

# What Is Life After Coronavirus?

## Coping With Financial Anxiety and Recession

Paul McEwan, Rea & Associates  
Doug Bambeck, Investment Partners

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# “Is The Market Overreacting to the Coronavirus Crisis?”



**Douglas G. Bambeck**

IAR, President, Chief Compliance Officer

Financial Advisor

Investment Partners, LTD

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# Discussion Topics

- **Focus on the long term**
  - When the markets are swinging up and down remember that your investments are structured to meet the needs of your personal situation
  - There is time for them to recover from their losses and potentially grow even more
- **Take care of yourself and focus on your mental health during this time of uncertainty.**

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# COVID-19 Impacts on 401k Plans



**Paul W. McEwan CPA, MTax, AIFA**

Principal

Retirement Plan Services Group

Rea & Associates

# Discussion Topics

## 🌀 Employees in Transition – Active → Inactive → Active

→ Compliance traps for the unwary

- Pay attention to your plan document

→ Be aware of the tax implications to employees

## 🌀 Cost containment ideas

→ Discontinuing employer contributions

→ Delaying employer contributions

→ TPA and Audit Fees paid by plan

## 🌀 Legislative changes

# Impact of Employee Layoffs

## Potential distributable event

- When is a lay off (furlough) considered Termination?
- If an employee is no longer being paid, and eligible for unemployment compensation and COBRA then they are terminated for purposes of 401k plan
  - As long as employee is being paid, then they are not terminated
- Receiving health insurance, but no pay?
  - Still considered terminated – health insurance is considered severance.

## Partial Plan Termination

- 🌀 If more than 20% of employees are terminated at once, then the plan is considered partially terminated
  - Result: Employees become fully vested in all sources
  - Discretionary match and profit sharing
  - Only employees that are terminated become fully vested

# Negative Impacts of Early Distribution

- 🌀 Selling at low point of market
  - Losses locked in
- 🌀 Subject to 10% excise tax
  - If younger than 59 ½ years old
- 🌀 Subject to federal and state income tax
- 🌀 Likely not rolled over to IRA
- 🌀 **Loss of future compounded earnings**
- 🌀 Retirement savings starts over, but less time to retirement



# What About Loan Payments for Inactives?

- 🌀 **Loans not suspended** will default if no payments received by last day of quarter following the quarter last payment made
- 🌀 Same 10% excise tax penalty as early withdrawal
- 🌀 Same federal and state income liability
- 🌀 Calculated on unpaid loan amount
- 🌀 Deemed distribution
- 🌀 Loan suspension allowed for up to 12 months – **check your loan program**
- 🌀 No default; payments begin after rehire
- 🌀 Can make one payment to catch up or re-amortize

# Loan Payments of Active Employees

## Active employees with plan loans

- Presumably they are making loan payments via payroll deduction
- The plan sponsor, as a plan fiduciary, must continue to collect these payments since plan loans are a plan asset and must not be allowed to go into default.
- If active employees terminate, then the remaining unpaid portion of loan can be deemed a distribution.
- However, there may be relief coming in the CARES Act currently being considered by Congress.

# Hardship Distributions

- 🌀 Must be permitted in plan document
  - Usually limited to employee deferrals
- 🌀 Most common safe harbor financial hardships:
  - Medical expenses
  - Principal residence – foreclosure/eviction
  - Natural disasters designated by FEMA (not Ohio yet)
- 🌀 CARES Act would create additional safe harbor hardships and ease some of the negative aspects of hardships

# Hardship Distributions

## Financial impact to participant:

- 10% excise (if under age 59 ½)
- Subject to federal and state income tax
- **Cannot repay the plan**
- Cannot rollover to an IRA
- Selling at low point of market
- Loss of future compounded earnings
- Retirement savings starts over, but less time to retirement

# Definition of Compensation

- ☪ Check your plan document's definition of compensation
- ☪ Generally comp is defined as W-2 wages
  - Even if you call the comp something different
    - Bonuses, sick pay, vacation pay, PTO, shift differential, longevity, etc., if it is on the W-2, then it's plan compensation
  - It is still reported on W-2 and taxable so you must calculate deferrals, match or other non-elective contributions using it

# Employee Deferral Election Changes

## Check your document

- Does it allow employees to change their deferral at any time?
- Your plan may only allow changes at certain times during the year

## Employees can STOP deferrals at any time

- Going to 0% or \$0 per pay

# Employee Service Crediting Concerns

- 🌀 Eligibility
- 🌀 Vesting
- 🌀 Allocation of profit sharing
- 🌀 Usually based on hours of service (check your document for each type of service)
  - 1000 hours is common
  - Profit sharing may be less (500 is common)
  - Beware of last day rule for profit sharing allocation

## Break in Service Rules


- 🌀 What happens when your employees come back onto payroll?
  - They don't need to satisfy eligibility again (a break requires 5 consecutive 1 year breaks in service)
  - They continue their vesting credit
  - If your plan is auto enroll, check your plan specs
    - Do they come back at same deferral percentage?



# Stopping Safe Harbor Contributions

- 🌀 The company is operating at a loss for the year **or**;
- 🌀 Your annual safe harbor notice indicates that the plan may be amended to remove the safe harbor contribution requirement mid-year
- 🌀 These conditions apply to safe harbor match and nonelective plans
- 🌀 Check your annual safe harbor notice – most plan document providers have added this language to allow flexibility – this was allowed starting in 2014

# Sample Safe Harbor Notice Language

 The plan administrator intends the Plan to be a safe harbor plan. In a safe harbor plan, if certain requirements are met, the Plan will be deemed to automatically pass certain IRS required non-discrimination testing (ADP, ACP, and top-heavy). One of these requirements is a minimum level of employer contributions to the Plan.

The Plan may be amended during the plan year to reduce or suspend the safe harbor contributions. The reduction or suspension will not apply until at least 30 days after you are provided notice of the reduction or suspension.

# Stopping Safe Harbor Contributions

## Safe Harbor Employee Notice Requirement

- You must give 30-day notice to your employees
- Employer contribution must be made through the effective date of the change
- Plan is subject to ADP/ACP testing for the entire year
- And you will need to amend your plan document
- Is your plan top heavy? May need to make nonelective contribution

# Stopping Non-Safe Harbor Contributions

## Non-safe harbor match?

- Is it discretionary? **Check your plan document**
- Employee notice not required, but recommended
- If not discretionary, this will require a plan amendment
- Must notify your employees of the plan amendment using the Summary of Material Modifications

# Delaying the Company Contribution

## Alternative to eliminating safe harbor

- Safe harbor benefits remain intact
- No amendment necessary
- No employee notice required (but recommended)
- Company contributions must be paid prior to the due date of the company's tax return (including extensions)
- Note that if you have a per payroll calculation of the match, then you must continue that (look at your document)

# SIMPLE IRA Plan Contributions

- Must continue the plan through the end of the year
- You can delay depositing the company contribution until due date of company tax return
- You can terminate the plan at year end by notifying employees no later than 60 days before year end (Nov 1)
- Best practice is to review your plan document – Form 5305-SIMPLE (all accounts at same place) or 5304-SIMPLE (accounts at different institutions)
  - Eligibility
  - Definition of compensation
- Termination not required for employees to take distribution

# Plan Expenses

- 🌀 Ongoing plan administration fees can be paid from plan assets
- 🌀 Ongoing plan administration fees are typically the following:
  - Investment management (mutual fund) fees
  - Investment advisor fees
  - Plan record keeping fees
  - TPA fees
  - Plan audit fee
- 🌀 Typically, only the first three are paid from plan assets
  - TPA fees are typically paid by the plan sponsor
  - Talk with your TPA if you want the plan to pay for the TPA or plan audit fee

# Plan Expenses

- 🌀 Plan related expenses that pertain to the implementation or changes in plan design are considered settlor expenses
  - Must be paid by the plan sponsor
  - Plan establishment
  - Plan amendments, restatement
  - Plan termination
  - Does the expense primarily benefit the plan sponsor or the participants?



# Possible Legislative Changes

## CARES (Coronavirus Stimulus) Act

### → Hardship distribution

- Waiver of 10% excise tax up to \$100,000 on 401k or IRA
  - Any individual diagnosed with COVID-19 or spouse of dependent diagnosed, who experiences financial hardship from:
    - » Quarantine, Furlough, Lay off
    - » Hours reduced
    - » Child care
    - » Closing or reduced hours of business owned by person with COVID-19

## CARES Act (Continued)

- Income tax due may be paid over three years
- Amount withdrawn may be recontributed over three years, pre-tax; repayments not subject to annual contribution limits
- Plan loan changes
  - Max loan amount **changed from \$50k to \$100k**
  - Up to **full** amount of vested balance (**100%**)
- Loan repayments for active employees with current loan repayments from date of enactment to 12/31/20 can be delayed for up to 12 months
- Plans can add these provisions immediately – amendment must be done by plan year end

# Questions?



*Douglas G. Bambeck, President  
Chief Compliance Officer  
Financial Advisor*

*Investment Partners, LTD*  
330.308.9707 phone | [dbambeck@invp.com](mailto:dbambeck@invp.com)  
[www.invp.com](http://www.invp.com)



*Paul W. McEwan CPA, MTA, AIFA  
Principal  
Retirement Plan Services Group*

*Rea & Associates*  
330.308.6827 | [paul.mcewan@reacpa.com](mailto:paul.mcewan@reacpa.com)  
[www.reacpa.com](http://www.reacpa.com)

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