



CITY OF *Los Angeles*

DEFERRED COMPENSATION PLAN

Board Report 20-14

Date: April 27, 2020

To: Board of Deferred Compensation Administration

From: Staff

Subject: Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Impact on Retirement Plans

Board of Deferred Compensation Administration

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Recommendation:

That the Board of Deferred Compensation Administration (Board):

- Adopt Coronavirus-Related Distributions (CRDs) of up to \$100,000 for qualified individuals in accordance with Section 2202 of the CARES Act;
- Adopt an increased loan limit of up to \$100,000 and extension of repayment periods for qualified individuals in accordance with Section 2202 of the CARES Act;
- Authorize the Board Chairperson to execute a plan sponsor letter of direction to Voya to make adopted CARES Act CRD and loan provisions available to DCP participants as soon as practical; and
- Direct staff to work with the City Attorney and outside tax counsel to draft the Board's adopted CARES Act provisions into the DCP Plan Document as part of its current Plan Document review and update process.

Discussion:

A. Background

On March 11, 2020, the World Health Organization declared the 2019 novel coronavirus (COVID-19) outbreak a pandemic due to the rapid spread of the disease globally and its impact on public health. On March 12, 2020, in response to the outbreak, Los Angeles Mayor Garcetti issued Citywide COVID-19 guidelines to protect the City workforce while ensuring continuity of operations. Subsequently, on March 19, 2020, Mayor Eric Garcetti issued a "Safer at Home" public order, and Governor Gavin Newsom issued Public Order N-33-20, directing Los Angeles and State of California residents (respectively) to stay home and limit all non-essential activities. Subsequently, on March 21, 2020, the County of Los Angeles Department of Public Health issued the "Safer at Home Order for Control of COVID-19," further restricting and limiting the gathering of persons and requiring the closure of non-essential activities and businesses in an effort to slow

the spread of COVID-19 in LA County. Across the United States, multiple states have implemented similar “Safer at Home” orders to further slow the spread of COVID-19 across the country.

National and regional responses to the pandemic have had an enormous economic impact on both businesses and individuals. The U.S. economy has entered a contraction of unknown depth and duration. Millions of Americans have either been deprived of their normal income or been formally laid off. The global nature of the epidemic has sharply reduced economic activity, disrupted business supply chains, and reduced household wealth as financial markets have fallen. The post-epidemic economic outlook is unclear as it is unknown how businesses and consumers will respond to the financial damage they experience during the crisis. In any event, it is likely to take time to restore business and consumer confidence.

To help mitigate the impact of the COVID-19 public health emergency and its economic impacts, the Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020. As the largest economic relief bill in the history of the United States, the CARES Act provides financial aid and support for individuals and businesses. The CARES Act also includes certain mitigation and support measures for individuals participating in defined contribution retirement plans. Such provisions apply to the City’s Deferred Compensation Plan (DCP) on either an optional or mandatory basis. These provisions are summarized in the following section.

B. Impact of the CARES Act on the City’s DCP

The CARES Act allows defined contribution plan sponsors to provide participants greater access to their defined contribution retirement plan funds. The CARES Act also provides relief to participants subject to mandatory age-related payouts. A summary of CARES Act provisions produced by Voya for a recent plan sponsor webinar attended by staff is provided as **Attachment A**. Key provisions relevant to the City’s DCP are summarized as follows:

1. Provision: Coronavirus-Related Distributions (“CRDs”) for Qualified Individuals

Provision Status: Optional for Plan Sponsor to Adopt

- The CARES Act allows 457(b) plans to provide a new distribution type, referred to as a CRD, without violating in-service distribution restrictions. A CRD is not a hardship distribution, under existing rules, but a unique distribution category.
- A CRD is any distribution made on or after January 1, 2020 and before December 31, 2020 to a “**qualified individual**” under the Act. A qualified individual is someone:
 - who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease (COVID-19) by a test approved by the Centers for Disease Control and Prevention,
 - whose spouse or dependent is so diagnosed, or
 - who, due to such virus or disease, experiences adverse financial consequences as a result of (1) being quarantined, (2) being furloughed or laid off, (3) having work hours reduced, (4) being unable to work due to lack of child care, or (5) being unable to work due to the closing or reduction of the hours of a business owned or operated by the individual.

- Plan sponsors, including the City, may rely on a participant’s self-certification that he/she has satisfied one of the above conditions – documentation is not required (as is the case with hardship distributions).
- The CRD can be in an amount up to \$100,000, as requested by the participant; plan sponsors also have the option of setting the maximum CRD amount lower than \$100,000, but whatever CRD limit is adopted by a plan sponsor must be consistent for all participants.
- A withdrawal is exempt from any applicable withholding tax but will be considered taxable income to the participant recipient. Participants can opt to report the income over three years.
- CRDs can be repaid back to the DCP within three years of the date of distribution or to an IRA to which a rollover contribution can be made. Repayments are treated as rollover contributions. Although additional clarification is needed from the IRS, presumably participants would be able to receive a refund of the taxes paid attributable to the distribution through the filing of an amended tax return or other administrative mechanism.
- Taking a CRD does not limit the eligibility of a participant from taking out a loan or requesting a hardship distribution.

2. Provision: Increased Loan Limit/Extended Repayment Period for Qualified Individuals

Provision Status: Optional for Plan Sponsor to Adopt

- The CARES Act further provides qualified individuals with expanded access to their accounts through loans. For the 180-day period beginning on the enactment of the CARES Act (March 27, 2020), a qualified individual may take out a loan in an amount not to exceed, in the aggregate, the lesser of \$100,000 (formerly \$50,000) or 100% (formerly 50%) of the participant’s vested account balance.
- Loan repayments are delayed by one year for any qualified individual who (1) has an outstanding participant loan balance on or after March 27, 2020, and (2) has loan payments due from March 27, 2020 through December 31, 2020.
- All subsequent payments are adjusted to take into account the one-year delay and the interest accrued during the delay. The five-year loan limit may be disregarded for this purpose.
- Adding this provision would not otherwise change the City’s loan program features or rules, including the City’s limitation of two loans per participant (including any CARES Act loan).

3. Provision: Temporary Waiver of 2020 Required Minimum Distributions (RMDs)

Provision Status: Automatic

- RMDs are mandatory distributions for those who have reached a certain age threshold and are thus required to withdraw their funds in minimum amounts in accordance with their life expectancy. The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) increased the starting RMD age from 70½ to 72 for those who reach age 70½ in 2020 or later. Unless otherwise elected by the

participant, the CARES Act provides for the suspension of RMDs in calendar year 2020, including RMDs due as a death benefit in accordance with the current beneficiary RMD rules, with those time limits being extended by one year. The RMD suspension also applies to those individuals who attained age 70½ in 2019 and who would otherwise have had to take the 2019 required beginning distribution by April 1, 2020.

- The Congressional intent in suspending RMDs is to defer distributions when asset values have declined and provide time to impacted participants to recover market losses.
- Participants who took distributions prior to enactment of the CARES Act because they believed they would be subject to RMD in 2020 can contribute the distributed amounts back to the DCP or an IRA that allows rollovers within 60 days from the date of distributions and avoid any potential tax consequences.

C. Key Considerations for the DCP in Adopting Provisions of the CARES Act

Staff has reviewed the CARES Act provisions with the City Attorney's Office. The City Attorney has advised that the optional CRD and enhanced loan provisions may be adopted by Board action and implemented immediately without requiring immediate amendment of the Plan Document until the last day of the 2024 plan year. As a result, if the Board chooses to adopt the CRD and loan provisions, those Plan Document changes will be incorporated into the Plan Document review/update process currently being conducted by staff and the City Attorney in conjunction with outside tax counsel.

Staff has also reviewed these provisions with DCP's Third-Party Administrator (TPA), Voya. Voya can administer any CARES Act provisions adopted by the City upon receipt of a letter of instruction from a plan sponsor (**Attachment B**).

In evaluating whether to add the CRD and loan provisions, the immediate financial needs of impacted participants should be considered relative to the future retirement savings impact. Given the size of the City's DCP and diversity inherent in such a large participant population, it is likely that some of the City's participants will be impacted by the COVID-19 crisis. The DCP's local account representatives have already received inquiries from participants experiencing financial distress due to the impact of the epidemic asking if the CRD and loan provisions can be made available. As noted previously, CRD and loan provisions are limited to only qualified individuals as defined under the CARES Act. Thus, assuming certain of the City's participants meet the qualified individual criteria, the additional resources provided for under the CARES Act may be necessary for them to avoid or mitigate adverse financial consequences greater than the impact on their supplemental retirement savings accounts. Staff's analysis is that the CARES Act optional CRD and loan provisions could provide a vital resource to support participants and should be made available. Thus, staff recommends that the Board:

- (a) Adopt CRDs of up to \$100,000 for qualified individuals in accordance with Section 2202 of the CARES Act;

- (b) Adopt an increased loan limit of up to \$100,000 and extension of repayment periods for qualified individuals in accordance with Section 2202 of the CARES Act;
- (c) Authorize the Board Chairperson to execute a plan sponsor letter of direction to Voya to make adopted CARES Act CRD and loan provisions available to DCP participants as soon as practical; and
- (d) Direct staff to work with the City Attorney and outside tax counsel to draft the Board's adopted CARES Act provisions into the DCP Plan Document as part of its current Plan Document review and update process.

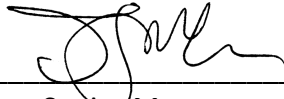
If adopted by the Board, these provisions will be activated for DCP participants within a few working days. Staff and Voya will work together to communicate these changes via the DCPs normal distribution channels, including the DCP website, Citywide emails, quarterly newsletters, local account representatives, and social media pages.

D. Voya Support to Address Financial Challenges of COVID-19

In support of the financial challenges caused by the COVID-19 pandemic, Voya is providing the following credits for its plan sponsor clients and the City's DCP participants:

- Credit participant accounts an amount equal to applicable hardship withdrawal distribution fees for new distributions processed between April 1, 2020 and September 30, 2020.
- Credit to participant accounts an amount equal to applicable CRD fees for CRDs processed between April 1 and September 30, 2020.
- Credit participant accounts an amount equal to applicable loan initiation fees for new loans processed between April 1, 2020 and September 30, 2020.

The City's DCP does not charge participants fees for hardships or distributions, but does charge loan initiation fees. Voya indicated that the loan initiation fee will be charged at the time the transaction is completed and deducted from the participant's account, but subsequently credited back to the participant's account within 90 days of the transaction.

Submitted by: 

Jenny M. Yau, Senior Management Analyst II

Approved by: 

Steven Montagna, Chief Personnel Analyst

Washington Watch: The CARES Act and what it means for you

April 6, 2020

Bill Harmon, President, Retirement Corporate Markets, Voya Financial

Justin Smith, SVP & Deputy General Counsel, Retirement and Insurance, Voya Financial

Mike Hadley, Partner, Davis & Harman LLP

Jeff Cimini, Head of Institutional Product, Voya Financial

Heather Lavalley, President, Retirement Tax-Exempt Markets, Voya Financial

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Davis & Harman LLP is not affiliated with the Voya family of companies.

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Cares Act overview

Congressional response to COVID-19



Phase 1

Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020

\$8 billion in funding to HHS, SBA, and other agencies



Phase 2

Families First Coronavirus Response Act

Requires employers with fewer than 500 employees and public employers to provide paid leave for COVID-19



Phase 3

Coronavirus Aid, Relief, and Economic Security (CARES) Act

\$2 trillion in economic stimulus and financial assistance

Largest stimulus package in U.S. history



Phase 4

Already under consideration

The Coronavirus Aid, Relief, and Economic Security (CARES) Act



Waiver of required minimum distributions for 2020

Current Law



IRA owners and plan participants must take required minimum distributions beginning at age 70.5 (72 if born after 6/30/49)

- Amount due is based on account balance at end of prior year
- Beneficiaries also have RMD requirements

CARES Act

- RMD is waived for 2020
- Available for defined contribution plans (401, 403(b), governmental 457(b)) and IRAs
- Does not apply to defined benefit plans
- Available if first RMD was due April 1, 2020
- Available for beneficiaries of inherited plan accounts and IRAs

Congress also waived RMDs for 2009, during financial crisis

Eligibility for COVID-19 loan and withdrawal provisions

Individual must:

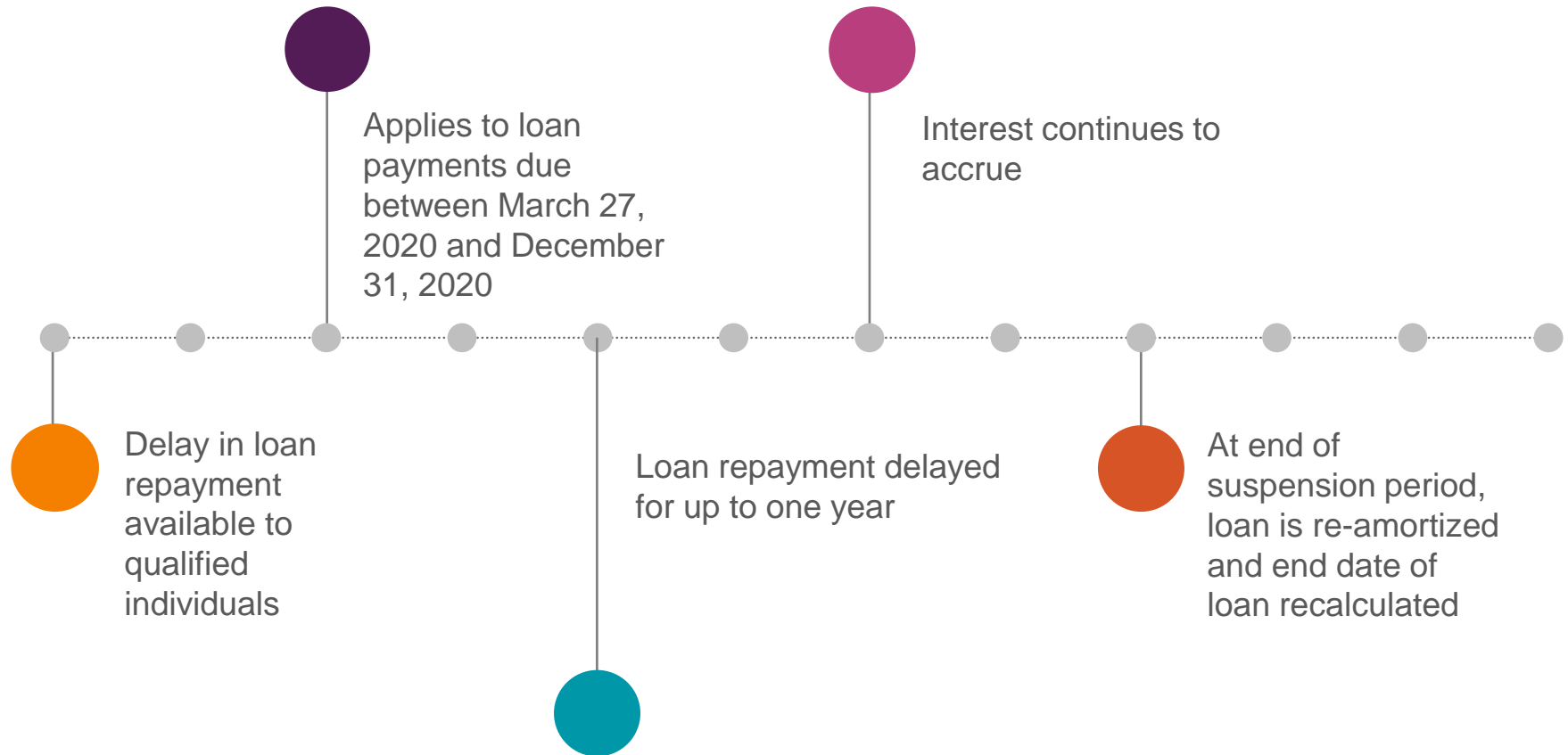
- be diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,
- have spouse or dependent who is diagnosed with such virus or disease by such a test, or
- experience adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care 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 IRS.



Plan permitted to accept certification that individual meets criteria

Beneficiaries and alternate payees can qualify

Ability to delay loan repayments



Higher loan limits temporarily



Current Law



Loans limited to
lesser of \$50,000
or 50% of
account balance

CARES Act

- Loans taken out until September 23, 2020 (i.e. 180 days after enactment) may be for up to \$100,000 or 100% of account balance
- Optional provision
- Total loan continues to be reduced by any other outstanding loans
- Participant must be a qualified individual

Coronavirus related distributions (CRD)

- Available to qualified plans (401(k), money purchase, DB) 403(b), governmental 457(b), and IRAs
- Distributions in 2020 only
- 401(k), 403(b) and governmental 457(b) plans may offer distribution in-service even if participant is under age 59 ½.
- Up to \$100,000
 - Applies across all plans and IRAs of an individual
 - Plan only monitors for distributions from that plan (and other plans in controlled group)

Coronavirus related distributions (CRD)



Advantages to individual

- 10% early withdrawal penalty waived
- Income inclusion over 3 years, unless individual elects otherwise
- Repayment as a rollover allowed within 3 years



Administrative

- Plan not required to withhold 20%
- No 402(f) notice required
- Plan need not offer direct rollover

Plan amendments



CARES Act provides extra time to adopt any needed amendments

- End of 2022 plan year for most plans
- End of 2024 plan year for governmental plans
- Amendment will need to reflect operation of the plan

Other CARES Act provisions

Additional DOL authority

DOL authority to extend ERISA deadlines explicitly includes health emergencies

Defined benefit funding

Employers may delay any 2020 funding obligations until January 1, 2021

Student loans

Employer's tuition reimbursement program may cover up to \$5,250 in student loan repayment tax-free in 2020

Individual tax provisions

- Rebate of \$1,200 (\$2,400 if married), plus \$500 per child; income limits
 - \$300 above the line charitable deduction in 2020
 - Loosening of limitation on itemized charitable deductions
-

Ongoing regulatory relief

Extension of Federal Tax deadline

Treasury extended until **July 15, 2020**, the deadline for filing an individual's 2019 tax return

Extension of Grace Period for employer contributions

Extension of business filing deadline extends grace period under Code section 404(a)(6)

Note: deadline to distribute excess deferrals still April 15, 2020.

Extension of IRA and HSA contribution deadline

Extended until **July 15, 2020**, the deadline for making IRA and HSA contribution for the 2019 tax year.

Extension of Plan Amendment deadlines

- 403(b) plan remedial amendment period extended from March 31 to June 30
 - Pre-approved defined benefit plan adoption deadline extended from April 30 to July 30
-

More coming?

Voya's preparedness

Questions we're hearing frequently



**How does this work
for the plan sponsor
and participants?**

**What is Voya's
preparedness
strategy?**

**How is Voya
responding to the
CARES Act?**

What plan sponsors can expect

With plan sponsor direction, Voya is prepared to operationally support the provisions of the CARES Act

The CRD and enhanced loan provisions are optional for plans to enact, so if a plan sponsor chooses to enact them, we need direction from them.

To help facilitate the process we have developed a plan sponsor letter of direction.

- Plan sponsors will receive the letter from their relationship manager.
- The letter must be completed and returned to Voya in order to officially authorize these provisions.

Sponsor Election to Allow Coronavirus-Related Distributions and Loans
Voya Financial

Dear Plan Sponsor,

On Friday, March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act (the "Act"). The Act includes a number of tax provisions related to retirement plans noted in this summary.

Coronavirus Related Distribution from Certain Retirement Plans
A plan participant or IRA owner may take a coronavirus related distribution from a 401(a), 401(k), 403(b), or governmental 457(b) plan or from a traditional IRA beginning March 27, 2020 and before December 31, 2020 due to:

- that individual being diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
- the individual's spouse or dependent being diagnosed with such virus or disease by such a test; or
- the

Plan Sponsor Authorization to Voya
By checking the box(es) below, you confirm your intent to amend your Plan based on the rule changes stated above and instruct Voya to process coronavirus-related distributions and loans.

Important Note: The Act is federal legislation and does not supersede any corresponding State legislation or State taxes applicable to retirement plans. As the Plan Sponsor you acknowledge that you are instructing Voya to process these distributions in the absence of conforming State law and State tax guidance.

Select each that apply:

The _____ Plan will adopt the Act's provision to allow **coronavirus-related distributions** as outlined above and directs Voya to accept participants' self-certification of eligibility (including a telephonic affirmation on a recorded line) to receive a coronavirus-related distribution.

The _____ Plan will adopt the Act's provision to allow **coronavirus-related loans** as outlined above and directs Voya to accept participants' self-certification of eligibility (including a telephonic affirmation on a recorded line) to receive a coronavirus-related loan.

The _____ Plan will adopt the Act's provision to permit delayed **loan repayments** as outlined above and directs Voya to accept participants' self-certification of eligibility (including a telephonic affirmation on a recorded line) to delay loan repayments.

period or one year for loan repayments outstanding on March 27, 2020 through December 31, 2020. The delay or the loan repayment will not cause the loan to fail to meet the Internal Revenue Code requirements for the

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TM: CARESACTDRL

Voya update

Fee Relief for Defined Contribution plan participants

For plans that permit the following distributions and loans, Voya will:

Credit participant accounts an amount equal to the Hardship or Unforeseen Emergency Withdrawal Distribution Fee

Credit participant accounts an amount equal to the Loan Initiation Fee

Credit to participant accounts an amount equal to Coronavirus Related Distribution (CRD) fee for CRDs

For transactions processed between April 1 and September 30, 2020.

Fee Relief for Defined Contribution plan participants

How does the fee credit work?



A hardship distribution, CRD or loan initiation fee

will be charged at the time the transaction is completed and deducted from the participant's account.



The fee

will be credited back to the participant's retirement account within 90 days of the transaction.

Voya will continue to pay the TPA's portion of the distribution, unforeseen emergency and loan fees.

Educational guidance on Voya.com

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Voya's response to COVID-19 [Learn More](#)

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Think your retirement account is just for checking your balance? [Think Again](#)

Need to file a claim? [Get Started](#)

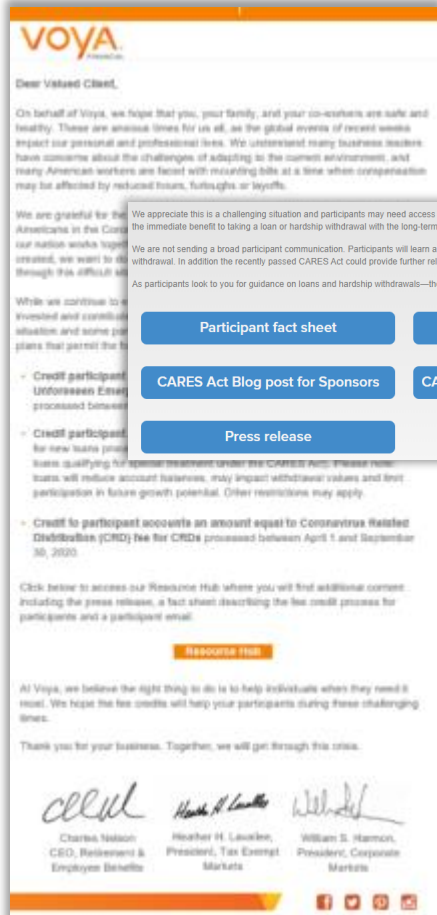
Ready to open an IRA? [Get Started](#)

Educational Guidance Program

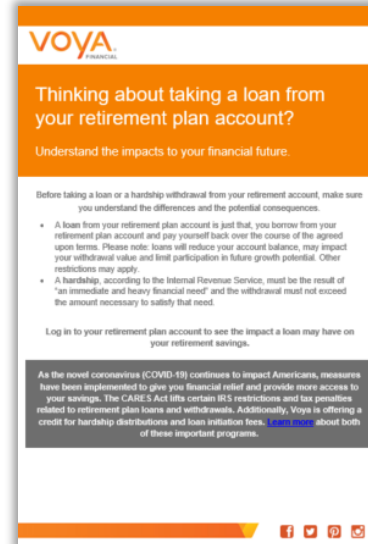
[Learn More](#)

Resources for you

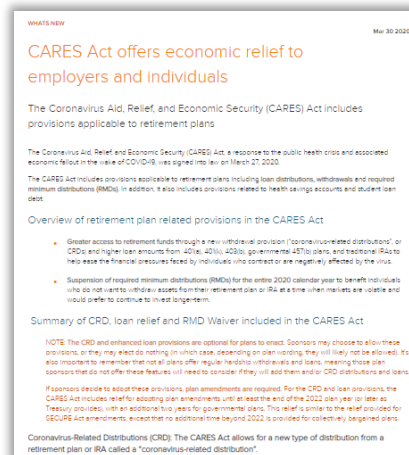
Emails and Landing Pages for Plan sponsors/intermediaries



Participant email



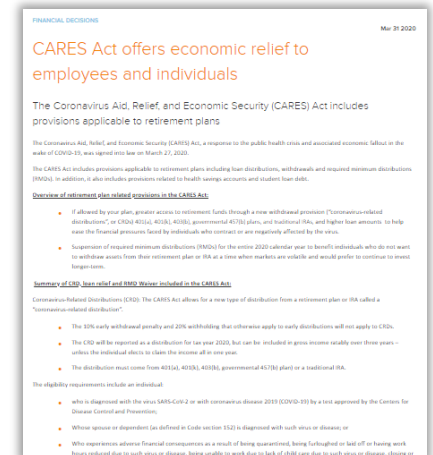
Voyalnsights.Voya.com



Participant fact sheet



Blog.Voya.com



Q&A

Disclosure

The information contained herein is for informational use only and is not legal or tax advice. Please consult with your legal or tax advisers regarding your specific situation.

Sponsor Election to Allow Coronavirus-Related Distributions and Loans

Voya Financial

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Coronavirus Related Distribution from Certain Retirement Plans

A plan participant or IRA owner may take a coronavirus related distribution from a 401(a), 401(k), 403(b), or governmental 457(b) plan or from a traditional IRA beginning March 27, 2020 and before December 31, 2020 due to:

- that individual being diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
- the individual's spouse or dependent being diagnosed with such virus or disease by such a test; or
- the individual experiencing adverse financial consequences as a result of:
 - being quarantined, furloughed or laid off or having work hours reduced due to such virus or disease;
 - being unable to work due to lack of child care 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
 - meeting such other factors as may be issued in Treasury guidance.

A plan administrator may rely on a participant's certification that the participant satisfies the eligibility conditions for taking a coronavirus-related distribution.

Federal Income Tax Treatment of Coronavirus Related Distribution

A coronavirus related distribution is not subject to the mandatory federal 20% withholding or delivery and receipt of the Special Tax Notice. Voya will tax report the full distribution amount for tax year 2020.

Waiver of the IRS 10% Premature Distribution Penalty Tax

A plan participant or IRA owner who takes a coronavirus related distribution up to an aggregate amount of \$100,000 is not subject to the Internal Revenue Service (IRS) 10% premature distribution penalty tax. A plan sponsor's responsibility for monitoring the \$100,000 aggregate distribution amount of a participant's coronavirus related distribution is limited to only coronavirus related distributions a participant takes from all plans of that employer (and any other plans that are part of that employer's controlled group). Please note that Voya will not monitor the \$100,000 aggregate distribution limit.

Repayment of Coronavirus Related Distribution

A coronavirus related distribution may be repaid in one or more contributions to a 401(a), 401(k), 403(b), or governmental 457(b) plan or to a traditional IRA over a 3-year period beginning on the date that the distribution was received if the recontribution is made to:

- a 401(a), 401(k), 403(b), governmental 457(b) plan, or traditional IRA. The coronavirus related distribution is considered to be a rollover eligible distribution for recontribution purposes.

Plan Loan Relief

A participant who satisfies the eligibility requirements for a Coronavirus Related Distribution:

- may take a loan from a 401(a), 401(k), 403(b), or governmental 457(b) plan during the 180-day period beginning on March 27, 2020 of up to the lesser of \$100,000 (taking into account the outstanding balance of all other loans taken from plans of the employer) or 100% of the non-forfeitable value of the participant's account under the plan (note existing outstanding loan amounts and number of loans permitted under the plan will serve to decrease the amount available); and
- may delay repayment of a new or existing loan from a 401(a), 401(k), 403(b), or governmental 457(b) plan for a period of one year for loan repayments outstanding on March 27, 2020 through December 31, 2020. The delay of the loan repayment will not cause the loan to fail to meet the Internal Revenue Code requirements for the

maximum five-year loan term for nonresidential loans or substantially level reamortized payment schedule. Once repayments recommence, the will be adjusted to reflect the delay, including accrued interest.

Please note, your existing loan provisions still apply with respect to the number of loans available. Additionally, your plan must offer loans in order to implement this provision.

Waiver of Required Minimum Distribution (RMD) from Certain Defined Contribution Plans and traditional IRAs for 2020 Calendar Year

RMDs are waived for all participants and beneficiaries in 2020 from accounts within a defined contribution 401(a) or 401(k) plan, defined contribution 403(b) plan, or a defined contribution governmental 457(b) plan, or a traditional IRA. Voya will automatically waive Required Minimum Distributions (RMDs) for 2020 unless otherwise directed.

Plan Sponsor Authorization to Voya

By checking the box(es) below, you confirm your intent to amend your Plan based on the rule changes stated above and instruct Voya to process coronavirus-related distributions and loans.

Important Note: The Act is federal legislation and does not supersede any corresponding State legislation or State taxes applicable to retirement plans. As the Plan Sponsor you acknowledge that you are instructing Voya to process these distributions in the absence of conforming State law and State tax guidance.

Select each that apply:

- The _____ Plan will adopt the Act's provision to allow **coronavirus-related distributions** as outlined above and directs Voya to accept participants' self-certification of eligibility (including a telephonic affirmation on a recorded line) to receive a coronavirus-related distribution.
- The _____ Plan will adopt the Act's provision to allow **coronavirus-related loans** as outlined above and directs Voya to accept participants' self-certification of eligibility (including a telephonic affirmation on a recorded line) to receive a coronavirus-related loan.
- The _____ Plan will adopt the Act's provision to permit delayed **loan repayments** as outlined above and directs Voya to accept participants' self-certification of eligibility (including a telephonic affirmation on a recorded line) to delay loan repayments.

Plan Name

Plan Numbers

Print Authorized Plan Sponsor Representative Name

Title

Authorized Plan Sponsor Representative Signature

Date