

**PENSION REVIEW COMMITTEE
RECOMMENDATION
PRUDENTIAL DIRECTIVE AUTHORIZATION UNDER THE
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT OF 2020
April 23, 2020**

INTRODUCTION

The Coronavirus Aid, Relief, and Economic Security Act of 2020 (The CARES Act) was signed into law on March 27, 2020. The CARES Act contains several provisions giving a plan sponsor the option of making distributions and loans from their retirement plan to plan participants who have been impacted by the coronavirus. On April 7, 2020, Lancaster County received a request from Prudential Retirement to provide a written directive to Prudential on whether the County wanted to elect any of these optional provisions, which include raising loan limits, deferring loan payments, and adding Coronavirus-Related Distributions (CRD). A copy of the request from Prudential is included with this Recommendation as Attachment A. The Pension Review Committee (Committee) met April 14, 2020 to formulate a recommendation to the Lancaster County Board of Commissioners on how to respond to the request.

DISCUSSION

The request from Prudential Retirement asks the County to provide direction on two questions: (1) Does the County intend to amend its retirement plan to offer CRD's under the CARES Act; and (2) Does the County intend to amend its plan to offer loan relief available under the CARES Act? The Committee addressed these two questions separately.

Coronavirus-Related Distributions

A CRD is a distribution from an eligible retirement plan made during the calendar year of 2020 to an individual:

- Who is 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
- Whose spouse or dependent (as defined in Code section 152) is diagnosed with such virus or disease
- Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to lack of child care due to such virus or disease

The maximum CRD for an individual from all eligible retirement plans and IRA's is \$100,000. The early 10% withdrawal penalty does not apply to a CRD, and it is not subject to the mandatory 20% withholding rules.

CRD's are allowed from 401(k), 403(b), and governmental 457(b) plans without regard to whether the employee separated from service, attained the age of 59 ½, or any other plan distribution requirements. A more thorough description of CRD's can be found in Attachment A to this Recommendation.

However, CRD's are not allowed from contribution sources attributable to money purchase dollars. Since the Lancaster County Employees Retirement Plan is a 401(a) governmental money purchase plan, the Committee addressed the preliminary question of whether CRD's from this plan are allowed under the CARES Act. Based on information from the National Association of Governmental Defined Contribution Administrators, as well as research conducted by Prudential and the Lancaster County Attorney, the Committee determined CRD's from the County's 401(a) are not allowed under the CARES Act. Accordingly, the Committee's recommendation on whether to allow CRD's applies only to the County's 457(b) Deferred Compensation Plan.

A key provision of the County's 457(b) plan is that distributions are allowed for unforeseen emergencies (also referred to as hardship distributions). Circumstances under which a hardship distribution can be made to a participant under the 457(b) include medical expenses, purchase of a residence, education expenses, foreclosure, funeral costs, and casualty losses. Like CRD's, the 10% early withdrawal penalty does not apply to hardship withdrawals.

The availability of hardship distributions led to different viewpoints among Committee members as to whether the 457(b) plan should be amended to include CRD's. Committee members in favor of amending the plan to include CRD's argue that since the plan already includes hardship provisions, it makes sense to add CRD's, which are just another type of hardship for which an employee could receive a distribution. Adding CRD's provides more favorable treatment of participants under circumstances very similar to the circumstances under which a hardship distribution can be made. Moreover, adding CRD's does not create an additional administrative burden on the County. Finally, the number of participants who request a CRD is likely to be small, because only a small number of participants or their spouses who contract the virus, or who suffer a financial hardship from lost wages, will also have funds in the 457(b).

Committee members opposed to adding CRD's also relied on the availability of hardship distributions. While CRD's are similar to hardship distributions, there are important differences. For example, a participant can obtain a CRD by showing only that themselves or their spouse has contracted the virus, without a showing of actual financial hardship. Concern was also expressed that CRD's are a short-term solution which can have long-term consequences by reducing the amount of funding the person will need for retirement. This is especially true for the unwitting participant who is not aware of the severe tax consequences which could result from obtaining a CRD. Since Prudential files a 1099-R for the entire CRD during 2020, the participant may experience a large tax bill for which they are not prepared. This is aggravated by the fact that the 20% automatic tax withholding requirement is waived for CRD's. Even though a participant can avoid the tax consequences by repaying the CRD over a three-year period, an accountant would be required to make sure all the necessary amended tax returns are properly filed. Also, a participant would be taking a CRD when asset prices are low.

Another concern is that CRD's could undermine the interests of all participants in the 457(b) plan by reducing the size of the pension fund. A larger fund gives the County bargaining power to keep fees low. Emphasis should be placed on keeping money coming into the fund rather than expanding opportunities to take it out.

The Committee's recommendation on CRD's involved the difficult task of balancing the immediate financial hardship caused by the virus versus retirement security. Ultimately, a recommendation to amend the 457(b) plan to include CRD's in an amount of up to \$50,000.00 was adopted by the Committee on a 5-4 vote. If the County Board chooses to accept and implement the Committee's

recommendation, Prudential Retirement can begin issuing CRD's within two business days. Thereafter, the County would have until the end of 2024 to amend the 457(b) accordingly. The plan amendments to the County's 457(b) would be made by Prudential.

As a final comment on CRD's, the Committee believes employees should be provided with as much information as possible about CRD's, including the potential tax consequences and impact on retirement savings.

Loan Relief

The Committee then addressed the question of whether the County should amend the retirement plan to include the loan relief offered under the CARES Act. Although loans under the CARES Act can be offered under both the 401(a) plan and the 457(b) plan, the County has never made loans available under either plan. The Committee also noted that unlike hardship distributions, loans can become an administrative burden on the County. For these reasons, it was the unanimous opinion of the Committee that loans under the CARES Act should not be made available to County employees.

RECOMMENDATION

Based on the foregoing information and discussion, the Pension Review Committee hereby tenders the following recommendation to the Lancaster County Board of Commissioners:

- 1. The Lancaster County 457(b) Deferred Compensation Plan should be amended to include Coronavirus-Related Distributions under the CARES Act in an amount of up to \$50,000.00, and Prudential Retirement should be notified accordingly; and**
- 2. Neither the 401(a) Lancaster County Employees Plan nor the 457(b) Deferred Compensation Plan should be amended to allow loans under the CARES Act, and Prudential should be notified accordingly.**

Respectfully submitted on behalf of the Pension Review Committee this 23rd day of April, 2020.


Kerry P. Eagan
Chief Administrative Officer

Prudential Retirement® Directive

Coronavirus Aid, Relief, and Economic Security Act of 2020 [HR 748, “CARES ACT”]

Directive Authorization

The Coronavirus Aid, Relief, and Economic Security Act of 2020 (the “CARES Act”), which was signed into law on March 27, 2020, contains several provisions affecting retirement plans in the area of distributions and loans due to the impact and effects of the Coronavirus. For a detailed summary of the CARES Act of 2020 see our March 2020 issue of [Pension Analyst](#).

TEMPORARY WAIVER OF REQUIRED MINIMUM DISTRIBUTIONS (“RMD”)

A participant or beneficiary who would have been required to receive required minimum distributions (RMD) under prior law but did not receive those distributions before January 1, 2020 from an Eligible Retirement Plan is not required to receive those distributions for 2020.

For participants and beneficiaries that have not had an RMD distributed as of April 10, 2020, Prudential Retirement (“Prudential”) will not process an RMD distribution. This includes 2020 RMD payments for participants and beneficiaries who began receiving them earlier (e.g., attained 70-1/2 before 2019), and participants and beneficiaries who under prior law have a required beginning date in 2020 (both the 2020 RMD payment and the 2019 RMD payment to the extent it was not previously made). For post-death RMDs, the one-year period is disregarded for purposes of the five-year payout requirement for deaths occurring before January 1, 2020. If the 2020 RMD payment is made, it is not treated as an eligible rollover distribution for certain purposes, but some amounts may be rolled over.

Participants and beneficiaries described above will be given the opportunity to elect to receive an RMD described above.

CORONAVIRUS-RELATED DISTRIBUTIONS (“CRD”)

A Coronavirus-Related Distribution (“CRD”) is a distribution from an Eligible Retirement Plan made on or after January 1, 2020 and before December 31, 2020, to an individual:

- who is 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
- whose spouse or dependent (as defined in Code section 152) is diagnosed with such virus or disease
- who experiences 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 Secretary of the Treasury.

The maximum CRD for an individual from all Eligible Retirement Plans and IRAs is \$100,000. The Plan Sponsor should monitor related Eligible Retirement Plans for this limitation.

The following special tax provisions apply to a CRD:

- The 10% early withdrawal penalty under IRC section 72(t) does not apply to any CRD. Prudential will report the entire distribution amount on Form 1099-R for the year of distribution. Prudential, however, will not report the distribution as exempt from the 10% penalty. If future IRS guidance permits it, a participant may claim exemption from the penalty when filing his/her individual tax return.
- An individual who receives a CRD may repay the distribution during the 3-year period beginning on the day after the date on which such distribution was received. The repayment is treated as an eligible rollover distribution that has been transferred to the Eligible Retirement Plan in a direct trustee to trustee transfer within 60 days of the distribution.
- Any amount required to be included in gross income (such as any portion of a CRD that a participant does not repay within 3 years) may be included in gross income over the 3-taxable-year period beginning with the year of distribution. Prudential, however, will tax report the entire amount on Form 1099-R for the year of distribution. If future IRS guidance permits, a participant may claim the 3-year (or shorter period) when filing his/her tax return.
- CRDs are not subject to the mandatory 20% withholding rules that apply to eligible rollover distributions.
- CRDs are allowed from 401(k) and 403(b) and governmental 457(b) plans without regard to whether the employee separated from service, attained aged 59½, or any of the other plan distribution requirements.

Participants cannot obtain favorable tax treatment on the CRD by rolling it to a qualified retirement plan or an IRA. Prudential will treat any repayments of CRDs as pre-tax rollover contributions.

If you intend to amend your Plan to offer CRDs under the CARES Act, please make your elections below

- The Plan will be amended to permit CRDs as permitted under the CARES Act up to \$100,000 unless elected below:
 - The Plan will limit CRDs to \$50,000.
 - The Plan will limit CRDs to \$25,000.

The CARES Act allows all contribution source types, except for sources attributable to Money Purchase dollars to be eligible for a distribution. If the Plan has any existing restrictions on in-service withdrawals (e.g., minimum amount or maximum number of withdrawals), those restrictions will be applied to the CRD. Amounts invested in Employer Securities are not available for a CRD.

LOANS

If you intend to amend your Plan to offer participants loan relief available under the CARES Act, please complete below, otherwise skip this section.

In general, if a retirement plan allows for loans, the loan is not treated as a taxable distribution to a participant if it is used to purchase a main home, or the loan is repaid within five years. The maximum amount of the loan cannot exceed the lesser of \$50,000 or one-half of the present value (but not less than \$10,000) of the taxpayer's vested benefit under the plan. This amount is then reduced by the highest outstanding balance of all loans during the past 12 months. Under the CARES Act, there is loan relief for a "qualified individual." A qualified individual is an individual who would be eligible to receive a CRD, as described on the preceding page.

For a qualified individual who requests a new loan between March 27 and December 31, 2020, (1) the \$50,000 limit is increased to \$100,000, (2) the one-half of the vested benefit limit is increased to 100% of the vested account balance, (the amount is still reduced by the highest outstanding loan balance during the past 12 months), and (3) the repayment period for any loan may be delayed by 1 year if the payment due date of the loan occurs sometime between March 27, 2020 and December 31, 2020. The remaining payments should be appropriately adjusted to reflect the delay and any interest accruing during the delay. The delay is disregarded in determining the term of the loan (for purposes of determining the statutory maximum loan term). The CARES Act does not override any existing loan restrictions under a plan (e.g., number of outstanding loans, restrictions after a loan default).

Please note that Prudential will not automatically delay loan repayments. Any requests for a delay for up to one year must be in writing to Prudential by either an authorized representative of the employer or a participant who certifies the participant's eligibility for the delay. This documentation will be retained at Prudential for audit purposes. Additional administrative details will be forthcoming.

If you intend to amend your Plan to offer loan relief available under the CARES Act, please select one or both of the elections below:

- The Plan will increase the Plan loan dollar limit to the lesser of \$100,000 or 100% of the participant's vested account balance.
- The Plan will allow for the delayed payments of outstanding loans for up to 1 year. Please see the cover communication for additional details.



CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT OF 2020 [HR 748, "CARES ACT"] AUTHORIZATION FORM

Plan Sponsor Authorization

Prudential will update its recordkeeping system as soon as administratively practicable after receipt of this Directive in good order to allow participants to take CRDs and loans under the relief offered by the CARES Act. Plan Sponsors must amend plan documents to reflect the new terms. The deadline for amending plans to include this relief is the last day of the first plan year beginning on or after January 1, 2022 (governmental plans get an additional 2 years), or such later date as provided by the Secretary of the Treasury. Plans are not required to offer this relief. These are optional plan provisions.

As an authorized signer for the Plan Sponsor, I direct Prudential to rely on this Directive to update its recordkeeping system (and, if Prudential's plan document services have been elected, draft plan amendments) that it maintains on behalf of the Plan and Plan Sponsor and to process any distribution and loan transactions in accordance with this Directive.

If Prudential does not provide plan document services for your Plan, please provide a copy of this Directive to your plan document provider to complete an amendment. Please provide a signed copy of your plan amendment to Prudential for our retention with records of your Plan.

Please return the completed Directive to CAREsactSelection@prudential.com.

Plan Name: _____

Plan Number: _____

Plan Sponsor: _____

Date: _____

Signed/Typed: _____

Title: _____



¹ Eligible Retirement Plan: a profit-sharing plan, including a 401(k) plan a 403(b) plan, or a governmental 457(b) plan.

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