Morgan Stanley
AT WORK

Retirement

COVID-19: Considerations for Plan Sponsors

Helping You Make Important Decisions To Protect Your Business and Support Your Employees

Like all business owners and corporate executives across the country, you're working tirelessly to ensure the long-term stability of your company as you strive to provide employees with support.

You're also seeking education on how to best understand the details of the Coronavirus Aid, Relief and Economic Security (CARES) Act, so you can quickly and effectively implement the provisions provided in the new law.

At Morgan Stanley, we are committed to helping you navigate the challenges you and your employees are facing by providing valuable insights and strategies to help you stabilize and strengthen your retirement plan.

The following are answers to key questions you may have about your retirement plan(s) or the CARES Act, as well as key action steps to begin taking now. More details can also be found in the Morgan Stanley white paper, "Coronavirus Aid, Relief, and Economic Security Act: Key Provisions for Individuals and Businesses." [1]

[1] Note that the following does not represent a comprehensive, exhaustive list of all CARES Act provisions. Additionally, some provisions included herein may have eligibility criteria and conditions not described here in full. Click here for the full text of the bill. Please consult your Financial Advisor, and Tax and Legal Advisors, to understand the potential CARES Act impact to your particular financial and tax situation, respectively.

Potential CARES Act implications for your plan

How does this relief impact plan loans and withdrawals?

If you choose to adopt such relief, the CARES Act temporarily relaxes distribution provisions to allow eligible plan participants to take withdrawals or loans from their retirement plan assets. The eligibility requirements are outlined on page one of our white paper mentioned earlier.

If they qualify – and if your plan permits loans – participants can temporarily take double the previous plan loan limit to the lesser of (a) $100,000 or (b) the present value of a participant's vested account balance. The increased loan amount would be available for loans taken within 180 days of enactment of the CARES Act (March 27, 2020).

The CARES Act also allows eligible participants to delay plan loan repayments that are due through the end of 2020 for up to one year. This includes previous loans from the plan.

In 2020, the CARES Act permits eligible participants to take up to $100,000 from all their retirement accounts (including IRAs) without the typical 10% early withdrawal penalty and exempts the distribution from the mandatory 20% federal income withholding applicable to eligible rollover distributions from qualified retirement plans (and exempts such distributions from 402(f) notice requirement and direct rollover requirement).

This withdrawal provision applies to both IRAs and defined contribution plans, so if participants also have individual IRAs, they can choose to withdraw needed cash from their IRAs and not necessarily from their plan at work.

Are participants required to take RMDs in 2020?

The CARES Act waives RMD payments for defined contribution plans and IRAs for calendar year 2020, including RMDs for 2019 that must be taken on or before April 1, 2020, by individuals who turned age 70 ½ in 2019, but only to the extent such RMD was not distributed before January 1, 2020.

Am I required to offer these provisions and amend my plan?

You should first determine if your plan permits distributions while people are still employed. Also, make sure you are familiar with the loan provision under your plan and decide if they should be updated.

The revised loan and withdrawal provisions under the CARES Act are optional, meaning it is up to you as the plan sponsor to determine whether to make them available to your participants. If you decide to offer them, the plan amendment deadline for adopting any of the relief provided under the CARES Act would be no earlier than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans).

While you do not need to make any plan amendments for the RMD provisions, it's important to note that the CARES Act does not provide any relief for RMDs from defined benefit or cash balance plans.

What changes to defined benefit plans are included in the CARES Act?

The CARES Act provides defined benefit funding relief for single-employer defined benefit plans, delaying the due date for employers to satisfy their plan funding obligations that would otherwise be due during 2020 until January 1, 2021, with interest for payments made after the original due date.

Balancing Retirement Plan Obligations with Cash Flow Needs

Can I reduce or eliminate contributions to my plan?

With today's volatile business and economic conditions, just having enough cash to run your business on a daily basis can be challenging. You may be looking for ways to improve your cash flow that involve suspending or reducing your safe-harbor contribution or employer match. Employers can generally amend their plans to reduce or eliminate matching, safe harbor or other employer contributions midyear on a prospective basis, subject to certain requirements.

For safe harbor plans, the ability to stop or reduce contributions mid-year may be restricted or special rules may apply. Safe harbor plans can suspend or reduce employer contributions if the safe harbor notice previously distributed to participants outlined this provision, or if the employer is operating at an economic loss for the plan year.

For plans without a safe harbor formula, there may be flexibility to reduce or eliminate an employer match or a non-elective contribution. Plan sponsors should review their plan document to determine if there are restrictions on amending the benefit.

It is important to note that each plan is unique and you should consult with your tax or legal advisor or TPA regarding any potential plan changes.

Can I terminate my plan?

While a defined contribution plan can be terminated at any time, caution should be exercised, as this may create more work and stress for you.

Here are some important considerations:

- When you terminate your plan, **you must distribute account balances to your participants**, usually within one year.
- **All account balances will automatically become 100% vested** – this includes participants who are not fully vested and those who take distributions after the termination date.
- If your plan has a safe harbor or fixed employer contribution, **you'll be required to make that contribution** this year.
- **There are plan termination fees**, including fees for processing participant distributions and administrative fees for the entire final year.
- **You won't be able to sponsor another plan for at least 12 months** after the plan is terminated.

Are there other options for my plan?

Yes, instead of terminating your plan, you can freeze the plan. While frozen, there are no plan contributions made or accrued and no new employees are eligible to participate.

You will need to notify employees that the plan is frozen, but the advantage to this strategy is you can reopen the plan in the future.

Are there any implications to my qualified retirement plan if I must lay off employees?

Yes, a reduction in force of 20% or more of plan participants could result in the inadvertent partial termination of your plan. When this occurs, all affected participants are required to be fully vested in their accounts. This determination requires an analysis of all the facts and circumstances associated with the layoffs.

Continue Fulfilling Your Fiduciary Responsibilities

What must I do to continue to protect my company and my employees when it comes to my retirement plan?

As the plan sponsor, you must continue to meet your fiduciary responsibilities, including depositing salary deferrals in a timely manner, monitoring investments and ensuring your plan's participants receive the information they need to make informed decisions.

Consider revisiting all of your plan documents. While doing so, it's important to review how your plan delegates other ERISA fiduciary responsibilities. For example, your plan may have a 3(38) Investment Manager, who is responsible for monitoring the plan's investment options or a 3(16) administrator, who is responsible for Form 5500 filings, keeping your plan documents updated, etc.

Can I make changes to my fund line-up?

During times of extreme market volatility, you should bear in mind the implications of eliminating investment funds from your line-up, including taking into account any resulting near-term blackout periods. As an alternative, you may want to consider adding another fund to that particular asset class, and then revisit the decision to remove the fund when the markets are less volatile.

Communicating with Your Employees

I am receiving many questions from my plan participants. What are the best strategies to inform and educate them about their retirement plan during these difficult times?

Your participants are most likely reaching out to you for help regarding their own retirement plan decisions. While you can provide them with investment education, be careful not give investment advice, as this may result in unintended fiduciary liability for you and your organization.

Consider using the resources and educational content[2] we've made available for you and your employees. We've also developed a recorded webinar you can offer your employees, Managing your finances in turbulent times. It covers topics like setting up a budget and retirement saving strategies within the context of the COVID-19 crisis.

In addition, consider sending special communications to appropriate groups of employees, such as those nearing retirement who may be worried about a sharp decline in their retirement account balance.

We Are All in This Together

At Morgan Stanley, we stand ready to help you, your company and your employees with your retirement plan – especially during these difficult and unprecedented times. You should also discuss any considered amendments and any potential changes to your retirement plan with your legal and tax advisors to determine what steps you must take before making any changes.

[2] Morgan StanleyCOVID-19 Personal Finance Resource Hub: https://advisor.morganstanley.com/covid-19

Morgan Stanley
AT WORK

Action Plan Summary and Checklist

CARES Act

LOANS AND WITHDRAWALS

- If your plan does not permit loans or in-service distributions, determine if you want to add these features.
- If your plan only allows for one loan, consider amending the plan to allow for more than one loan.
- Decide whether to allow the full $100,000 in loans/distributions or a portion.
- Review your policies related to the cure period and consider extending if possible.
- Contact your recordkeeper or TPA partner to understand how to implement the provisions.
- Notify plan participants of changes in the plan.
- If your plan requires spousal consent, consider online notary services.
- Amend plan documents by the end of 2022.

REQUIRED MINIMUM DISTRIBUTIONS

- Talk with your recordkeeper or TPA to learn whether they are suspending all scheduled RMD payments and understand the process for participants who already took their 2020 RMDs and want to return the distribution.
- Ensure any impacted participants, former participants and beneficiaries are communicated to appropriately.

DEFINED BENEFIT PLANS

- Determine if it makes sense to delay required 2020 DB contributions until January 2021. Be aware that relief in 2020 means significantly higher contributions will be needed in 2021.
- Stay current on developments for DB plans as industry efforts continue to focus on future funding relief.

Other Considerations

PLAN DESIGN CONSIDERATIONS

- Review DC plan documents to understand the matching and contribution requirements.
- If you decide to make changes to your DC plan, determine how you need to amend your plan and understand the participant notification requirements.
- If your DC plan has forfeitures, review the plan document to see if you can use those amounts to make company contributions.
- Discuss changes with your recordkeeper or TPA before taking steps to suspend or reduce mandatory DC contributions.
- Before terminating you plan, consider all other options – including freezing the plan. Consult your plan's administrative partner to make sure you understand all the implications of plan termination.
- It's important to monitor your company's layoff plans. If layoffs start to approach 20% in one year, begin to prepare for the possibility of a partial plan termination.

FIDUCIARY RESPONSIBILITIES

- It is critical to understand your fiduciary responsibilities, as you will be required to fulfill them, especially during difficult times.
- Document all committee meetings and decisions you make.
- Be aware of how plan documents delegate certain fiduciary duties to others.
- Continue to monitor investment options.
- Consider providing participants with additional investment education.

EMPLOYEE COMMUNICATIONS

- Ensure participants and beneficiaries receive all required notices and disclosures.
- Keep a record of all communications.
- Provide participants with additional educational resources.

You should discuss any considered amendments and any potential changes to your retirement plan with your legal and tax advisors to determine what steps you must take before making any changes.

Sources:

1. Morgan Stanley white paper "Coronavirus Aid, Relief, and Economic Security Act: Key Provisions for Individuals and Businesses" https://www.morganstanley.com/cs/pdf/604944129.pdf

2. Coronavirus Aid, Relief and Economic Security (CARES) Act: https://www.congress.gov/bill/116th-congress/senate-bill/3548

Please note that by clicking on a hyperlink(s), in some cases you will leave a Morgan Stanley Smith Barney LLC ("Morgan Stanley") website and enter another website created, operated and maintained by a different entity. By providing the third party publication(s) and/or links to a third party website(s), we are not implying that Morgan Stanley has an affiliation, sponsorship, endorsement, etc. with the third party or that any monitoring is being done by Morgan Stanley or its affiliates of any information contained within the publication(s) or web site(s). Morgan Stanley is not responsible for the information contained on the third party web site or your use of or inability to use such site. Nor do we guarantee their accuracy and completeness. The opinions expressed by the author(s) are solely their own and do not necessarily reflect those of Morgan Stanley.

This document is for informational and educational purposes only. The document does not take into account your personal circumstances and Morgan Stanley does not represent that this information is complete or applicable to your situation. The information and data contained in this report are from sources considered reliable, but their accuracy and completeness is not guaranteed.

Tax laws are complex and subject to change. Morgan Stanley Smith Barney LLC ("Morgan Stanley"), its affiliates and Morgan Stanley Financial Advisors and Private Wealth Advisors do not provide tax or legal advice and are not "fiduciaries" (under ERISA, the Internal Revenue Code or otherwise) with respect to the services or activities described herein except as otherwise provided in writing by Morgan Stanley and/or as described at www.morganstanley.com/disclosures/dol. Individuals are encouraged to consult their tax and legal advisors (a) before establishing a retirement plan or account, and (b) regarding any potential tax, ERISA and related consequences of any investments made under such plan or account.

©2020 Morgan Stanley Smith Barney LLC. Member SIPC.

CRC 3042435 (04/20)