

Obtaining Relief for Employers Under FFCRA and the CARES Act

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Paycheck Protection Program in the CARES Act Expands Section 7(a) Loan Program



Paycheck Protection Program

Section 1102 of the CARES Act

1. What It Does:

- i. Authorizes up to \$349 billion in forgivable loans to small businesses to pay their employees during the COVID-19 Crisis
- ii. Provides loans intended to cover certain costs and expenses during the “covered period”

2. Loan Terms: All loans will be the same for every borrower. Terms include:

- i. 0.50% fixed rate
- ii. Payments deferred 6 months, but interest accrues.
- iii. 2-year loan terms.
- iv. No collateral or personal guarantee required
- v. No prepayment penalties or fees.

3. Each borrower is limited to only one loan under this program.

Explaining the PPP

4. Covered Period: February 15, 2020 – June 30, 2020
5. Loan Amount: The loan amount will be determined based on tax documents submitted with the application. During the covered period, the maximum loan amount will be the **lesser** of:
 - i. (a) \$10 million or (b) 2.5 times the applicant's average total monthly payments for payroll costs for the 12-month period preceding the date of the loan or, for seasonal employers, for the period from February 15, 2019 or March 1, 2019 to June 30, 2019 **plus**
 - ii. the amount of any Economic Injury Disaster Loan (EIDL) made on or after January 31, 2020, described below that is being refinanced by the Paycheck Protection Program.

If the applicant was not in business during the applicable period in clause (b), then the average of total monthly payment for payroll costs in (b) above will be calculated based on the period from January 1, 2020, to February 29, 2020.

Payroll Cost

PAYROLL COSTS

- Salary, wage, commission, or similar compensation, capped at \$100,000 in 1 year per employee as prorated; (excluding employees whose place of residence is outside the US)
- 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
- sum of payments of any compensation to or income of sole proprietor or independent contractor as per above that is not more than \$100,000

Allowable Use of PPP Proceeds

6. All PPP loan proceeds must be used for business-related purposes. Specifically, during the covered period, an eligible recipient of a PPP loan may use the proceeds for:
- Payroll Costs;
 - Payroll costs are capped at \$100,000 on an annualized basis for each employee.
 - Costs related to continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
 - Payments of interest on any mortgage obligation (excluding prepayment or principal payment on mortgage obligation);
 - Rent (including rent under a lease agreement);
 - Utilities; and
 - Interest on any other debt obligations that were incurred before the covered period.

PPP Loan Eligibility

7. Loan Eligibility: Generally,
- i. small business concerns, sole proprietors, independent contractors
 - ii. any business concern, nonprofit organization, veterans organization, or Tribal business concern that employs not more than the **greater** of
 - a. 500 employees (individuals employed on a full-time, part-time or other basis); or
 - b. if applicable, the size standard in number of employees established by the SBA for the industry in which such entity operates, and
 - iii. any business concern that is assigned a NAICS code beginning with 72 as of the date of the loan disbursement (“accommodation and food services”) with more than 1 physical location that employs not more than 500 employees per physical location of the business concern.

Additional Requirements

8. The applicant/borrower will have to represent and certify the following*:
 - i. the loan is necessary to support its ongoing business operations;
 - ii. the loan proceeds will be used for the approved purposes (as explained);
 - iii. no EIDL under Section 1110 of the CARES Act has been applied for or is or will be obtained through December 31, 2020, for the same purpose as a Section 7(a) loan. However, a borrower can apply for a loan under the EIDL program for purposes other than the allowable use of proceeds under a Section 7(a) loan;
 - iv. the borrower, to the extent feasible, will purchase only American-made equipment and products; and
 - v. the borrower is not engaged in any illegal activity.

*This list is not exhaustive of what the applicant/borrower must represent, authorize, and certify in applying for a PPP loan.

Increased Access to Section 7(a) Loans

9. What: The CARES Act waives aggregate affiliation rules that generally limited access to Section 7(a) loans.
10. How this helps:
 - i. Generally, Section 7(a) loans are available to most companies with ≤ 500 employees – subject to aggregate affiliation rules
 - ii. This “waiver” allows more employers to be eligible to receive loans to pay employees
11. Specifically, the CARES Act waives the affiliation rules for:
 - i. any business concern in the accommodation and food services industry with a NAICS code beginning with 72 and with not more than 500 employees;
 - ii. any business concern operating as a franchise that is assigned a franchise identifier code by the SBA; and
 - iii. any business concern that receives financial assistance from a company licensed under Section 301 of the Small Business Investment Company Act of 1958 (i.e., an SBIC).

Applying for a PPP Loan

12. When: Application periods start April 3, 2020, for certain borrowers.

Applications must be submitted with the necessary documentation by June 30, 2020.

13. Where: Through any existing SBA lender or through any participating federally insured depository institution, federally insured credit union, and Farm Credit System institution

14. The application and a list of lenders can be found at www.sba.gov.

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

**Paycheck Protection Program
Application Form**

Non-Profit <input type="checkbox"/> Vet Org <input type="checkbox"/> Tribal <input type="checkbox"/> Ind. Cont. <input type="checkbox"/> Self Employed <input type="checkbox"/>		DBA or Tradename if applicable	
Business Legal Name			
Business Primary Address		Business TIN (EIN, SSN)	Business Phone
		() -	
		Primary Contact	Email Address

Average Monthly Payroll: \$	X 2.5 equals Loan Amount: \$	Number of Jobs:
Purpose of the loan (select more than one):		
<input type="checkbox"/> Payroll <input type="checkbox"/> Rent / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):		

Applicant Ownership

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Business or any owner previously suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Business, any of its owners, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Business or any owner an owner of any other business or have common management with any other business? If yes, attach a listing of all Affiliates and describe the relationship as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Business received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

Applicants who are individuals and all 20% or greater owners of the business must answer the following questions. If questions (5) or (6) are answered "Yes" or question (7) is answered "No," the loan will not be approved.

Question	Yes	No
5. Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 5: →		
6. Within the last 7 years, for any felony or misdemeanor for a crime against a minor, have you: 1) been convicted, 2) pleaded guilty, 3) pleaded nolo contendere, 4) been placed on pretrial diversion, or 5) been placed on any form of parole or probation (including probation before judgment)?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 6: →		
7. <input type="checkbox"/> I am a U.S. Citizen OR <input type="checkbox"/> I have Lawful Permanent Resident status <input type="checkbox"/> No		
Initial here to confirm your response to question 7: →		

PPP Loan Forgiveness

Section 1106 of the CARES Act

15. What: A borrower will be eligible for loan forgiveness under Section 1106 of the CARES Act (subject to reduction).
16. What happens to a forgiven loan?: Forgiven loan amounts will be considered cancelled indebtedness by the lender, but will be excluded from gross income for federal tax purposes.

PPP Loan Forgiveness (cont.)

17. Forgiven Amount: The amount of forgiveness will be the total amount, up to the principal amount of a PPP loan, of the sum of:
- i. the sum of payments of any
 - a. compensation with respect to employees (other than compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period) that is salary, wage, commission, tips, etc., vacation, leave, separation allowance, group health care benefits costs (including insurance premiums), retirement benefit or certain payroll taxes, and
 - b. compensation of independent contractors that is a wage, commission, or similar compensation up to \$100,000 in 1 year, as prorated for the covered period (collectively, the Payroll Costs);
 - ii. payments of interest on any mortgage on real and personal property that is a liability of the borrower and was incurred before February 15, 2020;
 - iii. payments of any rent obligation under a lease agreement in effect before February 15, 2020; and
 - iv. payments for electricity, gas, water, transportation, telephone or internet services that began before February 15, 2020.
18. Not more than 25% of the forgiven amount may be for non-payroll costs. 75% to payroll

Reduction of PPP Loan Forgiveness

19. Loan forgiveness is subject to reduction based on:

- i. the average number of FTEE per month employed by the borrower during the covered period, as compared to the average number of full-time equivalent employees employed (at the borrower's option):
 - a. from February 15, 2019 to June 30, 2019; or
 - b. from January 1, 2020 to February 29, 2020; or
 - c. in the case of seasonal employers, from February 15, 2019 to June 30, 2019.
- ii. any reduction in total salary or wages of any employee (who did not receive during 2019 an annual salary of more than \$100,000) during the covered period that is in excess of 25% of the total salary or wages of such employee during the most recent full quarter during which such employee was employed before the covered period.

EX: 2,000 forgivable amount. $x=A/B$ where: x =loan to be forgiven; A =FTE during 8 wk; B =FTE prior period
if in the prior period borrower had 300 employees, and in 8 wk 100:
 $2000 (100/300)$, loan forgiveness equals 666.

20. Note: Any reductions in salary or terminations between February 15, 2020, and April 27, 2020, will not be counted for purposes of the calculations above if not later than June 30, 2020, the borrower has eliminated the reduction in number of full-time equivalent employees or in the salary or wages of such employees, as applicable.

Other Favorable Features of the PPP

- SBA will not collect certain otherwise applicable fees.
- No personal guarantee or collateral is required and the SBA will not have recourse against any individual shareholder, member or partner of an eligible recipient unless the proceeds were used for an unauthorized purpose.
- SBA will waive the requirement that would otherwise apply that a small business concern is unable to obtain credit elsewhere.

What To Do Now

- Determine eligibility
- Talk to your lender: line up with your SBA lender. They are getting ready for an onslaught so preparedness will help get your application processed.
- Consult with your tax advisor

Payroll Tax Provisions in Families First Act and CARES Act



Payroll Tax Credit for Paid Sick or Family Leave Required by Families First Act

1. What. Credit against employer's portion (6.2%) of Social Security payroll tax
2. Amount of Credit. Equal to:
 - a. 100% of the qualified sick/family leave wages paid by an employer for each calendar quarter, PLUS
 - b. Qualified health plan expenses associated with the sick/family leave wages (pro rata allocation):
 - i. Employer-paid portion of health plan expenses, PLUS
 - ii. Portion of health plan expenses paid by employee with pre-tax salary reduction contributions, PLUS
 - c. Amount of employer's share of Medicare taxes on sick/family leave wages

Payroll Tax Credit for Sick/Family Leave (cont.)

3. Timing. Wages paid for period from April 1, 2020 through December 31, 2020
4. Limits on Wages Claimed for Credit
 - a. Credit only available for up to 10 paid sick leave days per employee (subject to same dollar limits as required sick leave)
 - b. Credit only available for up to 10 weeks of paid family leave (subject to same dollar limits as required family leave)

Payroll Tax Credit for Sick/Family Leave (cont.)

5. Mechanics

- a. Apply credit against employer Social Security taxes for qualifying sick/family leave - retain credit amount, do not deposit
- b. If excess credit, then offset and retain other payroll taxes* equal to qualifying sick/family leave pay rather than deposit them with the IRS:
 - i. withheld federal income taxes
 - ii. employee share of Social Security and Medicare taxes
 - iii. employer share of Medicare taxes

*Retain from taxes withheld from all employees – not just ones who received paid leave

- c. If excess credit, then file Form 7200 (Advance Payment of Employer Credits Due to COVID-19) to obtain expedited advance refund

Payroll Tax Credit for Sick/Family Leave (cont.)

6. Example

- a. Eligible employer paid \$10,000 in required sick/family leave and was required to deposit \$8,000 in taxes. Employer could use the entire \$8,000 of taxes to make qualified leave payments, and file a request with the IRS for an accelerated refund for the remaining \$2,000.

7. Keep Documentation

8. No Double Tax Benefit

- a. Gross income of employer increased by the amount of payroll tax credit
- b. Cannot use the same wages to get the benefit of both the payroll tax credit and of the existing employer credit under Internal Revenue Code § 45S for paid family and medical leave

Payroll Tax Credit for Employee Retention

1. What

- a. Refundable tax credit against employer's portion of Social Security taxes
- b. For 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis

2. Eligible Employers

- a. Had operations fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings; OR
- b. Experienced a greater than 50% reduction in quarterly gross receipts, as compared to the same quarter in 2019
 - Eligibility ends the quarter after the first quarter in which gross receipts are more than 80% of gross receipts for same quarter in 2019

Payroll Tax Credit for Employee Retention (cont.)



3. CAUTION: Not available to employers receiving Paycheck Protection Program loans under CARES Act
4. Wages Paid to Which Employees
 - a. Employers with 100 or fewer full-time employees (average) in 2019: Wages paid to all employees, regardless of whether wages are to an employee who is furloughed
 - b. Employers with more than 100 full-time employees (average) in 2019: Only the wages paid to employees who are “not providing services” as a result of their employer’s closure or reduced gross receipts
5. Timing. Credit applies to wages paid by eligible employer March 13, 2020 and through December 31, 2020

Payroll Tax Credit for Employee Retention (cont.)

6. Wages

- a. Cash or other benefits paid for employment (same meaning as defined in Internal Revenue Code § 3121(a)), PLUS
- b. Employer portion of any health plan expenses
- c. But capped at the first \$10,000 in wages paid by employer to an eligible employee

7. No Double Tax Benefit. No credit for:

- a. Wages for which employer received payroll tax credits for required paid sick/family leave under Families First Act
- b. Wages paid to employee for which employer received Work Opportunity Credit under Internal Revenue Code § 21
- c. Wages taken into account for Internal Revenue Code § 45S employer credit for paid family/medical leave

Payroll Tax Credit for Employee Retention (cont.)

8. Mechanics. Works like the payroll tax credit for sick/family leave:
 - a. Apply credit to employer Social Security taxes
 - b. Retain payroll taxes from pool of all withheld taxes
 - c. Apply for refund of any excess credit amount using Form 7200
9. Penalty Waiver. No penalties for employers that do not deposit applicable payroll taxes in reasonable anticipation of receiving the credit
10. Controlled Group Rules Apply. All members of “controlled group” under Internal Revenue Code § 52(a) or (b) or 414(m) or (o) are considered one employer

Employer Payroll Tax Deferral

1. What. Employers may defer paying the employer portion (6.2%) of Social Security taxes
2. Timing. Taxes that would otherwise be deposited from March 27, 2020 through December 31, 2020
3. Mechanics
 - a. Deposit 50% of deferred taxes no later than December 31, 2021
 - b. Deposit remaining 50% of deferred taxes no later than December 31, 2022
4. CAUTION: May not defer if taxpayer “has had indebtedness forgiven” under CARES Act § 1106 (SBA Paycheck Protection Program loans) or § 1109 (other Paycheck Protection Program loans)



Expanded Unemployment Benefits Under the CARES Act



Expanded Unemployment Benefits

- THE PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM (Section 2102)
 - Temporary Program - Effective January 27, 2020 -December 31, 2020
 - Includes coverage for individuals not otherwise eligible for UI benefits
 - Includes self-employed, ICs, GIG workers, part-time workers, and those without enough work history
 - Must be unemployed or unable to work (or telework) and “Self-Certify” one of the following reasons in order to qualify for benefits:
 - Diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis;
 - A member of their household has been diagnosed with COVID-19;
 - Providing care for a family member or member of their household who has been diagnosed with COVID-19;

Expanded Unemployment Benefits (cont.)

- A member of their household for which they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure they are unable to work;
- Unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency;
- Not able to work because they have been advised to self-quarantine by a health care provider;
- Scheduled to start a job but are unable to because of the COVID-19 public health emergency;
- A “major support for a household” because the primary income earner in the household has died as a direct result of COVID-19; OR
- Quit their job as a direct result of COVID-19

Expanded Unemployment Benefits (cont.)

- Pandemic Unemployment Assistance Program (cont.)
 - Assistance is available for a maximum of 39 weeks
 - Benefit amount is equal to what would otherwise be entitled to under state or federal law + Federal Pandemic Unemployment Compensation (\$600.00/wk)
 - No Waiting Period required
 - No requirement to actively seek work to receive benefits under this Program
 - NOTE: Individuals who are able to Telework or who have received Paid Sick Leave or other paid leave benefits are NOT eligible for benefits under this Program.
 - States will be fully reimbursed by the Federal Government for all costs associated with the Pandemic Emergency Unemployment Compensation Program

Expanded Unemployment Benefits (cont.)

- Emergency Unemployment Relief for Non-Profits, Governmental Entities, and Indian Tribes (Section 2103)
 - For Reimbursing Employers
 - Provides a way for such Reimbursing Employers to recover 50% of costs incurred to reimburse for benefit charges
 - Applies to Benefits paid through December 31, 2020

Expanded Unemployment Benefits (cont.)

- Federal Pandemic Unemployment Compensation Program (Section 2104)
 - Provides an additional sum of \$600/week – in addition to benefits otherwise due under state law
 - Referred to as “Federal Pandemic Unemployment Compensation”
 - Available through July 31, 2020
 - Flat amount – not tied to Employee’s Actual Weekly Wage amount
 - Eliminates one-week waiting period (Federal Gov’t to reimburse states for costs of waiving this)
 - Not be included as income for determining eligibility for Medicaid, CHIP

Expanded Unemployment Benefits (cont.)

- Federal Pandemic Emergency Unemployment Compensation program (Section 2107)
 - Provides an additional 13 weeks of benefits for those individuals who have exhausted the maximum unemployment benefits available for the benefit year under the state program (for example, 26 weeks in New York, or 12 weeks in Florida), so long as the individual:
 - is able to work
 - available to work
 - actively seeking work
 - The weekly benefit mirrors Section 2104 (the state amount plus Federal Pandemic Unemployment Compensation)
 - These additional 13 weeks of benefits are at no cost to employers or the state, as they will be funded by the federal government

Expanded Unemployment Benefits (cont.)

- Federal Funding of “Short-Time” Compensation Payments (Section 2109)
 - Established to provide such benefits in states where “short-time”, “partial”, or “workshare” programs unavailable
 - Purpose is to provide unemployment benefits to persons whose employers reduced their hours (i.e., a “furlough”) rather than laying off the worker
 - The person would receive a “pro-rata” unemployment benefit amount
 - Funding to support states which begin short-time compensation or workshare “agreements.” Under these “agreements” the Treasury would cover 50 percent of the costs that a state incurs in providing short-time compensation through December 31, 2020. The other 50 percent of costs associated with the “agreements” would be paid by participating employers

Expanded Unemployment Benefits (cont.)

- If a state agrees to enact a short-time compensation or workshare law that complies with Section 13 3306(v) of the IRC, the state would then be eligible for full reimbursements
- Excludes employees who are employed on a seasonal, temporary, or intermittent basis
- Department of Labor to develop and disseminate model legislative language for states, provide technical assistance, and establish reporting requirements related to short-time compensation or workshare programs

Relief to the Airline Industry and Other Transportation Providers



Coronavirus Economic Stabilization Act of 2020

- CARES Act provides liquidity relief in the form of loans or loan guarantees to eligible business, States and municipalities, including:
 - Up to \$500 billion worth of loans such and loan guarantees
 - An “eligible business” generally means air carriers, cargo air carriers, businesses critical to maintaining national security and any other business that has not otherwise received adequate economic relief in the forms of loans or loan guarantees provided under the CARES Act.
- Restrictions on executive compensation and severance payments
- Businesses that receive loans are prohibited from paying dividends or repurchasing any outstanding equity interests while the loan or loan guarantee is outstanding, or for 12 months after

Coronavirus Economic Stabilization Act of 2020 (cont.)

- Restrictions on executive pay: During the period beginning on the date on which a loan agreement is executed and ending on the date that is one (1) year after the date on which the loan or loan guarantee is no longer outstanding, no officer or employee of such eligible business:
 - Whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020), shall receive total compensation which exceeds the total compensation received by the officer or employee in calendar year 2019; and
 - If such total compensation exceeded \$3,000,000 in calendar year 2019, shall receive total compensation in excess of the sum of (a) \$3,000,000, plus (b) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee in calendar year 2019 during any 12 consecutive months within the restricted period.

Coronavirus Economic Stabilization Act of 2020 (cont.)

- Restrictions on severance payments: During the period beginning on the date on which a loan agreement is executed and ending on the date that is one (1) year after the date on which the loan or loan guarantee is no longer outstanding, no officer or employee of such eligible business whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020) shall receive severance pay or other benefits upon termination of employment that exceeds twice the maximum total compensation received by the officer or employee in calendar year 2019.

Coronavirus Economic Stabilization Act of 2020 (cont.)

- Executive Pay and Severance Restrictions :
 - For purposes of the limitations, the term “total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by the eligible business to an officer or employee.
 - Ambiguities surround:
 - What “other financial benefits” mean
 - How is deferred compensation handled
 - What if the employee or officer was only employed for a portion of the year so 2019 does not reflect their full pay
 - Are the economic benefits of welfare/health benefits included
 - Because many compensation provisions for key employees and officers are contractual, it is recommended that an eligible business understand its contractual responsibilities and the challenges it may face in being subject to these limitations.

Coronavirus Economic Stabilization Act of 2020 (cont.)

- In addition to loans, the CARES Act provides direct pandemic relief to the employees of passenger air carriers, cargo air carriers, and airline contractors
 - Financial assistance for employee wages, salaries, and benefits up to:
 - \$25 billion for passenger air carriers
 - \$4 billion for cargo air carriers
 - \$3 billion for airline contractors
 - To be eligible must not conduct involuntary furloughs or reduce pay rates and benefits through September 30, 2020
 - May not purchase an equity security in the carrier, contractor, or any parent company of the carrier or contractor, or pay any dividends through September 30, 2021
 - Compensation limits as previously discussed

Coronavirus Economic Stabilization Act of 2020 (cont.)

- \$25 billion for transit systems for health and safety measures but also to ensure access to employment and other essential services
- \$10 billion in grants for airports
- \$1 billion to recapitalize Amtrak

Retirement Plan Provisions in the CARES Act



Greater Participant Access to Retirement Monies

New COVID Distributions

1. What
 - a. An individual personally impacted by the Coronavirus may elect to take a distribution from his/her employer's retirement plan of up to \$100,000 (a "COVID Distribution").
 - b. A COVID Distribution will be considered to be a permissible and legitimate distributable event for purposes of 401(k) plans, 403(b) plans, and governmental 457(b) plans.
2. Penalty Waiver. A COVID Distribution will be exempt from the 10 percent early withdrawal penalty under Code Section 72(t), which generally applies to distributions made before a participant attains age 59½.

Greater Participant Access to Retirement Monies (cont.)

New COVID Distributions

3. Conditions to Taking COVID Distribution

- a. The distribution must be taken between January 1, 2020 and December 31, 2020 to qualify.
- b. The participant must be a Qualifying Participant.
- c. The \$100,000 overall limitation on COVID Distributions must be determined for a given employer on an aggregated controlled group basis as provided for under Code Section 414(b), (c), (m) and/or (o) by considering all COVID Distributions from all employer retirement plans within the controlled group.

Greater Participant Access to Retirement Monies (cont.)

New COVID Distributions

4. Who is a Qualifying Participant. The individual requesting a COVID Distribution must meet at least **one** of the following criteria:
- a. The individual is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention; OR
 - b. The individual's spouse or dependent (as defined in Code Section 152) is diagnosed with such virus or disease by such a test; OR
 - c. The individual experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of a business owned or operated by the individual due to such virus or disease.

The Secretary of the Treasury may identify other qualifying factors in future guidance. The plan administrator of the employer's retirement plan is permitted to rely on an individual's self-certification of such status.

Greater Participant Access to Retirement Monies (cont.)

New COVID Distributions

5. Taxation

- a. Unless the Qualifying Participant chooses to be taxed all at once on the distribution, the COVID Distribution will be included in gross income ratably over the three (3) taxable year period beginning with the taxable year of the COVID Distribution.
- b. COVID Distribution NOT subject to mandatory 20% withholding.

Greater Participant Access to Retirement Monies (cont.)

New COVID Distributions

6. Optional COVID Distribution Repayment. For participants taking a COVID Distribution and wanting to place themselves back into the tax-deferred retirement financial position had they NOT taken a COVID Distribution, such participants can return the full COVID Distribution to the plan, subject to the following:
 - a. Repay all or any portion of COVID Distribution during the three (3) year period beginning on the day after the date of the COVID Distribution;
 - b. Repay in one or more contributions during such three (3) year period;
 - c. Such “recontribution” will be treated as an eligible rollover distribution which is transferred via a trustee-to-trustee transfer (which means the portion repaid will be considered to include the respective taxes previously paid); and
 - d. Securing the actual refund for taxes originally paid on the COVID Distribution is anticipated to be covered in future guidance.

Greater Participant Access to Retirement Monies (cont.)

New COVID Distributions

7. Timing of Amendment

- a. So long as the plan being amended has been operated as if such amendment was in effect since March 27, 2020, the plan can be amended retroactively as late as the last day of the first plan year beginning on and after January 1, 2022 (or any such later date as prescribed by the Treasury Secretary).
- b. Governmental plans can be amended up to two years after the above deadline that applies to non-governmental plans.

Greater Participant Access to Retirement Monies (cont.)

Increase in Qualified Loan Amounts

1. What
 - a. Code Section 72(p)(2) generally provides that the maximum amount a retirement plan can permit as a loan is the lesser of (a) \$50,000 or (b) the greater of \$10,000 or 50% of the participant's vested account balance.
 - b. Under the CARES Act, if an individual takes a Coronavirus-related loan *during the one hundred eighty (180) day period starting on March 27, 2020*, the maximum amount that an employer's retirement plan can permit as a loan is increased to the lesser of (a) \$100,000 or (b) the greater of \$10,000 or 100% of the participant's vested account balance.
2. Timing of Loan. To qualify, the increased loan amount must be taken during the one hundred eighty (180) day period starting on March 27, 2020 and ending on September 24, 2020.

Greater Participant Access to Retirement Monies (cont.)

One Year Repayment Extension of Qualified Loans

1. What
 - a. If a Qualifying Participant has an outstanding qualified plan loan (on or after March 27, 2020) and such loan has a due date for any repayment from March 27, 2020 through December 31, 2020:
 - i. The due date for any repayment is delayed for one (1) year, and
 - ii. Any subsequent repayments will be appropriately adjusted to reflect this legislative delay (including any interest accruing during such delay); for example, for purposes of determining a five (5) year loan period or other term of a loan, the one year delay period will be disregarded.
2. Timing of Amendment. So long as the plan being amended has been operated as if such amendment was in effect since March 27, 2020, the plan can be amended retroactively as late as the last day of the first plan year beginning on and after January 1, 2022 (or any such later date prescribed by the Treasury Secretary).

Waiver of Required Minimum Distributions

1. What

- a. Payment of required minimum distributions (RMDs) under Code Section 401(a)(9) are waived for the period from January 1, 2020 through December 31, 2020.
- b. This specifically includes RMDs that were otherwise required to be made in calendar year 2020 because (i) the participant's required beginning date has occurred (i.e., turned age 70½ in 2019), and (ii) such 2019 required minimum distribution was not otherwise made before January 1, 2020.
- c. For years after calendar year 2020, the required beginning date for any applicable period under Code Section 401(a)(9) shall disregard the 2020 calendar year, thereby shortening the life expectancy period and increasing the amount of the future distribution.

Waiver of Required Minimum Distributions

2. Timing of Amendment

- a. So long as the plan being amended has been operated as if such amendment was in effect since March 27, 2020, the plan can be amended retroactively as late as the last day of the first plan year beginning on and after January 1, 2022 (or any such later date prescribed by the Treasury Secretary).
- b. Governmental plans can be amended up to two years after the above deadline that applies to non-governmental plans.

Relaxation of Pension Funding Rules

1. Minimum Required Contributions. Single-employer defined benefit pension plans that are required to make a minimum required contribution (under Code Section 430(a)) may delay such payment which would otherwise be due (including quarterly contributions) during the 2020 calendar year, until January 1, 2021 with a corresponding increase in such minimum required contribution for interest accruing during the period between the original due date of the contribution and the actual payment date. The interest accrued is calculated using the effective rate of interest dictated by the plan for the plan year which includes the actual payment date.
2. Funding Targets. For purposes of Code Section 436, plan sponsors are also allowed to elect to treat the plan's adjusted funding target attainment percentage (AFTAP) for the last plan year ending before January 1, 2020, as the AFTAP for plan years which include the 2020 calendar year.

Thank You For Attending



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