

Retirement Plan Provisions of CARES Act

This update summarizes provisions of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) that affect qualified retirement plans. The CARES Act makes several changes to retirement plan distributions, including coronavirus-related distributions, the rules applicable to required minimum distributions, plan loans, and funding requirements. All companies should work with their retirement plan providers and counsel to determine how to comply with the new rules and how to best assist employees during these difficult and uncertain times.

Coronavirus-Related Distributions

Through December 31, 2020, the CARES Act adds a new category of in-service distributions for participants who are affected by the coronavirus. These distributions will not be subject to a retirement plan’s normal distribution restrictions.

The following applies to coronavirus-related distributions:

- Maximum distribution of \$100,000 per tax year. This limit applies in the aggregate to all qualified plans of the employer.
- Income taxes apply ratably over the three tax years beginning in the year of distribution. Participant may elect to include distribution in income in a single tax year.
- Participant may repay distribution to plan within three years and repayment will be treated as an indirect rollover. Repayment need not be to the plan from which the distribution was made. Accordingly, participant can repay distribution to a plan of an unrelated employer or an IRA, provided that the recipient plan accepts rollover contributions of this type. If more than one distribution occurs, then the due date of repayment is measured separately from the date of each distribution.
- Repayments are not adjusted for earnings or losses.
- Distributions are deemed not to be “eligible rollover distributions,” and are therefore not subject to 20% mandatory withholding. Instead, distributions are subject to 10% withholding that may be waived by participant.
- Distributions are exempt from the 10% early withdrawal penalty (generally applicable for withdrawals for those under 59 ½ years of age).
- Except for defined benefit pension plans and money purchase pension plans, plan-specific distribution restrictions do not apply. Guidance is expected regarding pension plan distributions.



- It is possible that an employer may be able to reclassify in-service distributions taken in 2020 prior to the effective date of the CARES Act. Further guidance from the IRS would be helpful on this point.

Participants Eligible for Coronavirus-Related Distributions

In order to qualify for a coronavirus-related distribution, a participant must fall into one of the following categories:

- Participant has been diagnosed with the virus (as confirmed by a CDC-approved test);
- Participant's spouse or dependent has been diagnosed with the virus; or
- Participant experiences adverse financial consequences as a result of quarantine, furlough, lay-off, reduction in work hours, business closure, lack of childcare, or other factors identified by the IRS.

Loan Relief

The CARES Act provides for two types of loan relief:

- Plans may allow 'eligible' participants—as defined above—with respect to coronavirus-related distributions, to take loans up to the lesser of \$100,000 or 100% of the participant's vested account balance. These loans may be taken during the 180-day period starting on March 27, 2020.
- Upon the request of an eligible participant, again as defined above, plan sponsors may suspend loan repayments on outstanding loans which are due from March 27, 2020 through December 31, 2020 for up to one year. The period of the delay is not counted against the otherwise applicable maximum period of the plan loan (5 years in most cases).

Additional Rules Applicable to Coronavirus-Related Distributions and Loans

An employer may rely on the participant's certification of eligibility. The new distribution and loan provisions are optional, rather than required. Employers will need to consider whether to adopt them. Plans need not be amended until the end of the first plan year beginning on or after January 1, 2022. This is true, even if the plan does not currently permit hardship distributions or loans. For employers who wish to proceed with the expanded in-service distributions, expanded loans, or both, prior to adopting formal plan amendments, we recommend documenting these intentions with plan service providers and participants before implementing these features.

2020 Required Minimum Distributions

The CARES Act suspended required minimum distributions ("RMDs") to be made in 2020, including 2019 required minimum distributions for participants who reached age 70 ½ in 2019 requiring a distribution on or before April 1, 2020.



- The suspension for 2019 does not apply to RMDs that were taken by the participant in 2019.
- It is not clear what will be required with respect to RMDs taken prior to the effective date of the CARES Act.

Pension Plan Funding Considerations

The CARES Act extends to January 1, 2021, the due date for any contributions required in 2020 to defined benefit plans (including quarterly contributions). These rules only apply to single-employer plans and not to multi-employer pension plans.

- The minimum contribution amount is increased by the plan's rate of interest for the interim period.
- The plan sponsor is permitted to consider the AFTAP for 2020 to be the same as it was for the last plan year ending before 2020. As a result, plans electing this alternative may have higher funded percentages and fewer benefit restrictions (e.g., lump-sum payment restrictions).
- It is expected that Congress will be considering other funding relief that would potentially provide additional extensions.

Department of Labor Authority

Under the CARES Act, ERISA was amended to expand the Department of Labor's ("DOL") authority to extend certain deadlines up to one year in the event that the Secretary of the Department of Health and Human Services (HHS) declares a public health emergency pursuant to Section 319 of the Public Health Service Act. Prior to this change, it was limited to certain terrorist and military acts. Examples of such deadlines that potentially could be extended under the DOL's expanded authority include certain required notices and government filings (e.g., Form 5500). The HHS declared COVID-19 a public health emergency on January 31, 2020.



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