



PLAN OPERATION UNDER THE PROVISIONS OF THE CARES ACT

I. INTRODUCTION

On March 27, 2020, President Donald Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The purpose of the CARES Act is “To provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.” Section 2202 and 2203 of the CARES Act contain several special rules for use by retirement plans. These rules provide for temporary modifications of the rules governing the operation of retirement plans qualified under Internal Revenue Code 401(a) (“qualified retirement plan”). The CARES Act provisions are meant to allow participants in qualified retirement plans to utilize assets in such plans to help provide personal financial relief necessary due to the 2020 coronavirus pandemic.

Generally, the CARES Act does not require qualified retirement plans to adopt formal amendments incorporating the CARES Act provisions until the last day of the first plan year beginning on or after January 1, 2022. However, as an employer who sponsors a qualified retirement plan, you will have to operate your plan in good faith according to the provisions of the CARES Act. C&N, the sponsor of the documents outlining the provisions of your plan intend to execute a “document level” amendment to the Basic Plan Document (“BPD”) that governs your plan. This amendment will control the provisions of all employer plans who have adopted the BPD unless the employer intends to adopt an “employer level” amendment outlining CARES Act provisions specific to their plan only.

The following outline represents a summary of the retirement plan provisions of the CARES Act and how C&N intends to apply those provisions.

II. QUALIFIED CORONAVIRUS RELATED DISTRIBUTIONS

The CARES Act permits participants who are still employed to take special distributions. We refer to these distributions as **Qualified Coronavirus Related Distributions (QCRD)**. C&N intends to allow these distributions for all plans that utilize the C&N document subject to the following rules:

- A participant must meet the definition of a Qualified Individual in order to take a QCRD (see the definition of Qualified Individual at the end of this alert).
- A participant can only take QCRDs through December 31, 2020.
- A participant can take a single or multiple QCRDs as long as the sum of the QCRDs do not exceed the lesser of (a) their full vested balance or (b) \$100,000.
- A participant can take QCRDs from any source of funds (employee deferrals, regular employer match, profit sharing, safe harbor match and safe harbor 3% contributions).
- A participant does not have to meet any minimum age to take a QCRD.



- A participant can pay back (i.e. recontribute) the total amount of QCRDs they take on a pre-tax basis to any eligible retirement plan within a 3-year period starting the day after they receive a distribution.
- QCRDs are not subject to 20% mandatory Federal income tax withholding. Federal income tax withholding is voluntary and can be waived or set at any level by the participant.
- QCRDs are not subject to the 10% Federal early withdrawal penalty even if the participant has not reached age 59 ½.
- A participant can elect to pay Federal income taxes on QCRDs ratably over 3 tax years.

III. QUALIFIED CORONAVIRUS RELATED LOANS

The CARES Act permits participants to take plan loans with higher maximum loan amounts. We refer to these special loans as Qualified Coronavirus Related Loans (QCRL). C&N intends to allow these loans for all plans that utilize the C&N document subject to the following rules:

- If your plan does not allow for loans, the plan must be amended to provide for participant loans before any QCRLs are granted. If your plan allows for loans, no immediate amendments are necessary (see suggestions below).
- A participant must meet the definition of a Qualified Individual in order to take a QCRL (see the definition of Qualified Individual in APPENDIX A).
- A QCRL can only be taken through September 23, 2020.
- A participant can take a loan equal to the lesser of (a) 100% of their vested balance, or (b) \$100,000.
 - If the participant has had an outstanding loan(s) in the past 12 months, the \$100,000 limit will have to be lowered.
- A participant can immediately suspend payments on the new loan for up to 1-year (see Coronavirus Loan Repayment Suspensions below).

For plans that do not offer loans but would like to offer QCRLs, please contact C&N at 401khelp@cnbankpa.com to have a plan amendment and Loan Policy prepared. For plans that currently offer loans, you may want to consider temporarily increasing the number of loans that a participant can have outstanding at one time to allow “space” for a participant to take a QCRL. Please contact C&N to have your Loan Policy amended.

IV. CORONAVIRUS RELATED LOAN REPAYMENT SUSPENSION

The CARES Act requires plans to allow participants to elect to suspend any payments due on an outstanding loan or new loan for a 1-year period.

- A participant must meet the definition of a Qualified Individual in order to take a QCRL (see the definition of Qualified Individual in APPENDIX A).
- A participant may only suspend payments due between now and December 31, 2020.
- If a participant has multiple loans, they can suspend payments on all loans or any combination of loans.
- The period of suspension does not count towards the regulatory loan term limit of 5 years.

- Interest continues to accrue on the loan during the suspension period.
- Once payments resume, the loan plus accrued interest may have to be re-amortized, resulting in a higher payment.

V. WAIVER OF 2020 REQUIRED MINIMUM DISTRIBUTIONS (RMDs)

The CARES Act requires plan to permit participants to waive 2020 RMDs.

- The waiver applies to participants who were required to take their first RMD before December 31, 2019.
- The waiver applies to participants who were required to take their first RMD for the 2019 calendar year but have not yet taken their 2019 RMD.
- Participants may take their 2020 RMD if they choose to.

APPENDIX A DEFINITION OF A QUALIFIED INDIVIDUAL

QCRDs, QCRLs and Coronavirus Loan Repayment Suspensions are only available to participants who meet the definition of Qualified Individual.

A Qualified Individual for these purposes is a participant who meets one or more of the following criteria:

Who has been diagnosed with novel coronavirus or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention.

Who has a spouse who has been diagnosed with novel coronavirus or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention.

Who has a dependent has been diagnosed with novel coronavirus or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention.

Who is experiencing adverse financial consequences as a result of being quarantined, being furloughed or laid off or having my work hours reduced due to novel coronavirus or coronavirus disease 2019 (COVID-19).

Who has been unable to work due to lack of child-care due to novel coronavirus or coronavirus disease 2019 (COVID-19).

Who is a business owner or operator and the business has been closed or forced to reduce hours due to novel coronavirus or coronavirus disease 2019 (COVID-19).