



CARES ACT ADMINISTRATIVE Q&As

PLAN TYPE SPECIFIC ISSUES

The CARES Act didn't specifically address longer-term issues that have arisen in the wake of the COVID-19 outbreak. The IRS did release Notice 2020-52 which provides limited relief for safe harbor plans. Below we address several key issues regarding safe harbor & SIMPLE plans, government plans, as well as defined benefit and cash balance plans.

Safe Harbor, QACA & SIMPLE Plans

SH1: What do you believe the likelihood is of relief for plan sponsors from the 30-day advance notice for suspending safe harbor contributions?

A: In Notice 2020-52, the IRS provided that for plans who adopted an amendment, between, March 13, 2020, and August 31, 2020, to reduce or suspend safe harbor nonelective contributions will NOT be treated as failing the 30-day notice requirements if the supplemental notice is provided no later than August 31, 2020, and if the plan amendment is adopted no later than the effective date of the reduction or suspension. The relief is not applicable to plans that suspend or reduce the safe harbor matching contributions.

Note: In Notice 2020-52, the IRS clarified that since HCEs are not required by law to receive safe harbor contributions that amending a plan to eliminate them will not be considered a suspension of the safe harbor; rather it is a permissible mid-year amendment as defined by Notice 2016-16. Therefore, a new notice and election opportunity must be provided to the impacted HCEs

SH2: If a plan sponsor chooses to suspend their safe harbor 3% nonelective contribution now, can they restart later in the year if business is better? What if it is a match safe harbor?

A: A matching safe harbor plan can generally not be added once the plan year has begun. However, neither the law nor the regulations address this issue with respect to the nonelective contribution. There doesn't appear to be anything in the law precluding this, particularly in light of the SECURE Act, which allows a plan sponsor to add a nonelective safe harbor plan after the plan year has ended.

SH3: If a plan sponsor ceases the safe harbor contribution during the 2020 plan year, when is the contribution due?

A: By the due date of the 2020 tax return, including extensions. This is the same as ongoing plans.

SH4: Is there any relief for employers with SIMPLE IRA plans? Do you see any possibility of SIMPLE IRA plan sponsors being able to terminate their SIMPLE IRA plan mid-year or skip their matches for 2020?

A: We have received a lot of inquiries about SIMPLE IRA plan funding. Based on past experience, if relief is granted to Safe Harbor 401(k) plans it most likely will be for SIMPLE IRAs as well.



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SH5: When a QACA safe harbor is suspended mid-year, do plans default to EACA when the Safe Harbor piece is removed? Does a new auto enroll notice need to be drafted or is the current notice provided with the Safe Harbor suspension notice? I have two clients suspending their Safe Harbor match and neither recordkeeper have said anything about the automatic enrollment notice, or how auto enroll will work. With both, we requested EACA and I have requests in regarding the notice, but curious if there's a general default process here that should be followed.

A: A plan's eligibility requirements and methodology do not change upon the amending out of Safe Harbor status - unless the amendment to suspend the contributions also changes the automatic enrollment feature of the plan. Note that we don't have guidance regarding mid-year amendments to EACA features, but most believe the same rules for mid-year amendments to a safe harbor plan would also apply to an EACA.

SH6: Do you know how true-ups are handled with a mid-year suspension? Are they still required and simply made form start of the plan year to suspension? I could see this piece getting missed if required.

A: This is something that should be addressed as part of the suspension amendment, and it's probably often overlooked. If overlooked, it would be open to different interpretations. For example, the suspension means the true-up is also suspended. Or, the suspension means that the true-up is applied to matching contributions made up to the point of the suspension, but still on a full annualized plan year basis (odd result but this could be a reasonable interpretation).



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Government Plans

GP1: How does the CARES Act apply to governmental or non-ERISA church plans?

A: The following provisions of the CARES Act apply to governmental and non-ERISA church plans (but please note that the required amendment date may be different for governmental plans):

- The distribution and loan provisions under Section 2202
- The waiver of the required minimum distributions under Section 2203

Note: The provision for the DOL to extend the deadline for plan notices (Section 3607) would not apply because these plans are not subject to ERISA:

Note: The provision regarding Single Plan Funding relief is not applicable to governmental and non-ERISA church plans because they are not subject to minimum funding requirements.



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Defined Benefit & Cash Balance Plans

DB1: For a DB plan (such as a cash balance plan) which calculates the RMD based on an account balance, is the 2020 RMD waived in the same way RMDs are waived for a DC plan?

A: The RMD waiver is not applicable to DB plans, including cash balance plans.

DB2: Does the RMD waiver apply to an IRC §414(k) account within a defined benefit plan (such as a rollover account)?

A: No. IRC §414(k) provides that the account is treated as a defined contribution only for certain purposes. IRC §401(a)(9) is not one of the stated purposes. Therefore, the account is treated as a defined benefit plan.

DB3: I know there has been a proposal about relief for small employer defined contribution plans to waive 2019 contributions not made and suspend 2020 required contributions. Has there been any proposal for DB plans similar to this?

A: Not to forgo the contribution, but as we mentioned on the webcast, the CARES Act provided for a delay of any contributions due in 2020 to be made by January 1, 2021. But take note that there is interest due on the delayed payments.

DB4: If employers have up to 1/1/21 to make their DB contribution, what about the deduction, since most will file by 9/15/20?

A: The Act extended the deadline for making contributions but did not change the deduction timing rules. So, the deduction would have to be taken for 2021.

DB5: Any distribution relief for DB plans per payments to HCEs under Treas. Reg. §1.401(a)(4)-5(b)(3)(ii)?

A: Not at this point in time.



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