

**University of Washington**  
**Faculty Council on Benefits and Retirement**  
Special Meeting  
April 13, 2020  
2:00 – 3:00 p.m.  
Zoom Conference

**Meeting Synopsis:**

1. Call to order
  2. Review and feedback on CARES Act provisions
  3. Adjourn
- 

**1. Call to order**

The meeting was called to order at 2:33 p.m.

**2. Review and feedback on CARES Act provisions**

*Overview*

Shankar explained FCBR has been asked to hold this special meeting by UW Human Resources in order to weigh in on the University's response to the "Coronavirus Aid, Relief, and Economic Security" (CARES) Act, which passed the House of Representatives and was signed into law by the President on March 27, 2020. The bill is intended to be a third round of federal government support in the wake of the Covid-19 public health crisis and associated economic fallout.

Rachel Gatlin (Executive Director, HR Benefits, Analytics and Information Systems) reviewed a related document that includes an outline of the provisions that impact UW operated plans, which is meant to inform a recommendation from the FCBR to the President regarding direction and options specific to the University's UWRP plans (Exhibit 1). It was noted there are two main provisions that relate to the University: Corona Related Distribution (CRD), and Increased Loan Limits and Payment Deferral (Exhibit 1). The document states: "each provision of the act potentially impacts and/or changes current provisions in the University of Washington Retirement Plan (UWRP), the UW Voluntary Investment Plan (VIP) and the state managed Deferred Compensation Plan (DCP). At this time the state has not chosen to enable CARES act provisions on the DCP, however that may change in the future...The UWHR Benefits office has gathered data and legal advice on the different considerations and has outlined key issues in the chart below. More detailed analysis and legal advice is also found in the appendix of the document. UWHR would like to present a recommendation from this committee on provisions 1 (CRD) and 2 (Loans) being added to the UWRP plan" (Exhibit 1).

*Discussion*

Shankar asked for comments from members. One member noted she supports allowing these provisions for UWRP plan holders as long as resources are also provided outlining/explaining possible consequences for opting to use those provisions. It was noted Fidelity and TIAA have provided some information/education via their own websites, and Total Benefits is planning to add information on

these provisions to the existing Covid-19 response website of the University. It was noted the new provisions are not being marketed to employees.

A member questioned if the changes to UWRP under these provisions would be reversed after a certain amount of time or via some other automatic mechanism. The response was no; if an amendment is made to the plan to respond to Covid-19, another amendment must be made to change it back to its previous state.

Another member was in favor of allowing UWRP holders access to the provisions. She noted the UW is under obligation to provide access to this money for its employees, and let the employees have the choice to use that money if they need. Other members agreed with the opinion.

Attention was called to Appendix A within the document, which includes some written information from the UW Attorney General's Office on potential "risks associated with allowing employees to take distributions from UWRP" and other information (Exhibit 1).

In conclusion, it was noted the FCBR believes the UWRP should be opened up to withdrawals allowed by the CARES Act via necessary plan amendments, and that efforts should be made to make clear the financial impacts to UW faculty opting to take those provisions.

### **3. Adjourn**

The meeting was adjourned at 3:00 p.m.

---

*Minutes by Joey Burgess, jmbg@uw.edu, assistant to the secretary of the faculty*

**Present:**       **Faculty Code Section 21-61 A:** Nicole Hoover, Gowri Shankar (chair), Monika Sobolewska, William Yuh

**Faculty Code Section 21-61 B:** Deci Evans

**Faculty Code Section 21-61 C:** Mindy Kornberg

**Regularly invited guests:** Rachel Gatlin, Cathy Randolph, Stefanie Starkovich

**Absent:**       **Faculty Code Section 21-61 A:** Ellen Covey, Pete Johnson, Mary O'Neil, Jason Wright

**Faculty Code Section 21-61 B:** Charles Hirschman, Laura Lillard

#### **Exhibits**

Exhibit 1 – CARESactforcommittee.pdf

## CARES ACT RETIREMENT PLAN PROVISIONS

In recent legislation known as the CARES ACT, new provisions were allowed distributions and loans against employee retirement plans.

The act in its entirety is found here:

<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

There are multiple provisions in this legislation, the retirement plan impacts can be found in section 2203.

The resolution is effective for as of March 29, 2020 (per the act, however vendors have different implementation dates) and continues through 12/31/2020.

### Impacted Plans and Scope of Responsibility

Each provision of the act potentially impacts and/or changes current provisions in the University of Washington Retirement Plan (UWRP), the UW Voluntary Investment Plan (VIP) and the state managed Deferred Compensation Plan (DCP). At this time the state has not chosen to enable CARE act provisions on the DCP, however that may change in the future. Those provisions are outside the scope of responsibility of the UW, but may impact our participants if the direction from the state changes. This document is to outline the provisions that impact UW operated plans and to inform a recommendation from the committee to the President regarding direction and options specific to the University's UWRP plans. However, because they are interrelated, this document will also discuss impact on the VIP plans.

### Provision 1 of the Act: the Corona Related Distribution (CRD)

Employers can elect to offer CRDs which are available to both Active and Terminated participants. The withdrawal is limited to \$100,000 combined across all of a participant's retirement plans. This withdrawal is not subject to the 10% early withdrawal penalty, and allows for a reduction in the mandatory 20% tax withholding. To be eligible for this withdrawal you must meet one of the following criteria:

1. Be diagnosed with COVID-19 through a CDC approved test;
2. Have a spouse or dependent diagnosed with COVID-19 through a CDC approved test;
3. Experience adverse financial consequences due to COVID-19 such as:
  - a. Being quarantined;
  - b. Being furloughed, laid off, or have hours reduced due to COVID-19;
  - c. Be unable to work due to lack of child care;
  - d. Other factors as determined by the Secretary of Treasury.

Withdrawals are available through December 31, 2020 and can be repaid to the plan over a three year period as a rollover contribution. There is no requirement to repay the withdrawal, but participants will have the option to repay.

If CRD participation is elected by the employer, plan amendments will be required to allow the CRDs in their plans. These amendments will need to be made to the plan documents by December 31, 2022 and will follow the normal plan amendment process.

### Provision 2 for Increased Loan Limits and Payment Deferral

Employers can elect to increase the loan limits available to participants who are affected by COVID-19. To be eligible for this loan you must meet one of the following criteria:

1. Be diagnosed with COVID-19 through a CDC approved test;
2. Have a spouse or dependent diagnosed with COVID-19 through a CDC approved test;
3. Experience adverse financial consequences due to COVID-19 such as:

- a. Being quarantined;
- b. Being furloughed, laid off, or have hours reduced due to COVID-19;
- c. Be unable to work due to lack of child care;
- d. Other factors as determined by the Secretary of Treasury.

If elected by the employer, loan limits would increase from \$50,000 or 50% of a participant’s balance, to \$100,000 or 100% of a participant’s balance. The larger loans are available through September 23, 2020 (180 days from the Act’s signing)

Additionally, any participant who meets the above criteria who already has an outstanding loan can elect to defer their payments due through December 31, 2020 for 1 year. Deferred payments will continue to accrue interest and after the 1 year has ended the outstanding loan, including accrued interest, will be re-amortized.

If increased loan limits and/or loan payment deferral are elected by the employer, plan amendments will be required to allow the CRDs in their plans. These amendments will need to be made to the plan documents by December 31, 2022 and will follow the normal plan amendment process.

**UW Implementation Considerations:**

The UWHR Benefits office, has gathered data and legal advice on the different considerations and has outlined key issues in the chart below. More detailed analysis and legal advice is also found in the appendix of the document. UWHR would like to present a recommendation from this committee on provisions 1 (CRD) and 2 (Loans) being added to the UWRP plan. Recommendations from the Faculty Council on Retirement and Benefits, and the UW Fund Review Committee will be included in the final decision making that will be done by the President.

Plan	Provision	Current State	Considerations	UW Decision	Notes/Other Options to Consider
------	-----------	---------------	----------------	-------------	---------------------------------

VIP	Distributions	<ul style="list-style-type: none"> <li>Allows in-service and hardship withdrawals</li> <li>Allows rollovers into the plan</li> </ul>	<ul style="list-style-type: none"> <li>Allowing CRDs and repayment of CRDs would not drastically change the current state of plan operations.</li> <li>Ability to track \$100,000 limit across multiple record-keepers can pose some administrative difficulties</li> </ul>	Will Allow, Vendors have been notified.	No plan document changes needed, provision already exists.
VIP	Loans	<ul style="list-style-type: none"> <li>Allows loans within the current plan provisions</li> </ul>	<ul style="list-style-type: none"> <li>Allowing loans at the increased limits would not drastically change the current state of plan operations.</li> <li>Ability to track and re-amortize loans will need to be properly managed by the plan record-keepers</li> <li>May need to adjust current limit on number of loans allowed in the plan so participants are able to take advantage of new loan provisions</li> </ul>	Will Allow, Vendors have been notified.	No plan document changes needed, provision already exists.
UWRP	Distributions	<ul style="list-style-type: none"> <li>Does not allow in-service or hardship withdrawals</li> <li>Does not allow rollovers into the plan</li> </ul>	<ul style="list-style-type: none"> <li>Allowing CRDs and repayment of CRDs would drastically change the current state of plan operations.</li> <li>Plan would need to be amended to allow rollovers for repayments, which may have to include rollovers from outside employer plans</li> <li>Repayments of CRDs may affect UWSRP calculations as repayments are characterized as rollover "contributions."</li> <li>Ability to track \$100,000 limit is more complex across multiple plans and recordkeepers</li> </ul>	Need committee recommendation for president.	Any changes have until 12/31/2022 to be reflected in plan documents, there is further considerations, analysis and impact described below.
UWRP	Loans	<ul style="list-style-type: none"> <li>Does not allow plan loans</li> </ul>	<ul style="list-style-type: none"> <li>UWRP would need to be amended to first allow loans in the plan</li> <li>Loan policy would need to be drafted to specify only CARES Act loans are allowed</li> </ul>	Need committee recommendation for president.	Any changes have until 12/31/2022 to be reflected in plan documents, there is further

					considerations, analysis and impact described below.
--	--	--	--	--	--

### Additional Supporting Analysis:

#### **\$100,000 Loan Considerations:**

Both Fidelity and TIAA are requiring participants to self-certify that the withdrawal they are requesting will not exceed \$100,000 combined between all of the participant's retirement accounts. At this time, neither record-keeper has the ability to monitor each other's transactions to validate that a participant is not "double dipping" which could result in distributions exceeding \$100,000.

Fidelity does have the ability to ensure that withdrawals do not exceed \$100,000 between UWRP and VIP, but only on the Fidelity portion of participant accounts.

To assist with monitoring and to mitigate risk of employees exceeding \$100,000, both record-keepers are making reporting available to UW that will show transactions specific to the CRDs for review. If the situation arises where an employee's requested transactions will exceed the limit, UW will be able to contact the record-keepers to stop the transaction in question.

#### **UWSRP Considerations:**

The calculation of UWSRP benefits are made based on the contributions in UWRP. If UWRP participants begin taking CRDs and repaying those CRDs back into UWRP as rollover contributions there is a risk that UWSRP benefit calculations would be affected. As currently defined in the UWSRP plan document there is no distinction between rollover contributions and contributions due to UWRP not currently allowing rollovers. Any changes to the UWSRP plan document to clarify payroll vs rollover contribution would need to be considered by our legal counsel to understand the legal implications. Due to the volatile environment around all higher education supplemental plans, including litigation involving SBCTC, UW's AG strongly recommends against making any amendments to the UWSRP. See Appendix A, UW AG opinion, for further details.

### Appendix A: Analysis from Kyle Richard (AG for UW) reviewed and amended by Abigail Meyer (Ropes & Gray LLP)

"...The CARES Act, Section 2202, permits distributions from employer plans of up to \$100,000 per individual without penalty under Internal Revenue Code Section 72(t) if the distribution meets certain requirements. Under this provision, income (equal to the distribution) is split across the three years beginning with the year in which the distribution is taken, unless the employee elects to repay the distribution. The employee has three years to repay the distribution, and that is treated a rollover contribution. It's unclear whether the rollover contribution can be made to any eligible plan or the plan from which the distribution came.

My understanding is that Fidelity has the capability to permit the CRD, issue the required tax documents, and handle the repayments (and treat them appropriately). The statute permits individuals to self-certify that they meet requirements for the distribution to be treated as a “coronavirus-related distribution” (a “CRD”). Fidelity has indicated it will not monitor the \$100,000 limit and proposes that individuals self-certify. The statute does not clearly permit this approach – instead, the statute appears to place the burden, in part, on plans themselves. While a plan cannot monitor the rule in its entirety, the statute includes a rule that a “a plan shall not be treated as violating...” the Internal Revenue Code if CRDs from “all plans maintained by the employer (and any member of the any controlled group which includes the employer)” does not exceed \$100,000.

There is a question regarding the risk associated with allowing employees to take distributions from UWRP. Similarly, the statute is unclear whether a plan that does not permit rollover contributions may permit CRDs but continue to prohibit rollover contributions. In any event, Fidelity does not appear to be offering this distinction at this time [without a customized project plan]. It’s also unclear how CRDs could affect UWSRP calculations. My understanding is that UWRP does not allow in-service distributions and does not permit rollover contributions. As a result, the UWSRP plan document does not address how UWSRP calculations would be handled in the event of an in-service distribution and repayment, and to my knowledge, that issue has never been raised.

As you know, UWSRP provides for an actuarial calculation under Section 5, which takes into account the employee’s contributions and several complex actuarial calculations to determine if the benefit the employee would receive under UWRP is lower than a derived “assumed annuity”.

As written, under Section 5.3(a) of the UWSRP plan document, the assumed annuity is compared to a figure based on employee contributions. However, employee contributions are not specifically defined. Under the CARES act, repayments of CRDs are considered rollover contributions.

Because in-service distributions and rollover contributions have never been allowed, it is not clear if these repayments would be considered “contributions” within the meaning of the UWRP/UWSRP.

Reasonable arguments could likely be made for interpreting “contributions” to include or exclude these repayments. A plain reading of the UWSRP language, combined with the CARES act’s treatment of the payments as rollover contributions would seem to support including them in the SRP calculation. However, a reasonable argument could be made because these “contributions” are (in fact) repayments of distributions made to the employee, that they should not be considered unique “contributions” added to the base for the purpose of the SRP calculation.

Given the uniqueness of the SRP, this would be an issue of first impression in Washington, so it is difficult to determine how a court would interpret this issue. Under current Section 72, distributions for certain military personnel and certain birth and adoption costs may be repaid and treated as rollover contributions (in much the same way that CRDs would be treated).

The closest cases on this issue deal with bankruptcy, and the only case in the 9<sup>th</sup> Circuit does draw a distinction between “contributions” and “rollover contributions”, but I would caution that the context is not particularly analogous, and other circuits have held otherwise. It is very difficult to predict whether a court would consider this repayment (or “rollover contribution”) distinguishable from a regular contribution.

Given the concerns about UWSRP, the potential liability associated with it, and the lawsuit against the SBCTC, I would advise being extremely careful with any mechanism that could result in additional SRP calculations (or arguments for additional SRP calculations), particularly, if UW is not planning to offer additional SRP calculations in cases where the distribution is made.

As we discussed, if UW does elect to make these changes, it will likely need to make plan amendments to any plans in which it allows new forms of distributions or contributions. Once again, amending the UWSRP (or the UWRP in a way which affects the UWSRP) is likely to raise additional concerns, given the risks UW is otherwise facing with regard to UWSRP...”

DRAFT