

The New Normal and What's Next For Retirement Plans



COVID-19

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Today's Agenda

- Introduction
- Recent law changes
 - March 2020 CARES Act plan design changes
 - May 2020 Electronic disclosure developments
 - Spring 2020 Deadline extensions and PPP loans
- The New Normal
 - Phase I: Immediate workforce changes
 - Phase II: Planning for additional workforce changes
 - Phase III: Lessons learned

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CARES Act

Coronavirus-related distributions (CRDs)

- Optional feature
- Withdraw up to \$100k
 - No 10% early payment penalty, no 402(f) notice, no 20% withholding
- Report as taxable income over up to three years
- Option to repay to employer plan or IRA
- Available to Qualified Individuals only

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CARES ACT *(continued)*

Loans to Qualified Individuals

- Maximum limit temporarily increased until September 23, 2020, to lesser of:
 - \$100,000 reduced by any outstanding loan
 - 100% of participant's vested account
- Temporarily extends repayment period through December 31, 2020
 - Different approaches to resumption of repayments and reamortization




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CARES Act *(continued)*

Qualified Individuals (for CRDs and loans)

- Qualified Individual includes anyone:
 - Diagnosed with COVID-19
 - Whose spouse/dependent is diagnosed with COVID-19
 - Who experiences adverse financial consequences due to: quarantine, furlough, lay off, reduced work hours, inability to work due to lack of child care, closing or reduced hours of individual's business
- May rely on an participant's certification



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CARES Act *(continued)*

Hardships

- Based on financial need
- New FEMA disaster hardship event
 - Appears scope limited



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CARES Act (continued)

Required Minimum Distributions (RMDs)

- Waiver of RMDs for DC plans, not DB
- Applies to RMDs due in 2020
 - Birthday between 7/1/1948 and 6/30/1949
- Unrelated to SECURE Act change
 - Age 72 for birthdays after 6/30/1949
- Optional

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CARES Act

Trends and next steps

- Decide on changes
- Direct recordkeeper
- Communicate to participants
- Update and monitor internal processes and procedures
- Amend plan documents



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New Electronic Disclosure Rules

Issued May 21, 2020

In effect July 26, 2020, but can use them now

Do not replace 2002 rules

- Can follow 2002 or these
- Or use different rules for different groups

Safe harbor

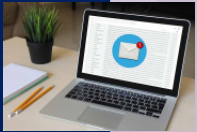
- Other methods can be OK as long as "reasonably calculated to ensure actual receipt"

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New Electronic Disclosure Rules
(continued)

Direct email method

- May email documents directly to individuals either in body of email or as an attachment
- Do not need to include NOIA, but email must contain substantially similar information




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New Electronic Disclosure Rules
(continued)

Opting out and paper copies

- Individuals may request a paper copy of a specific covered document published or sent electronically
- Can also elect a “global opt-out”
 - All subsequent disclosures must be provided on paper




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New Electronic Disclosure Rules
(continued)

Website accessibility, privacy, and data security

- Must ensure continued operation and security of website where covered documents are posted
- Rules are clear that protecting participant private information is a fiduciary obligation of the plan administrator
 - Need to establish procedures to make sure the service provider has adequate controls and contractual obligations for privacy and cybersecurity



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New Electronic Disclosure Rules

(continued)

New procedures required

- Processing requests and elections
- Acting on undelivered communications
 - Must have system to alert about undelivered communications and seek new electronic address or treat individual as opted out
- Handling severances when employees will no longer be on the employer's email system

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What Else is Going on?

IRS Extensions/Relief

DOL Extensions/Relief

PPP Loans



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IRS Deadline Extensions

General tax filing extension to July 15, 2020 (not 5500s)

Notice 2020-23 and Notice 2020-35 extensions for the period of April 1, 2020, to July 15, 2020, for:

- 2019 contributions
- Correcting 2019 excess contributions
- 60-day rollover window for IRAs on or after February 1, 2020
- EPCRS self-correction deadline
- Making plan loan payments (no defaults)
- 5500 filings due April 1, 2020, through July 14, 2020

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Joint Notice

Tolls claim-related deadlines from March 1, 2020 until 60 days after end of COVID-19 National Emergency

Benefit claims and appeals under review or that could have been filed

How to communicate the extension?

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Joint Notice *(continued)*

DOL relief:

- ERISA notices
- Blackout notices
- Failures to follow plan loan and distribution verification procedures
- Forwarding contributions and loan repayments to a plan
- Annual Funding Notice for DB plans
- Form 5500 filings

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Spousal Consent Relief

Notice 2020-42

Temporary Relief from Physical Presence Requirement for Spousal Consent

Notary: Witness via video and be consistent with state law. MI has provided guidance for notaries to provide remote notarization

Plan Rep: Check ID, witness via video, individual must deliver signed document the same day, and must give notice back to the individual

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DB Plans

CARES Act - 2020 DB quarterly contributions deferred to January 1, 2021

PBGC extensions to July 15, 2020

- No late filing penalties under 4071 or 4302
- No late payment penalty or interest charges
- Extensions of deadlines based on the due date or a filing or other action – measured from July 15, 2020

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Pre-Approved Plan Deadlines

403(b) plans – March 31, 2020, delayed to June 30, 2020

Defined benefit plans – April 30, 2020, delayed to July 31, 2020



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PPP Loans

Retirement Plan Contributions clearly "Covered Benefits" eligible for forgiveness

Owner contributions can be taken into account when calculating the amount of the PPP loan but are not eligible for forgiveness.


Annual contributions?

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Phase I
Workforce Changes

Reduce or suspend company contributions

- Ability to change and the timing depends on contribution type and plan terms
 - Special rules for safe harbor contributions
- Consider effect on allocation conditions
- May affect nondiscrimination testing



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Phase I *(continued)*

Furloughed employees and reduced hours

- Elective deferrals
- Loan repayments
- No distribution event




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Phase II

Planning for additional workforce changes

- Voluntary - Resign and execute release to receive benefits
 - Communication critical, including timing of disclosure and possibility of involuntary termination
- Involuntary - Employer-initiated termination
 - Existing or enhanced severance policy/program
 - Balance ability to offer incentives versus risk reduction
 - Consider effects on PPP loan and unemployment cost



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Phase II *(continued)*

Voluntary programs

- Legal considerations – ERISA, 409A, and employment laws
 - Possibly requires SPD, Form 5500
 - Nondiscrimination – Tax and employment law issues
- Define who
 - Age, service, job classification/dep't, location, HCE status
- Determine what
 - Cash incentive payment, medical and other benefits, enhanced pension benefit, leave cashout, retiree privileges

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Phase II *(continued)*

Involuntary programs: RIF, severance, or layoff


- Existing severance program or policy
- Risk of employment or benefit claims
- Service credit
 - Partial termination – vesting requirements
 - Last day or hours requirements to receive benefits
 - Years of service to meet pension eligibility requirements
- Compensation-based pension formulas

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Phase III
Lessons Learned

COVID stress tested your systems – what did you learn?

- Payroll systems / timely deposits
- Distribution processing
- Business continuity for you and your providers




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Phase III *(continued)*

Participant education

- Market volatility
- Rebalancing asset allocation
- The impact of withdrawals and loans on retirement readiness




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Phase III *(continued)*

Committee practices

- Have you met during the COVID crisis?
- How is your investment lineup faring?
- Any changes required?
- How did model portfolios/TDFs fare? As compared to those who self-selected?




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SECURE Act

Part-time employees starting 2021

Safe Harbor Changes

In-Service Withdrawal for birth or adoption



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Questions?



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