



CARES Act Retirement Plan and Other Employee Benefit Plans Relief

April 15, 2020

On March 28th, our firm published a client advisory (available [here](#)) outlining at a high level the relief available under the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), which was signed into law on March 27, 2020.

This client advisory supplements the March 28th client advisory by providing more detail regarding retirement plan and other employee benefit plan relief available to participants and plan sponsors under the CARES Act. The benefits-related provisions of the CARES Act are summarized below.

Plan Amendments and Plan Governance

The deadline for amending retirement plans for the changes made by the CARES Act is the last day of the first plan year beginning on or after January 1, 2022. However, the provisions of the CARES Act can be implemented immediately.

Because some of the provisions of the CARES Act are optional, plan governance best practices for retirement plans and other employee benefit plans include approval of the plan sponsor's implementation of the optional CARES Act provisions by the appropriate governing body, such as the board of directors, partners, limited liability company members or committee to which the applicable authority has been previously delegated.

Because plan amendments are not required at this time, summary plan descriptions are not required to be updated at this time either. However, the changes that are implemented should be communicated to participants as soon as possible. In addition, the "special tax notice" (also known as the 402(f) notice) that must be provided to individuals who receive retirement plan benefit distributions should be updated as soon as possible to reflect the applicable changes. These are important fiduciary duties for which the plan sponsor is generally responsible. We would be happy to assist you with these important communications.

Waiver of 2020 Required Minimum Distributions

The CARES Act waives the required minimum distribution rules for 2020 with respect to certain defined contribution plans and IRAs. An individual who already received a required minimum distribution for 2020 may be able to avoid taxation of the distribution by rolling it over to an employer-sponsored retirement plan or to an IRA.

While many record keepers and third party administrators have advised clients that the waiver of required minimum distributions for 2020 is optional rather than required by the CARES Act, the statutory language of the CARES Act provides that the required minimum distribution provisions of section 401(a)(9) of the Internal Revenue Code shall not apply for 2020. The IRS is aware of this issue and we anticipate that the IRS will issue guidance addressing the issue and possibly providing flexibility to plan sponsors. Pending guidance from the IRS, we believe that the best practice is for plans sponsors to treat this waiver as required rather than optional.

Coronavirus-Related Distributions

The CARES Act permits plan sponsors to offer a new type of distribution called a coronavirus-related distribution that can be made from eligible retirement plans during the

period beginning January 1, 2020, and ending December 30, 2020. For this purpose, an eligible retirement plan is a section 401(a) qualified retirement plan (including a 401(k) plan), a section 403(a) plan, a section 403(b) plan, a section 457(b) governmental plan and an IRA. Coronavirus-related distributions are not required by the CARES Act. Plan sponsors have the option of making them available or not making them available.

In order to be eligible to receive a coronavirus-related distribution, an individual must be a "coronavirus-affected individual." An individual is a "coronavirus-affected individual" only if:

- the individual 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,
- the individual's spouse or dependent (as defined in section 152 of the Internal Revenue Code) 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, or
- the individual 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 the 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 plan administrator of an eligible retirement plan may rely on an employee's certification that the employee satisfies the requirements to be a coronavirus-affected individual.

The aggregate amount of coronavirus-related distributions to an individual from all retirement plans maintained by the employer (including all employers that are members of the same controlled group or affiliated service group) cannot exceed \$100,000.

Coronavirus-related distributions are not subject to the 10% early distribution tax. Coronavirus-related distributions are subject to federal income taxation. However, the amount of the coronavirus-related distribution is included in gross income for federal income tax purposes ratably over the three-taxable-year period beginning with 2020 (i.e., one third of the total amount of the coronavirus-related distribution is included in gross income in each of the three years 2020, 2021 and 2022). The individual may elect to include the total amount of the coronavirus-related distribution in gross income for federal income tax purposes for 2020 rather than spreading it over three years.

An individual who takes a coronavirus-related distribution may repay the distribution to an eligible retirement plan during the three-year period beginning on the day after the date of the distribution. Repayments within the three-year period will result in the coronavirus-related distribution not being subject to federal income taxation, or in the case that federal income tax has already been paid, permit the individual to receive a refund of the previously paid federal income tax.

Coronavirus-related distributions are not treated as hardship distributions under the Internal Revenue Code. In addition to the special federal income tax treatment and repayment option summarized above for coronavirus-related distributions that are not applicable to hardship distributions, it's important to note that the rule that requires a participant to take all available distributions under a plan before being eligible to receive a hardship distribution requires a coronavirus-affected individual to take a coronavirus-related distribution before being eligible to receive a hardship distribution.

Increased Limits for Participant Loans

The CARES Act permits plan sponsors to increase the maximum participant loan limit under a qualified employer plan for the 180-day period beginning on March 27, 2020, with respect to coronavirus-affected individuals (as defined in the Coronavirus-Related Distributions section above). For this purpose, a qualified employer plan is a section 401(a) qualified retirement plan (including a 401(k) plan), a section 403(a) plan, a section 403(b) plan and certain government plans. Increasing the loan limit is not required by the CARES Act. Plan sponsors have the option of increasing the loan limit or not increasing the loan limit.

The increased loan limit is the lesser of (1) \$100,000 (increased from \$50,000) or (2) 100% (increased from 50%) of the participant's vested account balance.

Participant Loan Repayment Relief

The CARES Act provides participant loan delayed repayment relief with respect to coronavirus-affected individuals (as defined in the Coronavirus-Related Distributions section above). This relief provides that in the case of a coronavirus-affected individual with an outstanding loan, any due date for a participant loan repayment that occurs during the period beginning March 27, 2020, and ending December 31, 2020, shall be delayed for one year.

Any subsequent participant loan repayments with respect to such loans must be appropriately adjusted to reflect the delayed repayment due dates and any interest accruing during such delay. In addition, in determining the maximum five-year repayment term applicable to participants loans that are not home loans, the delayed repayment due dates shall be disregarded.

While many record keepers and third party administrators have advised clients that the participant loan repayment due date one-year delay is optional rather than required by the CARES Act, the statutory language of the CARES Act provides that "such due date shall be delayed for 1 year." The IRS is aware of this issue and we anticipate that the IRS will issue guidance addressing the issue and possibly providing flexibility to plan sponsors. Pending guidance from the IRS, we believe that the best practice is for plans sponsors to treat this participant loan repayment due date one-year delay as required rather than optional.

Funding Relief for Defined Benefit Plans

The CARES Act provides that any required minimum contributions for a single-employer defined benefit plan that are due during the 2020 calendar year are not required to be made until January 1, 2021, with accrued interest from the original payment due date to the actual payment date. Additionally, plan sponsors of defined benefit plans may treat the last plan year's adjusted funded target attainment percentage as the percentage applicable to plan years which include the 2020 calendar year for purposes of applying the funding-based limitation on shutdown benefits and other unpredictable contingent event benefits.

Access to Health Care

The CARES Act provides that for plan years beginning on or before December 31, 2021, a high-deductible health plan may cover all telehealth services prior to a covered individual reaching the applicable deductible without risking the plan's status as a high-deductible health plan. Employees covered under a high deductible health plan providing these services prior to reaching the deductible will continue to be eligible to make contributions to a health savings account. The purpose of this change is to increase access for patients who may have the coronavirus and to protect other patients from potential exposure.

The CARES Act also expands the list of permitted healthcare expenses for purposes of health savings accounts, health flexible spending accounts and health reimbursement arrangements to include over-the-counter medications without a prescription from a physician. This change effectively repeals the provision of the 2010 Patient Protection and Affordable Care Act that discontinued the tax-free reimbursement of over-the-counter drugs or medicines without a prescription. The list of permitted healthcare expenses has further been expanded under the CARES Act to include menstrual products. These provisions appear to be permanent as they are not set to expire as of a certain date.

Student Loan Repayment-Employee Education Assistance Program

The CARES Act permits employers to provide a student loan repayment benefit to employees on a tax-free basis of up to \$5,250 annually towards an employee's student loans. The cap takes into account both any new student loan repayment benefit as well as other educational assistance currently provided by the employer. The provision applies to any student loan payments made by an employer on behalf of an employee after March 27, 2020, and before January 1, 2021.

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



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