan while on furlough or other approved but unpaid leave. Employers should review plan provisions regarding service when considering placing employees on furlough or unpaid leave.

On the flip side, plan sponsors making layoffs or reductions in force should note that an involuntary turnover of 20% or more plan participants creates a presumption that there has been a partial plan termination. If a partial plan termination has occurred, all impacted employees will become

fully vested in their entire account balance, including all employer contributions (and matching contributions), regardless of the plan’s vesting schedule.

Q: Does the CARES Act offer any flexibility with regard to depositing employee deferrals?

Although workforce changes and personal circumstances may result in reduced elective contributions to 401(k) plans, it is important to also note that the current crisis does not reduce plan sponsors’ fiduciary obligations with regard to depositing employee contributions. Employers should make sure, whether implementing furloughs or layoffs, adapting to having employees work remotely, or operating under tightened budgets, that any employee contributions withheld are timely remitted to the plan. Those contributions are considered plan assets as soon as they can reasonably be segregated from the employer’s general assets, and failure to timely separate contributions from the employer’s general assets could result in excise taxes, penalties, and other additional costs to the employer.

Additionally, to the extent any leave of absence is paid or partially paid or in the event of layoffs, employers should be mindful to properly apply the plan’s compensation definition for purposes of employee deferrals. For example, paid time off is generally considered plan compensation, while severance pay is not.

Q: Is there anything we need to consider doing with regard to our plan’s investment line-up?

Plan sponsors must continue to review and monitor the investment options offered under their plan during this time. Plan investment fiduciaries and committees should continue to have meetings (by teleconference or video conference, as necessary) with their investment advisors to discuss the investments offered to plan participants.

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Small Business Administration State/Regional Resource Guides

Alabama: https://www.sba.gov/sites/default/files/files/resourceguide_2822.pdf

Alaska: https://www.sba.gov/sites/default/files/files/resourceguide_2821.pdf

Arizona: https://www.sba.gov/sites/default/files/files/resourceguide_3097.pdf

Arkansas: https://www.sba.gov/sites/default/files/files/resourceguide_3096.pdf

California:

Fresno: https://www.sba.gov/sites/default/files/files/resourceguide_3098.pdf

Los Angeles: https://www.sba.gov/sites/default/files/files/resourceguide_3099.pdf

OC/IE: https://www.sba.gov/sites/default/files/files/resourceguide_3103.pdf

Sacramento: https://www.sba.gov/sites/default/files/files/resourceguide_3100.pdf

San Diego: https://www.sba.gov/sites/default/files/files/resourceguide_3101.pdf

San Francisco: https://www.sba.gov/sites/default/files/files/resourceguide_3102.pdf

Colorado: https://www.sba.gov/sites/default/files/files/resourceguide_3104.pdf

Connecticut: https://www.sba.gov/sites/default/files/files/resourceguide_3105.pdf

DC Metro area: https://www.sba.gov/sites/default/files/files/resourceguide_3106.pdf

Delaware: https://www.sba.gov/sites/default/files/files/resourceguide_3107.pdf

Florida:

North FL: https://www.sba.gov/sites/default/files/files/resourceguide_3108.pdf

Miami: https://www.sba.gov/sites/default/files/files/resourceguide_3109.pdf

Georgia: https://www.sba.gov/sites/default/files/files/resourceguide_3110.pdf

Hawaii: https://www.sba.gov/sites/default/files/files/resourceguide_3112.pdf

Idaho: https://www.sba.gov/sites/default/files/files/resourceguide_3115.pdf

Illinois: https://www.sba.gov/sites/default/files/files/resourceguide_3161.pdf

Indiana: https://www.sba.gov/sites/default/files/files/resourceguide_3116.pdf

Iowa: https://www.sba.gov/sites/default/files/files/resourceguide_3114.pdf

Kansas:

Wichita area: https://www.sba.gov/sites/default/files/files/resourceguide_3117.pdf

Kansas City area: https://www.sba.gov/sites/default/files/files/resourceguide_3123.pdf

Kentucky: https://www.sba.gov/sites/default/files/files/resourceguide_3118.pdf

Louisiana: https://www.sba.gov/sites/default/files/files/resourceguide_3119.pdf

Maine: https://www.sba.gov/sites/default/files/files/resourceguide_3163.pdf

Maryland: https://www.sba.gov/sites/default/files/files/resourceguide_3120.pdf

Massachusetts: https://www.sba.gov/sites/default/files/files/resourceguide_3162.pdf

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Michigan: https://www.sba.gov/sites/default/files/files/resourceguide_3121.pdf

Minnesota: https://www.sba.gov/sites/default/files/files/resourceguide_3122.pdf

Mississippi: https://www.sba.gov/sites/default/files/files/resourceguide_3125.pdf

Missouri: https://www.sba.gov/sites/default/files/files/resourceguide_3124.pdf

Montana: https://www.sba.gov/sites/default/files/files/resourceguide_3126.pdf

Nebraska: https://www.sba.gov/sites/default/files/files/resourceguide_3129.pdf

Nevada: https://www.sba.gov/sites/default/files/files/resourceguide_3133.pdf

New Hampshire: https://www.sba.gov/sites/default/files/files/resourceguide_3130.pdf

New Jersey: https://www.sba.gov/sites/default/files/files/resourceguide_3131.pdf

New Mexico: https://www.sba.gov/sites/default/files/files/resourceguide_3132.pdf

New York: https://www.sba.gov/sites/default/files/files/resourceguide_3135.pdf

North Carolina: https://www.sba.gov/sites/default/files/files/resourceguide_3127.pdf

North Dakota: https://www.sba.gov/sites/default/files/files/resourceguide_3128.pdf

Ohio:

- Cleveland:** https://www.sba.gov/sites/default/files/files/resourceguide_3137.pdf
- Columbus:** https://www.sba.gov/sites/default/files/files/resourceguide_3138.pdf

Oklahoma: https://www.sba.gov/sites/default/files/files/resourceguide_3139.pdf

Pennsylvania:

- Eastern:** https://www.sba.gov/sites/default/files/files/resourceguide_3141.pdf
- Western:** https://www.sba.gov/sites/default/files/files/resourceguide_3142.pdf

Oregon: https://www.sba.gov/sites/default/files/files/resourceguide_3140.pdf

Puerto Rico: https://www.sba.gov/sites/default/files/files/resourceguide_3143.pdf

Rhode Island: https://www.sba.gov/sites/default/files/files/resourceguide_3144.pdf

South Carolina: https://www.sba.gov/sites/default/files/files/resourceguide_3145.pdf

South Dakota: https://www.sba.gov/sites/default/files/files/resourceguide_3146.pdf

Tennessee: https://www.sba.gov/sites/default/files/files/resourceguide_3147.pdf

Texas:

- Dallas/FW:** https://www.sba.gov/sites/default/files/files/resourceguide_3148.pdf
- El Paso:** https://www.sba.gov/sites/default/files/files/resourceguide_3149.pdf
- Houston:** https://www.sba.gov/sites/default/files/files/resourceguide_3151.pdf
- Lower RGV:** https://www.sba.gov/sites/default/files/files/resourceguide_3150.pdf
- Lubbock/West Texas:** https://www.sba.gov/sites/default/files/files/resourceguide_3152.pdf
- San Antonio:** https://www.sba.gov/sites/default/files/files/resourceguide_3153.pdf

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Utah: https://www.sba.gov/sites/default/files/files/resourceguide_3154.pdf

Vermont: https://www.sba.gov/sites/default/files/files/resourceguide_3156.pdf

Virginia: https://www.sba.gov/sites/default/files/files/resourceguide_3155.pdf

Washington: https://www.sba.gov/sites/default/files/files/resourceguide_3157.pdf

West Virginia: https://www.sba.gov/sites/default/files/files/resourceguide_3159.pdf

Wisconsin: https://www.sba.gov/sites/default/files/files/resourceguide_3158.pdf

Wyoming: https://www.sba.gov/sites/default/files/files/resourceguide_3160.pdf

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This information is based on federal government communications and materials reviewed as of March 31, 2020 and may not include and new details or changes that occurred after this date.

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