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Your Retirement Plan during the Coronavirus Pandemic
Frequently Asked Questions

This document has been prepared based on frequently asked questions we have received, here at PARS, from our clients since the pandemic began. This is not meant to be an all-inclusive list of issues to address. We do hope you find it helpful and encourage you to reach out with any additional questions you may have. We also ask that you read through this entire article to determine if any of these issues affect your plan.

Contribution Funding Deadlines

1. **When is my 2019 employer contribution due to be funded to our plan?**
   For deduction purposes, the general deadline for all employer contributions for a plan year is the tax return deadline for the company, including extensions. For most entity types, this would be either March 15th or April 15th of the following year. An extension could provide up to another 6 months beyond those dates.

   No relief was given to tax returns due on March 15, 2020. If your tax return deadline was March 15, 2020, and you did not file an extension, your 2019 contributions were due to the plan by March 15, 2020. Otherwise, your deposit deadline for all 2019 employer contributions is your extended due date.

   The IRS has provided relief for taxpayers (including business returns) due on April 15, 2020 to July 15, 2020. This also automatically extends the due date for contribution funding for such entities to July 15, 2020 with a normal company tax return deadline of April 15, 2020.

   Unfortunately, no such relief has yet been provided for tax returns due on May 15, June 15, or any other date besides April 15. This includes tax returns currently on extension beyond April 15. The extension deadlines are still applicable, barring any further relief announced by the IRS.
   We encourage you to discuss this with your accountant, and review the IRS Q&A that can be found on their website at https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers for more information.

2. **What are my options for 2020 required contributions?**
   Please see below for deadlines related to safe harbor contributions. Other fixed contributions such as a fixed non-safe harbor match or profit sharing contribution are generally due by the company's tax return deadline for 2020, as explained in #1 above. However, if you have a fixed contribution that you would like to decrease or eliminate, a plan amendment is most likely necessary. It's important you reach out to us to discuss any such requirements and options available to your plan to lower or possibly eliminate any fixed contribution obligations for 2020.

Participant Distribution Options

PARS sent out a Summary of the new CARES Act on March 30, 2020, which outlines the new provisions available to those affected by the Coronavirus pandemic. The CARES Act was signed into law on Friday, March 27, 2020. **We are still researching and preparing for the new optional provisions and will continue to provide information as we learn more.** Below are other options available to participants who may not qualify for the coronavirus-related distributions and/or loans.

1. **Do my employees who have been laid off, furloughed, etc. qualify to take distribution of their vested account balance?**
   Most plans generally permit terminated employees to take distribution of their vested account balance immediately upon termination. Some plans may have a waiting period after termination, such as the end of the current quarter or plan year end following termination of employment. Regardless, the employee must generally be officially terminated, which is considered a "distributable event" under IRS code.

   Most plans also permit in-service distributions upon attainment of age 59-1/2. For those over this age, there is a good chance your plan already permits distribution by those individuals for any reason, regardless of employment status. If your plan does not currently permit such a distribution, we can help with the amendment to add it to your plan moving forward.

2. **How do I determine if my employees are considered "terminated" for the IRS distribution rules?**
   The difference between "termination of employment" and "layoff, furlough, suspension, etc." is unclear. There is currently no guidance on this issue. The IRS has historically reviewed termination-related distributions on a facts-and-circumstances basis. We recommend you consider signs of actual employment termination, such as eligibility for unemployment, access to COBRA, and no apparent guarantee of rehire.

   If your business says "We are closing until April 30th," that may not appear to constitute a termination of employment for those affected. "We are closing our doors and we don't know what will happen next," may edge closer to a bona fide termination. The status of actual employment termination must be made by you as Plan Sponsor/Plan Administrator. PARS is not a law firm and does not specialize in employment law so we are unable to help you with this determination. We require you to provide us with an employment termination date prior to processing any distribution requests (other than the coronavirus-related distributions to those who qualify).

3. **I'm worried my participants will take distributions from the plan that will have significant negative consequences to their long-term retirement savings. What can I do to help mitigate that?**
   We encourage all of our clients to discuss these issues with their financial advisor(s). The new coronavirus-related distribution and loan provisions are optional. The plan is not legally obligated to

offer those options. However, you still have participants who may qualify for the standard distribution rules for "termination of employment", retirement, disability, etc. It's important you also encourage those participants to speak to the plan's financial advisor (or their personal financial advisor) before making any decisions on taking a withdrawal or loan at this time. Financial Advisors can be a great resource for that discussion and decision-making process.

4. **What options do my employees with loans have, if they are not currently on payroll but are not considered terminated (i.e. furlough)?**
   The CARES Act provided relief for current outstanding loans, for those who qualify. All loan repayments due between March 27, 2020 and December 31, 2020 can be delayed up to 12 months without defaulting on the loans. Interest will continue to accrue during the delay period.

   It's important you communicate with us and/or your record keeper to ensure proper handling of any loans for participants who are deferring payments. You want to make sure a 1099-R is not issued for a loan default at year-end due to delayed loan repayments. This may require notification to your record keeper. Again, this particular relief is only provided for those who qualify under the CARES Act. There are other pre-existing rules that provide the ability to suspend loan payments up to a year for certain leaves of absence. Please reach out to our office to discuss any specific situations you have that may be unclear to you.

5. **Can I add a loan option to my plan so that employees can repay whatever amount they may need to take at this time? Specifically, for those who do not qualify under the CARES Act?**
   Yes. Most retirement plan types permit a loan provision, which allows employees to borrow from their account balance. As long as they pay it back under the general rules, they avoid taxation. These general rules typically permit a loan up to the lesser of $50,000 or 50% of your vested account balance. Most plans will require a minimum of $1,000 loan and permit only one loan at a time. The interest rate is typically a factor of Prime (i.e. Prime + 1.5%). The interest and principal payments are repaid to the participants account. Transactional fees paid by the participant also typically apply. Loans must be made available in your plan document in order to take advantage of the higher loan limits provided by the CARES Act. PARS can prepare that amendment to you, upon request.

6. **With the market downturn what can I do, if anything, to help my account besides waiting for it to rebound?**
   One way to somewhat "take advantage" of the market downturn is to convert a portion of your pre-tax account(s) to Roth through an in-plan Roth conversion. These conversions were signed into law with The Small Business Jobs and Credit Act of 2010. Your plan must include a 401(k) provision, as well as the Roth contribution provision. For more information on Roth Conversions, please login to our website (PSL) at www.paretirementsolutions.com, click "Industry Bulletins" and download the article named "Roth Conversions". It is important participants discuss the pros and cons of a Roth Conversion with their accountant and/or financial advisor. We do not provide tax advice and cannot discuss anyone's individual situation with them regarding Roth conversions. The plan must adopt the Roth Conversion provision, via plan amendment, for participants to take advantage of this option.

Please contact our office if you are interested in adding this feature to your plan if it's not already available. We will also need to coordinate the addition of this feature with your plan's record keeper (if applicable), so please be patient throughout this process as it may take some time.

Safe Harbor Plans

This section is dedicated to plans that have adopted safe harbor for the current plan year. If your plan is not a 401(k) plan, or is not a safe harbor plan, this section would not apply to you.

1. **We have adopted the 3% safe harbor non-elective provision. What are our funding obligations and deadlines for 2020?**
   The IRS does not require you to fund your 3% safe harbor non-elective contribution throughout the year. You have up to your company's federal tax return deadline (including extensions) to fund the entire year's contribution. For 2020 calendar year fiscal years, this could be as late as September 15 or October 15, 2021, depending on your entity type.

2. **We have adopted the 4% safe harbor match provision. Our document currently states that our match is calculated on a per pay basis. Can we suspend or delay the deposit of our matching contributions, while retaining our safe harbor status for the current plan year?**
   Yes. Safe harbor match plans, defined as a per pay allocation, have until the last day of the following quarter to deposit that quarter's matching contributions. For example, all April/May/June 2020 pay dates must be funded no later than September 30, 2020. This delay could provide your company the relief it needs from a cashflow perspective, while retaining your safe harbor protection for the current year.

3. **Can we amend our plan from a per pay calculation to an annual calculation to delay the funding requirement even further, and retain our safe harbor status for the current plan year?**
   Yes. You can choose to amend your plan to an annual match calculation. This would convert the plan to the same funding deadline as non-elective safe harbor outlined in #1 above. However, the annual calculation could result in a larger match for some individuals. The annual match calculation considers the deferral and compensation totals for the entire year. We commonly refer to this calculation as a true-up, if you made any deposits during the year towards your safe harbor match.

   The per pay match calculates the match each pay and stops if and when the employee deferrals stop. If you decide to amend your plan to the annual match calculation, please understand that the overall match expense could be higher for some individuals once the annual amount is "trued-up".

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4. **Can we suspend/eliminate our safe harbor obligation for 2020?**
   Yes. In most cases, you may generally remove the safe harbor provision for the current year. This requires an amendment to your plan as well as a 30-day advance supplemental notice to employees. The safe harbor contribution must be funded from the beginning of the current plan year through the 30-day period. For example, if you notify your employees on April 1st that the safe harbor contribution is being eliminated, your funding obligation would be required through May 1st of this year.

5. **What are the consequences of removing our safe harbor provision?**
   The plan will have to revert to ADP and ACP testing for the year. This is a test that compares the average contribution of your Highly Compensated Employees (HCEs) to your non-HCEs. If that test fails, some (or all) of your HCEs may receive some (or all) of their deferrals and/or match back to them as a taxable refund. There are other ways to satisfy this test failure, but this is the most common and least costly approach to the Employer. If the refunds are all taken within 2-1/2 months of the plan year end, the employer avoids a 10% excise tax payable to the IRS.

   Top heavy plans should use caution when removing the safe harbor protection. Some plans designed with safe harbor receive automatic exemption from the top heavy rules as well. That exemption would be lost if safe harbor is removed, which may cause a minimum contribution by the employer anyway. This *may* outweigh the benefit and cost savings of removing the safe harbor expense, since a minimum contribution would still be needed. It's best to consult with our office, if your plan is over or close to the top heavy threshold. We are optimistically expecting there to be further governmental relief from the top heavy rules for the current year, but nothing has been announced yet.

6. **When and how can we reinstate our safe harbor contribution if we remove it this year?**
   The safe harbor **match** provision must be added before the first day of a plan year, via plan amendment. Notice is generally required to employees 30 to 90 days prior to the plan year beginning. Therefore, it's important that you discuss your desires to add back your safe harbor match feature at least 45 to 60 days prior to your next plan year beginning. For calendar year plans, these discussions should start no later than November 1st of this year.

   *There is much more flexibility with the 3% non-elective option. Under the SECURE Act, you now have up to 30 days prior to the plan year end to adopt safe harbor for that year. For a calendar year plan, that means you have up to December 1, 2021 to add the 3% non-elective option to your plan for the 2021 plan year. If you are able to fund at least 4%, that deadline becomes the end of the following year (December 31, 2022) to adopt the safe harbor feature for the 2021 plan year. The SECURE Act also eliminated the participant notice requirement for safe harbor non-elective plans.

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Partial Plan Termination

Can you explain the rules on partial plan terminations in more detail and how it may affect my plan?
Generally, if a plan incurs a significant reduction in participants due to involuntary (Employer-initiated) terminations of employment, it has incurred a partial plan termination. As a result, those affected must be made fully-vested in any employer accounts subject to a vesting schedule. While certain industries may argue a higher threshold is typical in their industry, the general standard is a 20% or more workforce reduction in the plan. An employer-initiated termination is any involuntary termination other than death, disability, or retirement on or after normal retirement age, **even if it is caused by reasons outside of the employer's control**. As you can see, this issue poses significant relevance at this time. Please contact our office if you have any further questions or concerns on this issue, as it may relate to your plan specifically.

IMPORTANT – We are awaiting further guidance on this issue, with possible relief to come in future Congressional and/or IRS action. Until that time, we can only advise our clients on the current law. You may decide to wait for potential relief and continue to apply the accrued vesting %'s to any terminated participant distributions. You may decide to err to the benefit of your participants and choose to fully vest those who have been terminated. This will be a plan sponsor decision based on your own facts and circumstances, and what we know at the time.

If you choose to continue applying the normal vesting schedule to terminated participant distributions, we caution you about using the forfeiture account for plan fees or contributions until you know for sure how you are to proceed. Those dollars may need to be paid out later to an employee if the current partial plan rules stand, and they apply to your plan. Hopefully there will be more to come on this issue in the near future. PARS will continue under the assumption there is no partial plan termination for our clients, unless they notify us otherwise.

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