

ACTION STEPS FOR PLAN SPONSORS/FIDUCIARIES/COMMITTEES *COVID-19 and your Retirement Plan: Reminders, Considerations & Communications*

At USI Consulting Group, we are here to provide clarity regarding the current environment and guide you and your committee on a pathway of ensuring proper Plan administration going forward. Despite current events, it's important that you continue to fulfill your fiduciary responsibilities.

Below is a checklist that can be used to make sure you have not missed, or do not miss, important actions regarding new legislation that has been enacted in response to COVID-19 and the appropriate next steps.

REMINDERS

You may have already acted on some of the below, but it is important to follow-up on any decisions and amendments your committee has made regarding the CARES Act as well as previous elections with the SECURE Act.

CARES Act Decisions

- Check with your consultant and/or recordkeeper to learn more regarding the provisions that were added to your plan: Coronavirus distributions, loan amount increases/loan payment suspensions, and waiver of required minimum distributions.
- Create a process to document these decisions, your rationale, and whether your recordkeeper required you to opt-in or opt-out for certain provisions.
- Plan Sponsors may implement these provisions immediately as of the enactment date which was March 27, 2020 and adopt Plan amendments for these provisions by December 31, 2022 for calendar year plans.
- Ensure that the Summary of Material Modifications (SMM) and Summary Plan Description (SPD) are updated.
- Document whether participants were informed and how.
 - Keep a copy of the communication that was provided in your files.
- More information about the CARES Act and Frequently Asked Questions (FAQs) is provided in our [April 2020 Benefits in Focus](#) newsletter and our [May 2020 Benefits in Focus newsletter](#).

Discussions to Have with Your Recordkeeper

- How is your recordkeeper documenting and capturing self-certification? Plan sponsors are not required to collect proof or documentation that participants meet the "qualified individual" criteria, but you must be aware of the process that is in place.
- How is your recordkeeper handling how you should code employees' status for:
 - Furloughs versus Layoffs versus Leave of Absence
 - Furloughs with loans
- Loan Suspensions
 - Will your recordkeeper need a list of the affected participants?
 - Will participants need to request the suspension themselves?
 - How will suspensions be reported, when will they resume and how is amortization managed?
- Loan Amount Increases
 - How is your recordkeeper administering this provision? Does your loan policy need to be updated?
- Ensure tax reporting forms will be coded properly for the Coronavirus distributions which are exempt from the 10% excise tax penalty.

- Confirm with your recordkeeper what other communications and features are available for participants to become familiar with their options with respect to the CARES Act and the provisions elected.

SECURE Act

- Check with your recordkeeper to see how they are handling the SECURE Act provisions in conjunction with the CARES Act and appropriate next steps for Plan Sponsors, if any.

CONSIDERATIONS/CONCERNS

The below, references considerations that Plan Sponsors should keep in mind as a result of current events. It also lists potential concerns that Plan Sponsors need to pay close attention to; or else they may be faced with penalties and fines.

Committee Charter

- Review your charter to see if it requires for committee meetings to take place in person. Otherwise, the charter will need to be updated to allow meetings to be conducted by phone or another virtual method.

Families First Coronavirus Response Act

- Paid sick leave is included in the definition of compensation and must be considered when calculating match totals.
- For a general overview of the Act, please refer to [USI's National Compliance Update](#) on the topic.
- Please note that on July 8th the Treasury Department and IRS issued [Notice 2020-54](#) with guidance on reporting qualified sick and family leave wages paid.

Major Business Change

- Significant amounts of withdrawals, or a Partial Plan Termination, may cause your headcount and/or Plan's assets to drop. Take a moment to review your recordkeeper contract as many have a "Major Business Change" clause that notes if the "business change" (spinoff, partial plan termination, etc.) causes Plan assets to drop by 20% or 25%, they have the right to re-evaluate their fees.

Non-Discrimination Testing

- For Safe Harbor Plans that have since eliminated their Safe Harbor feature, as well as Non-Safe Harbor Plans, Plan Sponsors should work with their recordkeepers to assess whether the Plan may be in jeopardy of failing non-discrimination tests due to changes in Plan features and participant count before it is too late. Please find additional information on this in our piece entitled [Returning to Work after COVID-19 for 401\(k\)/403\(b\) Retirement Plans](#).

Partial Plan Terminations & the Implications of Downsizing

- Per IRS guidelines, a Plan may have a partial termination if more than 20% of total Plan participants were laid off/terminated in a particular year. This can occur as a result of a significant corporate event, due to adverse economic conditions or other reasons that are not within the employer's control which result in employee downsizing and turnover.
- Impacted participants must be paid at 100% vesting in all employer contributions, regardless of the vesting schedule.
- Please refer to the [COVID-19 and Partial Retirement Plan Termination](#) for addition information and guidance.

Paycheck Protection Program (PPP) & Paycheck Protection Program Flexibility Act

- Employer contributions to both Defined Contribution Plans and Defined Benefit Plans are included in the definition of payroll costs when calculating the maximum amount of a PPP loan.
- Plan contributions must be made within the 8-week period following the loan disbursement. If paid after this 8-week period, these contributions will not be considered payroll costs or qualify for the PPP loan forgiveness. Therefore, Plan Sponsors should review their Plan documents and current employer contribution funding requirements for the following:
 - Plan Sponsors who previously suspended matching contributions to their Plan, and received a PPP loan, may wish to consider continuing to make contributions, at least through the 8-week period.

- Plan Sponsors who typically wait until year-end to make matching contributions or discretionary profit-sharing contributions and/or have a “last day” allocation requirement, may need to reconsider their current plan design and amend their Plan(s) in order to make these contributions within the 8-week period.
- Additional information on the PPP is provided in our [April 2020 Market & Legal Update](#)
- Please note, that as of June 5th, due to the Paycheck Protection Program Flexibility Act, the 8 week period was changed to 24 weeks.
- Please also note that on July 4th a bill was signed into law that extends the PPP loan application deadline until August 8, 2020 (previously June 30, 2020).

Plan Expenses

- If looking for relief, be aware that certain fees for operating your Plan may be paid from Plan assets, forfeiture accounts, and a Plan expense account. Balances in forfeiture accounts can generally be used to offset employer contributions. Check your Plan document for current options.

Plan Operations

- Plan Sponsors and Fiduciaries have the duty of adherence to the Plan document, no matter the circumstance.
- Employee contributions must continue to be remitted to the Plan according to guidelines by the Department of Labor (DOL). However, on April 30, 2020, the DOL released [Disaster Relief Notice \(2020-01\)](#) which indicates:
 - The DOL will not enforce actions for delays in remitting participant contributions, loan repayments, and distribution of required participant notices, among other items, as a result of COVID-19.
 - However, the DOL does not want Plan Sponsors to take advantage and misuse the money and expects Plan Sponsors to act prudently in the interest of participants and comply as soon as administratively feasible under the circumstances.
- Please find additional information on the Disaster Relief Notice within our [May Benefits in Focus newsletter](#).

COMMUNICATIONS

You may be under the assumption that all interested and supportive parties are aware of the elections you and your firm have made regarding the CARES Act. Therefore, be sure to inform the following parties of the provisions you have chosen to implement:

- Employees and Participants
- Plan’s auditor (if applicable)
- Third-party Administrator (if applicable)

USI’s RESOURCES & SUPPORT

Refer to [USI’s STEER](#) webpage for additional resources on how to navigate our current environment with respect to all of your benefit/insurance needs – Retirement, Employee Benefit, Property & Casualty and Personal Risk.

Updated as of July 2020

This Update has been prepared for informational purposes only and is not designed to be a comprehensive analysis of any topic discussed herein and should not be relied upon as the only source of information. Additionally, this Update is not intended to represent advice or a recommendation specific to your plan.

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