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# Passing Through the Fire:

## Refining Retirement Plans in a Crisis

Learn about the top 5 Plan Sponsor concerns and action steps plans can be taking now in this collaborative whitepaper from MassMutual and the Retirement Learning Center.



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PlanChampion is a comprehensive practice management program from MassMutual designed to help retirement plan financial professionals grow and enhance their practice. The program leverages the resources from prominent leaders in the retirement industry, like the Retirement Learning Center (RLC). With RLC and PlanChampion, you'll have a comprehensive retirement educational resource at your fingertips – giving you the retirement plan know-how to address the increasing demands of plan sponsors.

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# Passing Through the Fire:

## Refining Retirement Plans in a Crisis

We've seen disruptions in the market before, but what we are experiencing now is different. The COVID-19 crisis has pervading humanistic and economic aspects that seem to shake us at our very core. We will prevail, but it will not be easy. Realistically, the restoration of the economy will require a highly balanced, delicate combination of corrective measures. Right now, we have to struggle through the fight or flight mode. Businesses, in general, are taking stock of all operations—including their retirement plans—and shoring up all they can in the short term with the hope of securing long-term survival.

**Massachusetts Mutual Life Insurance Company (MassMutual) and the Retirement Learning Center recognize that ensuring the efficacy of workers' retirement plans and employee financial wellness is an integral part of a business's long-range strategy for financial stability.** That's why we suggest the following practical and tactical three-phase approach to dealing with workplace retirement plans during this challenging time that will help plan sponsors potentially preserve and improve their workplace retirement plans for the future.

This paper focuses on the details of **Phase I: Shoring up the business and managing cash flow.** This includes making adjustments to retirement plans and communicating to employees to ease their angst. During this phase, financial professionals can go beyond investment discussions to be a source of support for their plan sponsor clients.

Looking ahead, the second part of this series will highlight **Phase II: Making improvements to the current plan design and operations;** and **Phase III: Implementing an effective plan governance process.**

# Shore up the business and manage cash flow

Businesses are looking first to keep their doors open and make sure they have a safe place for their employees.

“As tough as it may be, business owners need to start planning how to move forward from this initial shock,” says Mark Cover, Head of DCIO Field Sales, MassMutual Investments, “and write a four to 12-week disaster recovery plan on how to keep the business going, considering the change in cash flow. Answering the question of what to do with the business’s workplace retirement plan is very much a part of this immediate exercise.”

Businesses have to face the reality that some reinforcement strategies for the business may be unpleasant (e.g., reducing workers’ hours, furloughing employees, cutting employee benefits, suspending 401(k) contributions, etc.). Hopefully, most, if not all of these actions, can be temporary, however. There are some less painful strategies for buttressing one’s business as well as a result of the Coronavirus, Aid, Relief and Economic Security (CARES) Act and other federal economic stimulus packages, especially for small businesses with fewer than 500 employees. The U.S. Senate Committee on Small Business & Entrepreneurship has put out many good resources. You can find more information by visiting [www.sbc.senate.gov/public/index.cfm/guide-to-the-cares-act](http://www.sbc.senate.gov/public/index.cfm/guide-to-the-cares-act).

## Role of Financial Professionals

Alleviating cash flow concerns is first and foremost in the minds of many business owners right now. Payroll and employee benefits, being one of the business’s highest expenditures, become the first targets for cutbacks. Plan sponsors are asking what cost-saving measures, if any, they can take now with their retirement plans. Panic can set in if employers don’t know what to do.

Financial professionals can step in as coaches to calm business owners and workers alike with education and communication. As educators, financial professionals can help plan sponsors better understand the terms of their retirement plans, inform them of what they can and cannot do with their plans, and explain various tactics and rules for

implementing action steps. Financial professionals can then help plan sponsors formulate a game plan and carefully communicate to plan participants what is happening with the retirement plan. The message should underscore the employer's commitment to participants' financial wellness over the long haul, and how these interim steps with the retirement plan, in the short term, will eventually lead to a more resilient plan down the road with the potential for better retirement outcomes for them.

### What are Plan Sponsors Most Concerned About?

Two words: cash flow. Plan sponsors are expressing their cash flow concerns by consistently posing the same few questions to their financial professionals. For some insight, MassMutual queried its partner, the Retirement Learning Center (RLC), a third-party industry expert that provides consulting services to financial professionals.

“ In addition to wanting to know how the Coronavirus, Aid, Relief and Economic Security (CARES) Act impacts them,” explains John Carl, President of RLC, “our financial professional call data reveals plan sponsors want to know what contribution options they have with their plans to help them manage to their available resources, and if they can ease access to plan balances for participants who are cash-strapped. ”

Based on calls received into RLC's consulting hotline, the following represents the most common questions plan sponsors are posing to their financial professionals and how they can use the CARES Act for relief.



# 1. Can a standard 401(k) plan be amended to remove employer contributions and, if so, how?

Yes, it can, and the precise steps depend upon whether the employer contributions are discretionary or mandatory (i.e., fixed).

**Standard 401(k) discretionary nonelective or matching contributions** may be reduced or eliminated at any time since, by the terms of the plan, the employer has the option to make them or not. Although not required, communicating the change to plan participants would be beneficial—especially if they have been accustomed to receiving these contributions in the past. Typically, no plan amendment is required. Nondiscrimination testing should be considered (i.e., to ensure the change in the formula does not unduly favor high compensated employees).

**Standard 401(k) mandatory employer contributions** may be eliminated mid-year on a prospective basis by amending the plan document. The employer must make the contribution for the portion of the year prior to the amendment for those who satisfy the eligibility requirements to receive it. For example, if a plan has a last day requirement to receive the contribution, a plan amendment to eliminate the contribution may occur anytime before the last day. If a plan does not have a last day requirement, but has hours of service requirement, then anyone who has satisfied the service requirement at the point the plan is amended would still be entitled to a contribution. Nondiscrimination testing should be considered. Participants must receive a Summary of Material Modifications or an updated Summary Plan Description that describes the change.

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## ACTION STEP

**Review the most current copy of the plan document with a financial professional in order to better understand the type of employer contributions being made, and proper procedure for making changes to the plan.\***

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\*Any plan amendments required as a result of the CARES Act will be due as of the last day of the plan year beginning on or after January 1, 2022 (2024 for a governmental plan) or possibly later at the IRS's discretion. For example, plan amendments for a nongovernmental, calendar year plan would be due by December 31, 2022.

## 2. Can a 401(k) safe harbor plan be amended to suspend or eliminate the safe harbor contribution?

Under limited circumstances, and according to [final Treasury Regulations](#)<sup>1</sup>, a sponsor of a 401(k) safe harbor plan may amend the plan during the current year to reduce or suspend the company's safe harbor contribution—either the matching or nonelective contribution. However, the plan becomes subject to the actual deferral percentage and/or actual contribution percentage test.

A removal or reduction of a safe harbor contribution mid-year is permitted if the employer either:

1. Is operating under an “economic loss” for the year (See Internal Revenue Code Section [IRC 412(c)(2)(A)]<sup>2</sup> or
2. Included a statement in the safe harbor notice given to participants *before the start of the plan year* that the employer:
  - May reduce or suspend contributions mid-year;
  - Will give participants a supplemental notice regarding the reduction or suspension; and
  - Will not reduce or suspend employer contributions until at least 30 days after receipt of the supplemental notice.

While the IRS has not expanded on the definition of economic loss for this purpose, under generally accepted accounting principles, documentation by the employer that the business's expenses exceeded income for the year would, presumably, may suffice.

### Supplemental Notice

If a reduction or suspension will occur, the supplemental notice must explain 1) the consequences of the suspension or reduction of contributions; 2) how participants may change their deferral elections as a result; and 3) when the amendment takes effect.

### Other Procedural Requirements

The employer must also:

1. Give participants a reasonable opportunity after they receive the supplemental notice and before the reduction or suspension of employer contributions to change their contribution elections;
2. Amend the plan to apply the actual deferral percentage (ADP) and/or actual contribution percentage (ACP) tests for the entire plan year; and
3. Allocate to the plan any contributions that were promised before the amendment took effect.

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### ACTION STEP

Review the annual Safe Harbor Notice for the plan with a financial professional to determine whether the “maybe” language is present. If so, execute the appropriate amendment and supplemental notice procedures. For a reduction as a result of economic loss, document the business's financial hardship, and watch for additional guidance from the IRS.

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### 3. When does a partial plan termination happen and what are the ramifications?

When a significant number or percentage of employees who are participating in a business's qualified plan are terminated and/or are no longer eligible to participate in the plan, a "partial termination" may have occurred in the eyes of the IRS.

The determination is based on the facts and circumstances of each case. The IRS requires that all participants covered under the portion of the plan deemed terminated become 100% vested in matching and other employer contributions if the contributions were subject to a vesting schedule under [IRC §411\(d\)\(3\)](#)<sup>3</sup> and [Treasury Regulation 1.411\(d\)-2](#)<sup>4</sup>.

The IRS presumes there is a partial termination when an employer reduces its workforce (and plan participation) by at least 20%. This presumption is rebuttable, however. For example, if the situation is such that the turnover rate is routine for the employer, that favors a finding that there is no partial termination (see [Revenue Ruling 2007-43](#)<sup>5</sup>).

Whether a partial termination has happened may not be an easy call. The IRS makes it clear that the determination of a partial plan termination is based on the facts and circumstances of the particular scenario ([Treasury Regulation § 1.411\(d\)-2\(b\)](#)<sup>6</sup>).

However, within [Revenue Ruling 2007-43](#)<sup>7</sup>, the IRS provides the following guidance in helping to determine if a partial plan termination has occurred.

- The turnover rate is calculated by dividing all employees eligible to participate terminated from employment (vested or unvested) by all employees eligible to participate during the "applicable period."
- The applicable period is generally the plan year, but can be deemed longer based on facts and circumstances. An example would be if there are a series of related severances of employment the applicable period could be longer than the plan year.
- The only severance from employment that is not factored in determining the 20% are those that are out of the employer's control such as death, disability or retirement.
- Partial plan termination can also occur when a plan is amended to exclude a group of employees that were previously covered by the plan or vesting is adversely affected.
- In a defined benefit plan, partial plan termination can occur when future benefits are reduced or ceased.



## Q&A: TOP 5 PLAN SPONSOR CONCERNS

### 3. Continued from previous page.

Failure to fully vest the affected participants in their employer contributions to which they are entitled as of the termination date could result in underpayments from the plan when distributions to these individuals occur. These underpayments could, potentially, cause the IRS to disqualify the plan if the error is not corrected. This vesting failure can be corrected using the Employee Plans Compliance Resolution System (EPCRS).

If a partial termination may be an issue, a plan sponsor may seek ruling from the IRS as to whether the facts and circumstances amount to a partial termination. The plan sponsor can file, *IRS Form 5300, Application for Determination for Employee Benefit Plan* with the IRS to request a determination of partial plan termination. According to the *Instructions to Form 5300*, one should follow the instructions under line 4a for Partial Termination Request.

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#### ACTION STEP

Keep in mind a partial termination is not a one-time event, but judged over a plan year, or potentially longer. If an employer has a series of layoffs during a plan year, in totality, the layoffs might add up to 20 percent, and give cause for concern.

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## 4. Can a plan sponsor change the plan's matching contribution funding frequency from per payroll to year end?

Yes, sponsors of both standard and safe harbor 401(k) plans can adjust the funding frequency mid-year.

For a standard 401(k) plan, a sponsor should confirm if an amendment is needed to the plan document. Some plans allow funding flexibility and would not require an amendment. Other documents have specific language that addresses the funding timing that may need to be amended.

For a safe harbor 401(k) plan, a sponsor can change from per-pay-period funding to year-end funding with a retroactive plan amendment and notice to employees no later than three months before the end of the year (see [IRS Notice 2016-16<sup>8</sup>](#)).

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### ACTION STEP

**Review the plan document with a financial professional to determine what type of plan amendment is needed, if any. Make sure participant notice requirements are satisfied where needed.**

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## 5. Are hardship distributions as a result of COVID-19 exempt from the 10% early distribution penalty tax?

Yes, under the newly enacted [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#)<sup>9</sup>, the IRS will waive the 10% early distribution penalty for the first \$100,000 of a “Coronavirus-Related Distribution” from an eligible retirement plan due to Coronavirus. Distribution recipients may pay back the amount within three years; and taxation can be spread over three years. The term “eligible retirement plan” includes individual retirement accounts and annuities (IRAs), qualified pension, profit-sharing, or stock bonus plans (including 401(k) plans), qualified 403(a) annuity plans, 403(b) annuity contracts and custodial accounts, and governmental section 457 deferred compensation plans.

A Coronavirus-Related Distribution is an amount taken by an eligible person between January 1, 2020, and before December 31, 2020; and, despite being eligible for rollover, is not subject to the mandatory 20% federal withholding amount.

An eligible person is:

1. An individual, his or her spouse, or a dependent who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19); or
2. Someone, because of the virus or disease, who experiences adverse financial consequences as a result of being:
  - Quarantined,
  - Furloughed,
  - Laid off,
  - Subjected to reduced work hours,
  - Unable to work due to lack of child care, or
  - Required to close or reduce the hours of a business owned or operated by the individual.

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### ACTION STEP

**A plan sponsor is not required to offer Coronavirus-Related Distributions. Discuss the pros and cons of incorporating such distributions into the plan (e.g., will they add more administration costs, how will the record keeper handle such distributions, are they in the best interest of the participant, etc.). Make sure there is record of the decision in the fiduciary file covering the plan for later reference and evidence. Timely execute a plan amendment, if needed.\***

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Note: The IRS may add other factors to the list above. A plan administrator may rely on a participant’s certification that the participant satisfies the requirements to be an eligible person.

<sup>9</sup>Any plan amendments required as a result of the CARES Act will be due as of the last day of the plan year beginning on or after January 1, 2022 (2024 for a governmental plan) or possibly later at the IRS’s discretion. For example, plan amendments for a nongovernmental, calendar year plan would be due by December 31, 2022.

## Other CARES Act and Tax Considerations for Plan Sponsors

**The IRS has delayed the individual and certain corporate tax filing deadline for 2019** from April 15, 2020, to July 15, 2020. This extension will give some business owners extra time to make contributions to their qualified retirement plans for the 2019 tax year.

**The IRS is offering a temporary waiver of required minimum distributions (RMDs)** for individuals who have an RMD due in 2020 from an IRA, defined contribution, 403(a), 403(b), or governmental 457(b) plan. This waiver also includes a first-year 2019 RMD due April 1, 2020, that is taken in 2020. What is more, a distribution taken after December 31, 2019, that otherwise would have been an RMD for 2020, is eligible for rollover. Someone that has received a no-longer-required distribution can return the funds to the original account or rollover the funds to another retirement account (either through the 60-day-rollover window, or the extended rollover deadline offered through IRS Notice 2020-23).

**Maximum plan loan amounts may be temporarily increased.** For any plan loan requested by a “qualified individual” from March 27, 2020, to September 23, 2020, the maximum plan loan amount may be increased to the lesser of \$100,000 or 100% of vested accrued benefit (up from lesser of \$50,000 or half of vested accrued benefit). A qualified individual is the same as that listed above for Coronavirus-Related Distributions.

**Plan loan payments may be delayed.** Any individual with an outstanding loan as of March 27, 2020, who has a loan payment(s) due through December 31, 2020, may delay the payment for one year if the plan permits. Any subsequent repayments must be adjusted for interest accrued during the delay, and plans may extend the term of the loan for a year.

**The CARES Act does not require employers to add COVID-19-related distributions and/or loans to their plans;** they are optional.

## Conclusion

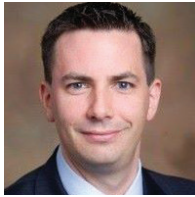
These are unprecedented, but not insurmountable, times for businesses and their retirement plans. Addressing the crisis becomes more manageable when business owners and their financial professionals adopt a phased approach. Phase I is to shore up the business and manage cash flow. A business's retirement plan is a logical consideration for immediate cost savings. However, we believe a business's long-range financial stability is dependent on a consistent and content workforce. Retirement plans help facilitate employee financial wellness and, therefore, we suggest that it should be an integral part of a business's long-range financial plan.

"The options a plan sponsor has to ease expenditures related to its retirement plan can only be understood with a thorough review of the governing plan document," observes Mark Cover, "and MassMutual has the resources to assist plan sponsors with

that discovery process." With that knowledge, financial professionals can educate plan sponsors on plan triage tactics, help them formulate a game plan unique to their needs, and help ease employee anxiety with a coherent communication program. Answering key employee questions will be paramount including, what is happening with the business and retirement plan, why it is happening, and when will the changes take place, all while reassuring employees of any intentions of the employer's long-term commitment to creating a plan that will strive to deliver better retirement outcomes for them. Only with a successful Phase I can a business advance to Phase II where improvements to a retirement plan's overall design and operations can be made, followed by Phase III where an effective, ongoing governance process can be implemented. MassMutual with RLC stand ready to help plan sponsors take it one step at a time.



## Authors



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Mark Cover is the Head of Defined Contribution Investment Only (DCIO) Field Sales at MassMutual. In this role, Mark manages MassMutual's external wholesalers who work directly with retirement focused advisors and recordkeeper wholesalers. Prior to MassMutual, he served as the Head of DCIO Field Sales for T. Rowe Price for eight years.

Prior to joining T. Rowe Price, Mark was the National Sales Manager for ADP Retirement Services, where his team focused on driving retirement plan sales through the Financial Advisor community. Mark also spent nearly a decade working for Scudder Investments & Pioneer Investments; with all positions focused on the retirement industry. Mark graduated from Bryant University in Rhode Island with a B.A. Actuarial Sciences.



### **John Carl, Retirement Learning Center, President**

John Carl is Founder and President of Retirement Learning Center, the nation's preeminent thought leader on retirement issues, as well as founding lecturer for The Retirement Advisor University (TRAU) at UCLA Anderson School of Management Executive Education, and Executive Director of the PLANSPONSOR Institute, the education and training arm of PLANSPONSOR. He also serves on the Government Affairs Committee for the National

Association of Plan Advisors. As the "advisor to the advisors," John is a highly sought after industry insider who travels the country educating groups of financial professionals on the very latest in retirement legislation, forecasts, and developments affecting the industry.

A veteran of the retirement industry with over 25 years of experience, John has been featured on CNBC, CNN, Forbes, ABC News, The Wall Street Journal, USA Today, and CBS MoneyWatch.com, among others. John released his first book in 2009, *Retirement Resource Guide: Essential ERISA Education & Best Practices for Financial Advisors*, which has won multiple APEX Awards for publishing excellence and serves as the basis continuing education workshops for financial advisors. It is now in its sixth edition. John's extensive industry experience includes having run Alliance Capital's Defined Contribution initiative as well as creating and running the state of Rhode Island's 529 savings plan, CollegeBoundFund®. Later, John directed Global Product Management for the firm. John has also operated as a successful branch and regional sales manager for Prudential Securities, as well as an independent financial advisor.

## Citations

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