THE CARES ACT GUIDE

The **Coronavirus Aid, Relief, and Economic Security (CARES) Act** was signed into law on March 27, 2020. The CARES Act has many elements to aid businesses and workers, as well as assisting the US healthcare system in dealing with the COVID-19 pandemic.

CORONAVIRUS-RELATED DISTRIBUTIONS

Plans may permit in-service coronavirus-related hardship distributions from a participant's vested account balance without regard to normal hardship withdrawal restrictions. This relief is offered through December 31, 2020.

These distributions are subject to the following requirements:

- Limited to a maximum of $100,000 from an eligible retirement plan (defined as a qualified retirement plan (e.g., a 401(k) plan, 403(a) plan, 403(b) plan, governmental 457(b) plan, or an IRA)
- Not subject to 20% mandatory withholding
- Exempt from 10% early withdrawal penalty
- Remains taxable income subject to ordinary taxes based on the individual's filing status
- Can be indirectly rolled into an IRA or employer plan within 3 years from the date the distribution is taken
- For amounts not indirectly rolled into an IRA or employer plan, taxes may be paid in the year of distribution or spread ratably over three tax years

Coronavirus-related distributions are available to 'eligible' participants who:

- Are diagnosed with a coronavirus illness
- Have a spouse or dependent diagnosed with a coronavirus illness
- Experience 'adverse financial consequences' due to a quarantine, furlough, layoff, reduction in work hours, business closure, or are providing childcare due to the coronavirus emergency

The plan sponsor/plan administrator may rely on a participant's certification of the above.

CORONAVIRUS-RELATED PLAN LOAN RELIEF

Two types of loan relief are available:

1) Plans may allow 'eligible' participants, as defined above, to take loans up to the lesser of $100,000 or 100% of the participant's vested account balance for the specified period.
2) Upon the request of an 'eligible' participant, plan sponsors must suspend loan repayments due on outstanding loans that are in good order for a period of up to 12 months. This relief expires on December 31, 2020. The suspension period is to be added to the original loan term when repayments (including accrued interest) resume, regardless of the length of the loan's original term.

Note for considering a loan:

Participants who are furloughed or laid off but who continue to be considered active employees may also suspend loan repayments for up to one year of unpaid leave. Plan sponsors/plan administrators should ensure they are reporting the correct employment status to their investment provider for these participants so their loan repayment suspensions and other plan rights, including the in-service distribution options are properly administered. For example, if a participant is granted a furlough without being terminated from employment, **do not** report them as terminated to your investment provider, and **do not** report a date of termination for them.

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WAIVER OF 2020 REQUIRED MINIMUM DISTRIBUTIONS

Qualified 401(a), 401(k), 403(b), and governmental 457(b) plans will not be required to make required minimum distributions (RMDs) for 2020. Participants and beneficiaries will be provided the following RMD relief.

- Participants who turned age 70 ½ in 2019 will not be required to receive an ongoing RMD for 2020
- Participants who turned age 70 ½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020, will not have to receive their first (2019) RMD or their 2020 RMD
- Participants who are in pay status and receiving an annual RMD will not be required to take a distribution for the tax year 2020
- Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD
  - Beneficiaries who have an account balance in the plan subject to the five-year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death)
  - Beneficiaries who have an account balance in the plan subject to the 10-year distribution rule may extend their required distribution by one year (a full distribution of the account must be made by the 11th anniversary of the participant's death)
- If a 2020 RMD is provided to any of the above, it may be rolled over to an IRA or employer plan. A participant's RMD or beneficiary's life expectancy RMD for 2021 will still be required to be paid.

DEFINED BENEFIT PLAN RELIEF

Delay in 2020 funding obligations

- Under CARES, all single-employer funding obligations due during 2020 are not required to be made until January 1, 2021, with interest for late payments

Benefit restrictions

- Under CARES, a plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020

TIMING OF PLAN AMENDMENTS

The CARES Act includes a remedial amendment period giving plan sponsors additional time to amend their plans for this relief.

- Sponsors of non-governmental plans have until the last day of the plan year beginning in 2022 to amend their plans (i.e., December 31, 2022, for a calendar year plan)
- Sponsors of governmental plans have until the last day of the plan year beginning in 2024 to amend their plans

PLAN SPONSOR CONSIDERATIONS

The coronavirus-related hardship distributions and increased loan limits are optional plan provisions; consequently, plan sponsors will need to evaluate which of the following courses of action they wish to take:

- **Plan sponsors may elect to do nothing at this time.** Because the hardship withdrawal and loan limit increase provisions are optional, they will not go into effect unless you opt to affirmatively add them to your plan. This may be a good choice if you have not furloughed, laid off, or reduced hours for any of your employees, and if your employee population and their families continue to remain healthy. In that case, these provisions may be added later if or as the COVID-19 situation changes; however, the situation could change quickly, so it may be prudent to consider adding them sooner rather than later.

- **Plan sponsors may add the increased loan limit provision without offering the hardship withdrawal provision.** It is permissible to add either the hardship withdrawal option or the increased loan limits independent of the other. Adding the expanded loan limit will permit participants to access more of their accounts without direct leakage from the plan; in addition, because loan repayments due in 2020 may be suspended for a period of up to a year, taking a loan will not create an immediate financial burden for participants. However, if a participant takes an expanded loan, is subsequently terminated, and is unable to repay the full amount of the loan, the outstanding loan balance would default, and would be included in taxable income in the year of the default. Absent future relief, three-year ratable taxation does not apply in this situation. Note: depending on the number of loans permitted at a time by the plan, adding this provision may also require modifying the restrictions around the number of permissible loans that may be taken from the plan and or the frequency with which they may be taken.

- **Plan sponsors may add the hardship withdrawal provision without offering the increased loan limit provision.** Adding the expanded hardship withdrawal provision will create leakage, possibly substantial, from the plan, but it ensures affected participants can access their funds without the risk of taxation of the loan amount in a single plan year in the case of a subsequent termination of employment. Any or all of the withdrawn amounts may be repaid to the plan at a later date, which may mitigate some leakage, and the tax burden would be spread out over three years.

- **Plan sponsors may add both the hardship withdrawal and increased loan limit provisions.** Adding both provisions would provide participants with the opportunity to make the decision between a hardship withdrawal or an increased loan, based on what they determine best for their situation. This may be a good opportunity to educate participants on the importance of preserving their retirement savings to the extent they are able and the accompanying advantages of a loan over a hardship withdrawal in that regard. They should also be informed of the potential tax consequences of both scenarios and encouraged to repay any amounts they might elect to withdraw once this crisis is behind us.

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