# The Coronavirus Aid, Relief, and Economic Security (CARES) Act: Increasing Loan Limits Service

Published: August 3, 2020

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed on March 27, 2020. The CARES Act includes optional changes related to plan loans, as described in Section 2202 of the CARES Act, available for 401(a), 401(k), 403(b) and governmental 457(b) plans (individually, a "Plan"). The CARES Act permits Plan Sponsors to increase the maximum loan limit generally up to the lesser of 100% of the vested account balance or $100,000 for loans made to qualified individuals from March 27, 2020 through September 22, 2020. Fidelity will support this provision by increasing loan limits and adding a new loan type ("CARES Act Loan") to plans that wish to offer this feature. The CARES Act Loans service is described below.

The IRS issued Notice 2020- 50 on June 19, 2020 that significantly expanded the categories of "qualified individuals" – participants who are eligible to obtain a CARES Act Loan. Fidelity updated its CARES Act increasing loan limits service accordingly, as described in section 1 below. This document also reflects additional administrative modifications to the CARES Act increasing loan limits service.

By directing Fidelity Workplace Services LLC or an affiliate ("Fidelity") to provide this service, the Plan Sponsor and Fidelity intend and agree that this document constitutes a modification of the Plan Administration Manual or an amendment to the applicable agreement between Fidelity Investments Institutional Operations Company, LLC and/or Fidelity Workplace Services LLC and/or Fidelity Management Trust Company and the Plan Sponsor/Client and/or Plan Administrator for recordkeeping and related services to the Plan. Please contact your Service Team for a separate written amendment or updated Plan Administration Manual reflecting these changes. This document may contain service and/or compensation information intended by Fidelity to satisfy the requirements of Department of Labor regulation Section 2550.408b-2(c)(1) and which require review by the responsible plan fiduciary.

Plan Sponsors are responsible for ensuring that their plan documents and/or loan policies, and/or procedures or other descriptions are timely amended for this provision and service, including increasing the number of available loans if CARES Act Loans are intended by the Plan Sponsor to be in addition to regular loans. Clients using the Fidelity 401(k) or 403(b) Volume Submitter Plan Document will receive additional information from Fidelity. Clients using individually designed plan documents should discuss amendment requirements with their benefits counsel. The deadline for retroactive plan amendments is the last day of the first plan year beginning on or after January 1, 2022 (December 31, 2022 for a calendar year-end plan) or, for governmental plans, two years later.

If the Plan is a 401(a) plan, a 401(k) plan or a governmental 457(b) plan and Fidelity Management Trust Company is the trustee, the Trust Agreement for the Plan is deemed amended to permit this service unless prohibited by the Plan. If the Plan is a 403(b) plan and Fidelity Management Trust Company is the custodian of a group custodial account, the Group Custodial Account Agreement for the Plan is deemed amended to permit this service unless prohibited by the Plan. If the Plan is a 403(b) plan funded with Fidelity Investments® Code Section 403(b)(7) Individual Custodial Accounts (ICA), Plan Participants will be notified that the ICA Agreement has been amended by Fidelity Management Trust Company to permit such services.

Note that the following plans are not eligible for the services described below: Defined benefit plans; Puerto Rico-qualified plans; the Puerto Rico portion of dual-qualified plans; and nonqualified deferred compensation plans (including 409A plans, 457(b) plans sponsored by tax-exempt entities, 457(f) plans and 415(m) plans).

## Description of a CARES Act Loans from 401(a) Defined Contribution Plans, 401(k) Plans, 403(b) Plans and Governmental 457(b) Plans

1. Qualified Individuals: A participant ("Participant") must be a "qualified individual" in order to be eligible for a CARES Act Loan. A qualified individual is a Participant to whom one or more of the following applies. **IRS Notice 2020-50 expanded the categories of qualified individuals as shown below in bold font**:

    i. The Participant is diagnosed with the virus SARS-Co-V-2 or with coronavirus disease 2019 ("COVID-19") by a test approved by the Centers for Disease Control and Prevention **(including a test authorized under the Federal Food, Drug, and Cosmetic Act)**;

    ii. The Participant's spouse or dependent (as defined in section 152 of the Internal Revenue Code) is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention **(including a test authorized under the Federal Food, Drug, and Cosmetic Act)**; or

    iii. The Participant experienced adverse financial consequences because:

a. The Participant, **the Participant's spouse or a member of the Participant's household** was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19;

b. The Participant, **the Participant's spouse or a member of the Participant's household** was unable to work due to lack of childcare due to COVID-19;

c. A business owned and operated by the Participant, **the Participant's spouse or a member of the Participant's household** closed or reduced hours due to COVID-19; or

d. **The Participant, the Participant's spouse or a member of the Participant's household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19.**

**A "member of the Participant's household" is someone who shares the Participant's principal residence.** As permitted by the CARES Act, the plan administrator may rely on a Participant's certification that the Participant satisfies one or more of the above conditions. Each Participant will self-certify as to his or her eligibility. Fidelity will not request or collect any additional information.

2. <u>Pre-Approved CARES Act Loans</u>: CARES Act Loans will be available by phone or NetBenefits®, eliminating the need for a paper application and submission/approval of documentation by the plan administrator or Fidelity. For by-phone transactions, Participants will certify with a Workplace Services Group Representative that they meet the eligibility requirements for a CARES Act Loan. For NetBenefits® transactions, Participants will self-certify that they meet the eligibility requirements online. **NOTE**: All repayments due on CARES Act Loans through December 31, 2020 (the "Deferment Period") will be deferred. The first repayment will be due in January 2021. See sections 10 and 11 below for more details.

3. <u>Spousal Consent CARES Act Loans</u>: The Plan configuration for spousal consent functionality remains the same. The following applies only to Plans with spousal consent requirements:

   i. <u>If the Participant is single and therefore spousal consent is not required</u>: For by-phone transactions, participants will certify with a Workplace Services Group Representative that they meet the eligibility requirements for a CARES Act Loan. For NetBenefits® transactions, Participants will self-certify that they meet that the eligibility requirements online.

ii. <u>If the Participant is married and therefore spousal consent is required</u>: For by-phone transactions, Participants will certify with a Workplace Services Group Representative that they meet the eligibility requirements for a CARES Act Loan. The representative will send the appropriate paperwork to the Participant, who will complete the paperwork, obtain spousal consent and send it directly to Fidelity. For NetBenefits® transactions, Participants will self-certify that they meet that the eligibility requirements online, download and complete the paperwork, obtain the witnessed spousal consent (as required or permitted by applicable law and governmental guidance), and send it directly to Fidelity. A Participant's request for a spousal consent CARES Act Loan transaction will remain valid and pending for 30 days before it expires and is purged from the system.

4. <u>Sponsor-Approved CARES Act Loans</u>: The following applies only to Plans that currently use Sponsor-Approved Loans. A paper application and submission/approval of the documentation by the plan administrator or Fidelity will be required. For by-phone interactions, Participants will certify with a Workplace Services Group Representative that they meet the eligibility requirements for a CARES Act Loan, and the representative will send them the required sponsor approved form. If the plan is subject to the joint and survivor annuity rules, then a spousal consent (as required or permitted by applicable law and governmental guidance) will be required if the Participant is married.

5. <u>Availability</u>: CARES Act Loans must be processed by September 22, 2020, 4:00pm ET.

6. <u>Maximum Amount</u>: The lesser of $100,000 or 100% of the Participant's vested account balance reduced by the Participant's highest outstanding loan balance during the prior 12 months. Fidelity will track the overall limit of $100,000 within or across plans for Plans who are using Fidelity's Cross Plan Loan Service.

7. <u>Number of Loans Outstanding</u>: CARES Act Loans will be included in the number of outstanding loans otherwise permitted under the Plan. The Plan Sponsor may increase the number of available loans by providing appropriate direction to Fidelity.

8. <u>Interest Rate</u>: Same as for other Plan loans.

9. <u>Status Codes</u>: Same as for other Plan loans.

10. <u>Loan Repayment Deferment</u>: The CARES Act Loan service will include the loan repayment deferment period provided under the CARES Act. All loan repayments due from the date the

Participant requests CARES Act Loan through and including December 31, 2020 will be deferred (the "Deferment Period"). CARES Act Loans will have a first repayment due in January 2021. The loan period will be extended by the period that the loan repayments were deferred (for example, if a CARES Act Loan is taken on July 1, 2020, the deferment period is from July 1, 2020 through December 31, 2020 (six months); the loan repayment term will be extended six months as permitted under the CARES Act).

i. Early Termination of Deferment Period. Plan Sponsors and terminated Participants may contact Fidelity on or before December 30, 2020 to initiate an action to proactively request a plan loan offset on or before December 30, 2020 by requesting a lump sum distribution and/or direct rollover (which would reflect the plan loan offset).

11. Re-amortization and Accrued Interest: Interest will continue to accrue during the Deferment Period. In January 2021, Fidelity will re-amortize the outstanding balance of the loan plus the interest accrued during the Deferment Period over the remaining term of the loan. The repayment amount of the re-amortized loan will reflect the outstanding principal balance of the loan and the accrued interest on the loan including the interest that accrued during the Deferment Period. At the end of the Deferment Period, Fidelity will provide the Plan Sponsor with an updated feedback file to reflect the new repayment amount. Fidelity will notify Participants directly of the re-amortized ACH loan repayment amounts after the Deferment Period ends and prior to the repayment start date.

12. Loan Repayment Frequency: Same as for other Plan loans (after the Deferment Period repayment start date).

13. Maximum Loan Term: Five years plus Deferment Period (with first repayment date set in January 2021).

14. Available Sources: Same as for other Plan loans. Amounts will be redeemed from the available source(s) using the same redemption method configuration as for other Plan loans.

15. Delivery: CARES Act Loans will be delivered by check, deposited into a Fidelity nonretirement account, or by electronic funds transfer (EFT) to the Bank Account identified on the Participant's account in NetBenefits®.

The CARES Act Increasing Loan Limit service described above may be modified if legislative, regulatory or other relevant guidance is issued or for service enhancements. Modifications may affect the associated policies, processes, procedures, applications, Participant communications, forms, etc.

Fidelity does not provide legal or tax advice. The information herein is general in nature and should not be considered legal or tax advice. Consult an attorney or tax professional regarding your specific situation.

For plan sponsor use only.

Fidelity Investments Institutional Operations Company LLC., 245 Summer Street, Boston, MA 02210

925568.5.0