

CARES Act: Key Provisions Affecting Retirement Plans

March 31, 2020

On March 27, 2020, the U.S. House of Representatives passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) that was passed in the U.S. Senate on March 25, 2020. The President signed the bill into law on March 27, 2020. This brief is a summary of provisions contained in the CARES Act that impact retirement plans and IRAs.

If you have any questions, or if you would like more information, please contact Stephen Dobrow, 650-692-2043 ex. 27.

<p>Is the CARES Act now law?</p>	<p>Yes. The CARES Act passed the U.S. Senate on March 25, and the U.S. House of Representatives on March 27. The President signed the bill into law on March 27, 2020.</p>
<p>What are the major changes that impact plan sponsors and participants?</p>	<p>There are several changes that impact plan sponsors and participants, including:</p> <ul style="list-style-type: none"> • Relief impacting “Coronavirus Related Distributions” for qualified participants; • Relief impacting plan loans to qualified participants; • Waiver of Required Minimum Distributions for calendar year 2020; • Changes to single-employer defined benefit plan funding rules; and • Expanded DOL authority to postpone filing deadlines. <p>More information on each of these items is below.</p>
<p>What changes impact “hardship” distributions? Are there different rules for Coronavirus Related Distributions?</p>	<p>Traditional hardship distributions are subject to an additional 10% tax on early withdrawals. The CARES Act waives the additional 10% for an individual who takes a distribution on or after January 1 and before December 31, 2020, and meets the following requirements:</p> <ul style="list-style-type: none"> • Is diagnosed with COVID-19; • Has a spouse or dependent diagnosed with COVID-19; • Experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of childcare due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; <p>OR</p> <ul style="list-style-type: none"> • Meets other factors as determine by the Treasury Secretary. <p>In addition, for participants who meet the requirements above:</p> <ul style="list-style-type: none"> • Up to \$100,000 can be withdrawn, aggregated across all qualified plans, 403(b) plans, governmental 457(b) plans or IRAs of the individual; • Tax on the income due to the distribution can be spread over a three-year period; and • Amount distributed can be repaid into the plan (or IRA) over the next three years. Any repayments would not be subject to the plan contribution limitations. <p>Distributions made pursuant to Coronavirus Related Distribution rules do not have to satisfy other plan related distribution requirements. Coronavirus Related Distributions will be treated as a rollover for the purpose of allowing repayments; however, they will not be subject to mandatory withholding on traditional distributions from plans or IRAs.</p> <p>Coronavirus Related Distribution provisions:</p>

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	<ul style="list-style-type: none"> • Can be adopted immediately, even if the plan does not currently allow for hardship distributions, provided the plan is amended on or before the last day of the first plan year beginning on or after January 1, 2022 (or later if prescribed by the Treasury Secretary).¹ <p>Plan Sponsor Takeaways: for those participants who meet the requirements above:</p> <ul style="list-style-type: none"> • This is an optional provision that can be implemented immediately; • Verify that tax-reporting service providers are aware of which distributions qualify for special treatment; • Verify that the party approving the distributions, the plan sponsor or service provider, properly evaluates qualification requirements for each impacted participant. Participants are able to self-certify that they meet the requirements; • Make sure the plan is amended properly, if necessary, by the deadline stated above.
<p>What changes impact plan loans?</p>	<p>Under the CARES Act, the following relief regarding plan loans is available to participants who meet the requirements identified above regarding Coronavirus Related Distributions:</p> <ul style="list-style-type: none"> • For plan loans taken between March 27, 2020 and September 23, 2020, the maximum loan amount is doubled from lesser of \$50,000 or 50% of the participant’s vested account balance to lesser of \$100,000 or 100% of the vested account balance for loans to qualified participants; • Participants who have a loan from their account that is due from March 27, 2020 through December 31, 2020, can delay their repayment(s) and extend the term of the loan for up to one year;² • Changes can be adopted immediately, even if the plan does not currently allow for loans, provided the plan is amended on or before the last day of the first plan beginning on or after January 1, 2022 (or later if prescribed by the Treasury Secretary).³ <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • This is an optional provision that can be implemented immediately; • A plan amendment is required by the last day of the plan year beginning on or after January 1, 2022, or such later deadline as stated above;⁴ • Absent guidance from the IRS or technical correction to the act, it appears employee self-certification is not available related to loans.
<p>What changes impact Required Minimum Distributions for 2020?</p>	<p>Required Minimum Distributions (RMDs) from defined contribution plans under 401(a), plans described in 403(a) and 403(b), eligible (governmental) 457(b) plans, and IRAs are waived for calendar year 2020.</p> <p>This includes the RMDs for participants that turned 70½ during 2019 and had not taken their distribution prior to January 1, 2020.</p> <p>This change also provides that amounts that would have been RMDs, but for the CARES Act, that are (or were) distributed, are eligible rollover amounts that can be rolled over within 60 days. The CARES Act also excludes such amounts from the mandatory withholding requirements even though such amount could be rolled over.</p> <p>This includes the RMDs for participants that turned 70½ during 2019 and had not taken their distribution prior to January 1, 2020.</p> <p>This change also provides that amounts that would have been RMDs, but for the CARES Act, that are (or were) distributed, are eligible rollover amounts that can be rolled over within 60 days. The CARES Act</p>

¹ Governmental plans may have different deadlines. Plans sponsors should contact their service providers for more information.
² Interest accrues during the delay period, but the one-year delay is disregarded in determining the term of the loan and the maximum five-year repayment period.
³ Governmental plans may have different deadlines. Plan sponsors should contact their service providers for more information.
⁴ Caution: Plan sponsors may wish to contact their service providers or counsel to determine the impact on pre-approved plan reliance, if the IRS does not provide additional guidance.

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	<p>also excludes such amounts from the mandatory withholding requirements even though such amount could be rolled over.</p> <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • This is an optional provision that can be made available immediately; • Since it is optional, plan sponsors will need to make the decision on implementation and must then communicate the decision to service providers. Some plans experienced operational failures in 2009 because plan sponsors and service providers were not aligned, resulting in Voluntary Correction Program (VCP) filings with the IRS; • For plan sponsors who choose to adopt this provision, the plan can be amended retroactively on or before the last day of the first plan year beginning on or after January 1, 2022. For governmental plans, the deadline to amend is on or before the last day of the first plan year beginning on or after January 1, 2024.
<p>What changes impact single-employer defined benefit plans?</p>	<p>Under the CARES Act, employers with single-employer defined benefit plans, including cash balance plans, will be given more time to meet their funding obligations by delaying the date for contributions due in 2020 until January 1, 2021. The delay applies both to final contributions due in 2020 for 2019 plan years as well as quarterly contributions due during the year. Delayed contributions will be subject to interest for the accruing period at the effect rate of interest for the plan, for the plan year which includes the payment date.</p> <p>Additionally, plan sponsors can treat the plan’s adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 as the target for plan years which include 2020.</p> <p>Plan Sponsor Takeaways:</p> <ul style="list-style-type: none"> • This applies immediately and can provide cash flow relief; • No plan amendments are required to implement this provision; • Plans who may not be able to make contributions to a defined benefit or cash balance plan in future years may wish to consider freezing or terminating their plans. Those sponsors should contact their service providers to discuss options.
<p>Will DOL extend the deadlines for meeting certain filing requirements?</p>	<p>This is likely, given that under the legislation, DOL has been granted authority to extend deadlines imposed under ERISA. In a March 16 letter, the American Retirement Association has asked for relief on several filing requirements, including extensions of the following:</p> <ul style="list-style-type: none"> • Deadline to file Form 5500; • Deadline for correcting an ADP or ACP test; and • Period for distributing excess contributions from a plan. <p>Plan Sponsor Takeaway: Although DOL has been granted authority to extend deadlines, the agency has not issued guidance yet. Plan sponsors should check with their service providers regarding any changes.</p>
<p>Has IRS or DOL issued any other guidance impacting retirement plans?</p>	<p>Separate from the CARES Act, on March 27, 2020, the IRS announced that the March 31, 2020 deadline for adopting a 403(b) plan document has been extended to June 30, 2020.</p> <p>In addition, the IRS has also announced that the April 30, 2020 deadline for adopting a pre-approved defined benefit plan document has been extended to July 31, 2020.</p> <p>Plan Sponsor Takeaway: This extension provides an additional 3 months to finalize documents that have not otherwise been adopted.</p>
<p>Next steps?</p>	<p>Signing the CARES Act into law is an important step; however, there could very well be others in the days and weeks ahead, including:</p> <ul style="list-style-type: none"> • Given the authority granted to them under the CARES Act, it is possible that DOL will issue further guidance regarding filing deadlines; • IRS may issue additional guidance impacting plans and IRAs; • The American Retirement Association (ARA) has indicated that they will continue “to push for

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	<p>defined contribution funding relief,”⁵ and</p> <ul style="list-style-type: none">• As mentioned earlier in the brief, it is possible that Congress could issue technical corrections and/or additional bills to address the COVID-19 pandemic. <p>We will continue to monitor developments and update you as we know more. In the meantime, please contact Stephen Dobrow, 650-692-2043 ex. 27.</p>
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⁵ Source: National Association of Plan Advisors, March 27, 2020. <https://www.napa-net.org/news-info/daily-news/house-passes-coronavirus-stimulus-retirement-relief>