COVID-19/CARES ACT WEBCAST Q&A
April 23, 2020

CORONAVIRUS-RELATED DISTRIBUTIONS (CRDs)

Q: ***If the plan document has one in-service distribution per plan year, could a participant take a CRD if they had already taken a previous in-service? Do we need to amend the plan to allow for more than 1 in-service? When will the amendment be due?***

A: The answer is not clear. The plan sponsor must decide whether or not to allow for CRDs and, if allowed, the plan's parameters for CRDs. To the extent that the plan sponsor decides to allow for CRDs, the plan document must be amended to reflect the parameters, including to allow for more than one in-service distribution in a plan year. The CARES Act contains a special provision relating to plan amendments. Under the provision, any amendment pursuant to any provision relating to the CRD rules is not required until the last day of the 2022 plan year. Some practitioners read this to allow for any amendment related to the CRD rules, including increasing the number of permissible in-service distributions, to be delayed until the end of the 2022 plan year. Other practitioners argue that this is a discretionary amendment and, therefore, must be made by the end of the 2020 plan year. At this time, no guidance has been issued providing clarity on this point. Certainly, the conservative approach would be to make the amendment to increase the number of permissible in-service distributions by the end of the 2020 plan year.

Q: ***Can a terminated participant take a partial CRD, even if the AA does not allow (only allows lump-sum)?***

A: The available form of distribution from a plan is determined by the distribution options under the plan. If a participant receives a lump sum and is otherwise entitled to CRD, the participant may utilize the special tax relief treatment and recontribution rules for CRDs. This is not a plan issue, but an individual tax issue.

Q: ***Statute says before 12/31/2020. Does that mean CRD must be taken by 12/30/2020 (that's the overly conservative position we are taking)?***

A: You are right. The statutory language says a CRD must be made "on or after January 1, 2020 and before December 31, 2020." The literal (and conservative) reading would require that the CRD be made by December 30, 2020. Industry commentators have asked for clarification from the IRS that a CRD made on December 31, 2020 would also be acceptable.

Q: ***Who is responsible in determining if loan/distribution falls within the CARES Act related distribution/loan?***

A: The plan administrator has responsibility to determine whether a distribution is a CRD and whether a loan is a coronavirus-related loan. A plan administrator may rely on the employee's certification that the employee satisfies the conditions for receiving a CRD or a coronavirus-related loan.

Q: ***Employee, still fully employed with an employer as a W-2 employee, owns a side business that is closed due to COVID-19. Does this give reason to take a distribution from her W-2 employer's 401(k) plan?***

A: In this situation, it would appear as though the individual could take advantage of the special tax relief and recontribution rules for CRDs. The individual has experienced adverse financial consequences as a result of "closing or reducing hours of a business owned or operated by the individual due to such virus or disease." However, to receive a CRD from the plan of the employer that continues to employ the

individual, the plan would need to allow for CRDs and the employee would need to certify that she satisfies the conditions for receiving a CRD.

Q: Does an "Aggregate CRD" include Loans AND In-Service Distributions?

A: No, the thresholds for aggregate CRDs and for aggregate coronavirus-related loans are separately determined.

Q: If a previously terminated participant took a termination distribution prior to the plan implementing the COVID-19 distribution, can they later certify the distribution as a COVID-19 distribution without impact to the plan?

A: Yes, this is apparent from the CARES Act provision that provides that CRDs may include distributions on or after January 1, 2020. The plan is not required to allow for CRDs, but the participant can take advantage of the special tax relief and recontribution rules for CRDs.

Q: What distribution code do you expect will be applied to COVID-19 related distribution?

A: Based on prior guidance, the payor is permitted to use Code 2 (early distribution, exception applies) or Code 1 (early distribution, no known exception).

Q: In your opinion, would a business owner wanting to take a CRD in order to make payroll (instead of furloughing EEs) meet the qualified individual designation?

A: This situation does not clearly fit within the criteria for receiving a CRD. The closest criterium is where an individual has experienced adverse financial consequences as a result of "closing or reducing hours of a business owned or operated by the individual due to such virus or disease." The need to make payroll is not included as a criterium. Hopefully, the IRS will expand the circumstances under which an individual may receive a CRD.

Q: The statute wording is that the employer may rely on the EMPLOYEE'S certification that s/he is a qualified individual. Are you expanding this to terminated employees, beneficiaries and alternate payees?

A: You are right. The statute reads "The administrator …. may rely on an employee's certification that the employee satisfies the conditions …" for receiving a CRD. It would appear that a terminated employee with an account balance under the plan could certify to a CRD. It is unclear how the certification rule applies to beneficiaries and alternate payees. That said, based on prior guidance, beneficiaries and alternate payees should be able to treat distributions as CRDs and take advantage of the special tax relief and recontributions rules available for CRDs, if they meet the conditions.

Q: I have a plan owner who wants to take the COVID-19 distribution or loan for $100k and wondered how the self-certification for himself might cause any issues. He actually does not have virus but says business has suffered due to virus. He has not had to layoff anyone.

A: The owner will need to meet one of the criteria for receiving a CRD or a coronavirus-related loan. The owner may self-certify to that effect. However, the certification must be an honest assessment that he/she meets one of the criteria. If he/she has not been diagnosed as having the virus, he/she would have to be an individual who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, having work hours reduced due to such virus or disease, being unable to work due to lack of childcare due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the

Secretary of the Treasury. The owner should be reminded that the CRDs and coronavirus-related loans, to the extent permitted under the plan, should be administered in a uniform and nondiscriminatory manner.

Q: ***It's impossible for a plan administrator to know all the situations. We will have a simple signed statement that says, "I certify that I am eligible for a CRD" and nothing else. FWIW.***

A: We agree the plan administrator is not expected to know all of the situations. The sample ASC certification forms list the conditions to receive a CRD or coronavirus-related loan but rely on the individual to determine that he/she meets one of the criteria.

Q: ***If a plan currently requires spousal consent for all distributions, is spousal consent required for a CRD distribution?***

A: The CARES Act does not change the otherwise applicable plan distribution requirements, including spousal consent requirements.

Q: ***Any recommendations on paying distributions from a traditional balance forward profit sharing plan with one valuation per year? High stock market at 12/31/2019 and now down by over 20%. They never revalue when the market is up!***

A: This can be a difficult fiduciary decision for which the employer may want to seek the advice of legal counsel. Many practitioners believe that, given the current circumstances, an interim valuation is the proper course of action. All plans must provide for at least annual valuations. Most plans, including the ASC plans, allow for interim valuations. The fiduciary decision to perform an interim valuation depends on several factors. Fiduciaries should weigh whether an interim valuation is the prudent decision given the facts of the situation. In any event, the decision cannot favor highly compensated employees and the fiduciaries must act solely in the interest of all plan participants. Fiduciaries, including the trustee, should carefully document their decision-making process. The same decision-making process should be followed in both up and down markets.

Q: ***If a participant voluntarily quit in January, are they eligible for a CRD now?***

A: Yes, a distribution made on or after January 1, 2020 to a terminated employee can qualify for a CRD and the individual may receive the special tax relief treatment and the recontribution rules. This is true even if the plan does not classify the distribution as a CRD.

Q: ***Could you remind me about money purchase pension plan assets merged in a 401k plan? Under the CARES Act, can they be taken at any age?***

A: No, money purchase plan assets that are merged into a 401(k) plan must be separately accounted for and they retain the distribution restrictions applicable to money purchase plans. Therefore, the in-service distribution restrictions continue to apply, and in-service distributions cannot occur from money purchase assets until the attainment of age 59½.

Q: ***Must the plan authorize in-service distribution to provide for a CRD? Does your answer differ if it is money purchase pension plan or governmental 457(b) plan?***

A: An interim amendment will be necessary providing for CRDs by the end of the 2022 plan year (2024 for governmental plans). A 401(k) plan does not need to currently authorize in-service distributions to operationally provide for CRDs. With respect to money purchase pension plans, the plan must restrict in-service distributions until the attainment of at least age 59½, including for CRDs, except for rollover and after-tax sources, which are not restricted to age 59½. With respect to governmental 457(b) plans, a plan does not need to currently authorize in-service distributions to operationally provide for CRDs.

Q: Shouldn't a notice be given to notify the participants of these changes if the plan sponsor elected the changes?

A: We believe that participants should receive some communication relating to the CARES Act rules that are adopted by the plan sponsor. ASC has a sample communication piece available on the DGEM Download page under 5 Miscellaneous Forms available to ASC clients.

CRDS: TAX-RELATED

Q: In regard to the 20% normal tax withholding, is this tax not required for COVID-19 distributions? Is it now 10% or 0%?

A: The mandatory 20% withholding rules for eligible rollover distributions do not apply to CRDs. However, the "regular" 10% withholding rule (with the ability of the participant to elect to waive withholding) does apply.

Q: Can participants waive the 20% federal withholding for an early distribution if they have been terminated during this time, but their plan opted out of CRDs? Or does the waiver of federal withholding only apply to CRDs?

A: If the plan does not offer CRDs, 20% federal withholding will apply to distributions to terminated participants. Although, a participant that meets the requirements for a CRD may still be eligible for the special tax relief and recontribution rules when filing his/her annual tax return.

Q: Can terminated participants take CRDs so they can take advantage of the 3-year income tax payment?

A: Yes, a distribution to a terminated employee can qualify as a CRD and the individual may take advantage of the special tax relief and recontribution rules. This is true even if the plan does not classify the distribution as a CRD.

Q: Does the Special Tax Notice for participants cover this information when they request a CRD distribution?

A: Under the CARES Act, CRDs are not treated as eligible rollover distributions for purposes of the notice requirements under Code §402(f). As such, a Special Tax Notice is not required to be provided with CRDs. However, we recommend that the employer provide some communication to employees explaining CRD distributions.

Q: If the plan does not offer CRDs but the participant certifies that they're a qualified individual and is otherwise able to take a distribution from the plan, what will be the withholding percentage: 20% or 10% or even 0% if the participant waives it?

A: 20%. The waiver only applies to CRDs and, if not allowed by the plan, the waiver does not apply.

Q: Can a participant still receive the waiver of early withdrawal tax under a termination of services distribution? Or must it be COVID related?

A: The waiver of the 10% early withdrawal tax applies to CRDs regardless of whether a participant is active or terminated. If a terminated participant who receives a distribution upon termination of employment qualifies under the CRD criteria, he/she is entitled to the special tax relief and recontribution rules regardless of whether the plan allows for CRDs.

Q: ***If a terminated plan was in the process of liquidating assets prior to the CARES Act would you relay to the plan sponsor to contact their accountant/CPA for IRS tax relief and relay the same to their participants?***

A: Certainly, you can advise a client and their participants to consult with their financial advisors regarding relief that they might be eligible for under the CARES Act and other stimulus legislation. We caution our clients to only provide specific consulting or financial advice that they are qualified to provide.

Q: ***For CRDs, does it mean all distributions, including distribution on account of termination of employment, that are taken in 2020 can spread the income tax over 3 years and be repaid?***

A: Yes, a distribution made on or after January 1, 2020 to a terminated employee can qualify as a CRD and the individual may take advantage of the special tax relief and recontribution rules. This is true even if the plan does not classify the distribution as a CRD.

CRDs: REPAYMENTS/ROLLOVERS

Q: ***Will a pay back to the plan as a rollover be placed in the rollover account and subject to in-service distributions as allowed by plan?***

A: A plan should treat the recontribution of a CRD just like any other direct rollover contribution. The ability to withdraw it from the rollover contribution account will be based on plan terms.

Q: ***If someone repays the CRD to the same plan from which it was withdrawn within the 3-year period, will that be considered a related rollover for the Top Heavy Test?***

A: While not totally clear, it would appear as though the recontribution would be treated as a related rollover and included in the top-heavy testing. IRS guidance on this issue would be helpful.

Q: ***If a plan decides they will receive the repayment of CRDs, does it have to accept a repayment rollover from a terminated participant who no longer has a balance in the plan? Assuming they don't if they typically don't allow rollovers from terminated participants.***

A: A plan is not required to accept rollover contributions, including recontributions of CRDs. Most plan documents, including the ASC plan documents, provide for the ability to restrict rollover contributions, including for terminated participants. The plan may allow this to be done through administrative policies.

Q: ***Would a participant who repays a CRD be required to repay the full distribution amount?***

A: No, the CARES Act is very clear that a participant who receives a CRD may repay all or a portion of the CRD.

Q: ***If the CRD repayment is treated as regular rollover, can that source be withdrawn any time and not subject to hardship or in-service condition?***

A: A plan should treat the recontribution of a CRD as a direct rollover contribution. The ability to withdraw it from the rollover contribution account will be based on plan terms.

Q: ***Is this true even if the plan doesn't otherwise accept rollovers?***

A: A plan is not required to accept rollover contributions, including recontributions of CRDs.

Q: ***Do you think the plan will be required to track the 3-year period for payback/rollover or is that on the plan participant's individual filings and the plan simply accepts a rollover if allowed?***

A: Based on prior guidance, a plan administrator accepting a recontribution is entitled to the relief provided under Treas. Reg. §1.401(a)(31)-1, Q&A-14. Under this regulation, if a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements of Code §401(a), as if it were a valid rollover contribution, if the following two conditions are satisfied: (1) When accepting the amount from the employee as a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is a valid rollover contribution; and (2) If the plan administrator of the receiving plan later determines that the contribution was an invalid rollover contribution, the amount of the invalid rollover contribution, plus any earnings attributable thereto, is distributed to the employee within a reasonable time after such determination.

As for the tracking of the 3-year period for recontribution of a CRD, it would seem this would be the responsibility of the plan participant. Since participants can recontribute a CRD to any plan, in some cases the plan administrator may not have such information, making it administratively infeasible.

CRDs: PLAN DOCUMENTATION

Q: ***Does ASC have a CRD specific election form? If not, will you be working on one?***

A: Yes, ASC does have a Coronavirus-Related Distribution Request Form. This form and other special CARES Act - COVID-19 forms are available on the DGEM Download page under 5 Miscellaneous Forms.

Q: ***Have you added a 204(h) notice to freeze a plan? The 204(h) notice in DGEM was only for when a plan terminates.***

A: Yes, we have added a sample 204(h) benefit reduction notice to accommodate an amendment to freeze a plan. You can find the notice on the DGEM Download page under 5 Miscellaneous Forms > CARES Act - COVID-19 Forms.

Q: ***If a money purchase pension plan makes a CRD, would it be wise on Operational Checklist to say that the plan will be amended to add in-service distributions at 59 ½ since it doesn't fall under deferral liberalization?***

A: The plan sponsor of a money purchase pension plan should amend its plan to allow for in-service distributions upon the attainment of age 59 ½, if it wants to allow for such distributions, including CRDs.

Q: ***Do you recommend the Operational Checklist be signed by the Plan Sponsor? I didn't see a signature line.***

A: We have added an optional signature line to both the CARES Act and SECURE Act Operational Checklists.

Q: ***Any chance the Operational Checklist can be made into a fillable PDF? The Word version is not user friendly to make elections without printing it, marking it up and scanning it.***

A: ASC has added a fillable form version of the CARES Act Operational Checklists on the DGEM Download page.

Q: Can the Operational Checklists be used by non-ASC clients?

A: You may want to consult with your document provider to see if it has an Operational Checklist available for its clients.

Q: How can I get a copy of the ASC SECURE Act Operational Checklist? Thank you!

A: The SECURE Act Operational Checklist is available to ASC document clients on the DGEM Download page under 2 Plan Documents > Operational Checklists. ASC non-document clients may contact ASC Support to request a copy of the Checklist. Non-ASC clients may want to consult with their document provider to see if it has an Operational Checklist available for its clients.

Q: Is there a way to create a mail merge for our CARES Act amendment so we would not be required to fill out one at a time?

A: You will be able to generate CARES Act Interim Amendments in batch, but the CARES Act Operational Checklist is only available in Word at this time. Since the Operational Checklist is provided in Word, you should be able to use that to do a mail merge outside of DGEM.

Q: The degree to which we can consolidate amendments with the restatement would be preferable for all involved particularly clients who are overwhelmed by multiple document updates.

A: ASC agrees. We will try to structure the interim amendments in a way to reduce the burdens on document providers and plan sponsors. For example, we intend to combine the SECURE and CARES Acts into one single interim amendment and will include "defaults" to minimize the situations where employers must make elections.

Q: Do you have any concerns with having the CARES Act amendment (CRD and loan increases) at the BPD level and if a plan sponsor elects to do something different provide those plan sponsors with a specific amendment to their plan?

A: ASC has provided interim amendments on disaster-related relief laws that are similar to the CRD rules at the basic plan document level multiple times in the past. The disaster-related relief provisions were included in the ASC PPA plans and the IRS approved the document. A plan sponsor should document in administrative procedures how it operationally applies the CARES Act provisions. An Operational Checklist is available to ASC clients for such purposes on the DGEM Download page under 2 Plan Documents.

Q: Will the SECURE Act interim amendment take the same approach (all plans get but operational) or will elections be required?

A: The SECURE Act includes disaster-related relief provisions that are similar to the CARES Act relief provisions. We intend to take the same approach of operational application for these provisions. However, there are provisions in both the SECURE Act (e.g., allowing a distribution for childbirth and adoption expenses) and the CARES Act (e.g., the waiver of required minimum distributions) that may require employer elections. ASC intends to combine the SECURE Act and CARES Act amendments into a single interim amendment.

Q: Do you anticipate incorporating the CARES Act amendment as an Interim Amendment in DGEM or will it be incorporated in the Cycle 3 restated document?

A: The interim amendments for the CARES Act and the SECURE Act will be separate from the Cycle 3 pre-approved plan document. (The IRS does not allow the incorporation of laws enacted after 2017 into the Cycle 3 plans.) At this time, ASC is still considering the timing of incorporation of the CARES Act and SECURE Act interim amendments onto the DGEM system. Your input on this issue is welcome.

Q: Does your plan termination package include all required amendments for Hardship, SECURE and CARES Acts?

A: Yes, the 2020 plan termination package for defined contribution plans include provisions to comply with the CARES Act and SECURE Act. We assume that the plan has been amended for the final hardship distribution regulations. If not, you may use the hardship distribution wizard to create an amendment to update the plan for the final hardship distribution regulations.

Q: I completed an ASC plan termination amendment today, 4/23/2020, with an effective date of 5/31/2020. If some new legislation comes out before 5/31/2020 will I have to do another amendment?

A: Unfortunately, yes, if the legislation affects the plan. Terminating plans must be amended for all laws in effect as of the date of termination. However, a terminating plan does not need to include language which reflects laws that do not affect the plan.

LOANS

Q: COVID-19 distribution with a loan offset. If a participant is terminated because of COVID-19, I think the lump sum would be processed using the COVID-19 rules, but how is the loan offset processed?

A: It would appear as though the loan offset also should be processed as a CRD.

Q: Does the $100,000 CRD cap apply just on a plan/related plan basis, or does it also mean, as an individual, one is limited to $100,000 total CRD?

A: The limit applies to the individual person. To qualify for the special tax relief and recontribution rules for a CRD, the plan must make the CRD on or after January 1, 2020 and before December 31, 2020 and the aggregate distribution cannot exceed $100,000 (including all plans maintained by members of the same related employer group).

Q: $100,000 loan limit includes any existing outstanding loans as well, correct?

A: That is correct. Under the CARES Act, for the 180 day period beginning on the enactment of the CARES Act, a participant who is eligible to receive a CRD may receive plan loans in an amount not to exceed the lesser of $100,000 (rather than $50,000) or 100% (rather than 50%) of the participant's vested account balance (accrued benefit). All outstanding loans would be aggregated for this purpose.

Q: Can a person take the $100,000 COVID loan and then turn around and also take the $100,000 distribution?

A: Yes, if the participant's vested account balance is sufficient as the coronavirus-related loan and the CRD limits are applied separately.

Q: Does the one-year loan repayment delay only apply to COVID-19 qualifying individuals?

A: Yes, the delay in loan repayment provision only applies to "qualified individuals," which means the individual would need to qualify for a CRD (i.e., meet one of the conditions for receiving a CRD) to have the one-year delay in loan repayments.

Q: If a plan that does not currently offer loans wants to allow loans only to CRD qualified individuals, do you believe the plan has to be amended in the current year to add loans, or can it wait until the remedial CARES Act amendment period to add limited loans?

A: The answer is not clear. The CARES Act contains a special provision relating to plan amendments. Under the provision, any amendment pursuant to any provision relating to the coronavirus-related loan rules is not required until the last day of the 2022 plan year (2024 for governmental plans). Some practitioners read this to allow for any amendment related to the coronavirus-related loan rules, including adding a loan provision, to be delayed until the end of the 2022 plan year. Other practitioners argue that this is a discretionary amendment and, therefore, must be made by the end of the 2020 plan year. At this time, no guidance has been issued providing clarity on this point. Certainly, the conservative approach would be to make the amendment to add a loan program by the end of the 2020 plan year.

Q: Can an employee restart repayment on a suspended loan if they are rehired (furlough ended) by 8/1/2020?

A: While guidance on this issue would be helpful, it would appear as though this would be acceptable.

Q: Assume that a loan repayment is due on 4/3/2020. The plan uses operational relief for loan repayments and interpretation #3. Does that mean loan payments resume 4/3/2021 or 12/31/2021 (with reamortization on resumption date)?

A: Under interpretation #3, the assumption is that all loan repayments would resume 4/3/2021.

Q: Regarding delay of loan repayments, will the loan still need to be repaid within the original 5-year term (for general purpose loans)?

A: No, under the CARES Act's delay of repayment provision, the period of delay is disregarded in determining the 5-year period and the term of the loan. Thus, the term of the loan can extend beyond the original 5-year period by the period of delay.

Q: What do I do in this event? We have a furloughed participant with a loan payment due, but he received no paycheck from which his loan payment could be deducted?

A: The plan could allow for a delay in the repayment under the CARES Act rules. Another option would be to allow the furloughed employee to make the loan payment using some other means such as a personal check.

Q: If an active participant has an outstanding loan and s/he is a qualified individual, can s/he request a distribution of the loan as part of a CRD? Can s/he request that only the loan be distributed?

A: Currently, this is unclear and additional guidance is necessary. Until guidance is available, a reasonable, good-faith, nondiscriminatory approach should be acceptable.

Q: How would you count if it was ONE DAY after enactment? I would say it's the next day that starts with 1, so probably Sept 23. But I agree with you, unless they tell us (which they will before 9/23),

A: The law states the loan must be made to a qualified individual "during the 180-day period beginning on the date of the enactment of this ACT." EBSA Disaster Relief Notice 2020-01, released on 4/29/2020 clarifies that coronavirus-related loans may be taken through September 22, 2020.

Q: For DB plans with loan provisions, do all the CARES Act rules that apply to 401k plans also apply? Specifically, loan deferrals? A DB loan is from the plan assets and not a participant's account and deferring loan repayments could affect the plan's funding

A: The CARES Act does not distinguish between coronavirus-loans from a defined contribution plan or a defined benefit plan. The effect on funding could impact a plan sponsor's decision to implement the CARES Act loan rules.

Q: Does the employee only qualify for the loan repayment delay if the reason for the furlough is COVID-19?

A: Yes, the delay in loan repayment provision only applies to "qualified individuals," which means the individual would need to qualify for a CRD (i.e., meet one of the conditions for receiving a CRD) to have the one-year delay in loan repayments.

Q: If we suspend loan payments now, and then restart loan payments before 1/1/2021, say 9/1/2020, can we do the re-amortization then?

A: While guidance on this issue would be helpful, a reasonable interpretation of the loan delay rules would appear to allow re-amortization on 9/1/2020.

RMDs

Q: Can the plan sponsor choose to NOT allow the participant to take their RMD if the participant wants to take it?

A: This is not clear. Under prior guidance relating to the 2009 waiver of required minimum distributions (see Notice 2009-82), the IRS provided sample language that a plan could use to address the waiver rules. Under the sample language, participants were always given the opportunity to elect to receive or not receive the required minimum distribution otherwise payable in 2009. The IRS also provided "plan operation relief" if participants were not given the option of receiving or not receiving distributions that include 2009 required minimum distributions. We assume that the IRS will take a similar approach for the 2020 required minimum distribution waiver, but guidance is needed.

Q: Doesn't the 2020 Notice delaying certain deadlines include the delay of the 60-day rollover rule, resulting in only January 2020 RMDs being at issue (i.e., RMDs taken from 2/1 would be due to be redeposited under the 60-day rule by 4/1, which was extended until 7/15)?

A: Notice 2020-23 references the extensions provided under Revenue Procedure 2018-58 as eligible for the extension to July 15, 2020. Revenue Procedure 2018-58 lists the 60-day rollover rule under Code §402(c) as eligible for extension. The IRS may provide a further extension for 2020 RMDs.

Q: Are waivers to RMDs an optional plan provision, or do all participants, despite whether or not the plan sponsors elect this in their plan, have the opportunity to make this decision?

A: This is not clear. Under prior guidance relating to the 2009 waiver of required minimum distributions (see Notice 2009-82), the IRS provided sample language that plans could use to address the waiver rules. Under the sample language, participants were given the opportunity to elect to receive or not receive the required minimum distribution otherwise payable in 2009. The IRS also provided "plan operation relief" if participants were not given the option of receiving or not receiving distributions that include 2009 required minimum distributions. We assume that the IRS will take a similar approach for the 2020 required minimum distribution waiver, but guidance is needed.

Q: So an RMD amount that is not required to be taken in 2020 is also NOT considered as "rollover eligible," am I reading that right?

A: Not quite. Under the CARES Act, if an individual receives a distribution after December 31, 2019 that is eligible for waiver, the individual may rollover the distribution. However, if all or a portion of a distribution during 2020 is an eligible rollover distribution because it is no longer a required minimum distribution under this provision, the distribution shall not be treated as an eligible rollover distribution

for purposes of the direct rollover requirement under Code §401(a)(31), the notice and written explanation of the direct rollover requirement under Code §402(f), or the mandatory 20% income tax withholding for eligible rollover distributions under Code §3405.

Q: Do you have a sample participant election for RMD for 2020?

A: ASC has added a sample 2020 RMD Waiver Form to the DGEM Download page.

Q: If a plan sponsor DOES NOT elect to waive RMDs, the amount the participant receives would not be eligible for rollover, correct? It would remain a true RMD, yes?

A: No, the amount received is not a required minimum distribution for 2020 and is eligible for rollover. Under the CARES Act, RMDs are waived for 2020. Thus, if an individual receives a distribution after December 31, 2019 that is eligible for waiver, the individual may rollover the distribution. However, if all or a portion of a distribution during 2020 is an eligible rollover distribution because it is no longer a required minimum distribution under this provision, the distribution shall not be treated as an eligible rollover distribution for purposes of the direct rollover requirement under Code §401(a)(31), the notice and written explanation of the direct rollover requirement under Code §402(f), or the mandatory 20-percent income tax withholding for eligible rollover distributions under Code §3405.

Q: Do these RMD Waiver issues apply to business owners who are still working and over 70½?

A: Yes, the CARES Act rules relating to the waiver of 2020 required minimum distributions apply to both "5% owners" and to non-"5% owners." Also, keep in mind the RMD age was increased from age 70½ to age 72 under the SECURE Act.

Q: If a participant elects to take the RMD, does this make it subject to 20% tax w/h because it's eligible for rollover?

A: No, a distribution that otherwise would be a 2020 RMD absent the waiver rule is not subject to the mandatory 20% withholding rule. However, the 10% withholding rule (with the ability of the participant to elect to waive withholding) does apply.

Q: If a participant chooses to take an RMD for 2020, is this now considered an in-service and does the plan otherwise need to allow for in-service (assuming participant is still employed)?

A: Some plans only allow in-service distributions in order to satisfy the required minimum distribution requirements. We believe that a reasonable interpretation of the plan provisions would not require an amendment to allow for other in-service distributions. We will clarify this in our interim amendment

MISCELLANEOUS

Q: What is your feeling on whether discretionary profit sharing contributions (attributable to pay for the 8-week applicable period), are eligible payroll costs for purposes of PPP loan forgiveness?

A: In FAQs related to the Payroll Protection Program (PPP) released April 6, 2020, the Department of the Treasury indicated that 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. There is no discussion of discretionary versus mandatory contributions. We at ASC do not advise on matters relating to the PPP. We recommend that plan sponsors consult with their bank, tax advisors, and/or legal counsel on these matters.

Q: ***Has there been any relief information regarding safe harbor contributions for 2019 plan year that the plan sponsor may not have yet deposited but is having financial hardship in terms of making the deposits?***

A: The American Retirement Association and others are asking Congress to pass a law to provide relief for plan sponsors of defined contribution plans, including safe harbor 401(k) plans, that are having economic difficulties due to the coronavirus crisis. This may include contributions due for 2019 and for 2020 contributions.

Q: ***Can a 403(b) plan that calculates its match each payroll period under 6-4 of the AA suspend their match as of a prospective payroll period even if there are no allocation requirements in the document? It seems that they haven't accrued the match until then.***

A: If the match formula is fixed under the plan document, then the match must be provided through the effective date of the amendment.

Q: ***Employers are starting to ask if they can stop their ER/Match contributions. Is there any relief for sponsors who have a fixed employer contribution w/ no allocation conditions (not Safe Harbor plan) to suspend their contributions prospectively for this current PY?***

A: There is no relief currently available. However, the American Retirement Association and others have asked Congress to enact legislation that would provide contribution relief for employers experiencing substantial business hardship caused by the coronavirus crisis.

Q: ***Many recordkeepers are providing fee waivers. Is there a requirement to provide participants with a revised fee disclosure showing the fee waiver?***

A: We believe that participant fee disclosure notices will need to be revised to reflect the reduction in fees. Fortunately, the Department of Labor recently released EBSA Disaster Relief Notice 2020-01, which provides relief from the disclosure timing requirements where there has been a change in relevant information. Under the relief, a plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Certainly, a plan may provide the revised disclosure notice prior to the end of the relief period.

Q: ***Is the correction of excess deferrals extended to July 15th from April 15th?***

A: Notice 2020-23 references the extensions provided under Revenue Procedure 2018-58 as eligible for the extension to July 15, 2020. Revenue Procedure 2018-58 lists the April 15 deadline for excess deferrals as eligible for extension; thus, the correction of excess deferrals is extended to July 15, 2020.

Q: ***Does anyone know if the stimulus package approved on 4/23 has anything related to retirement plans?***

A: There were no rules specific to retirement plans in the coronavirus-relief law that was signed into law on April 24, 2020. Future stimulus laws may include such provisions.

Q: ***Is the coronavirus-related distribution available to SIMPLE IRA holders?*** **I*f yes for SIMPLEs, is it still optional, meaning the Employer has to decide to allow it?***

A: The rules are different for SIMPLE 401(k) plans and SIMPLE IRA plans. The distribution rules otherwise applicable to 401(k) plans also apply to SIMPLE 401(k) plans. Therefore, it is also optional

for SIMPLE 401(k) plans and the employers sponsoring them would need to authorize CRDs under their plans. With respect to a SIMPLE IRA, the employer does not impose the distribution rules; the provider of the SIMPLE IRA does. ASC does not provide a SIMPLE IRA plan. Employers should address questions to their SIMPLE IRA provider.