

Overview of CARES Act provisions affecting retirement plans

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Key highlights

- The CARES Act addresses the economic fallout caused by the coronavirus
- Section 2202(a) of the ACT provides for tax-favored withdrawals from retirement plans in the case of COVID-19 related distributions
- There is an increase in the dollar limit in the amount of a loan made from a qualified employer plan to a qualified individual during the 180-day period beginning on the date of enactment of the Act
- New language in the Act suspends the requirement to take a minimum required distribution for the 2020 calendar year for any plan that is subject to the minimum distribution requirements of IRC 401(a)(9).

I. CARES Act

The “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” was signed into law by President Trump on March 27, 2020. For ease of reference, we will simply refer to the CARES Act as the “Act” in this paper. First and foremost, the CARES Act addresses the economic fallout caused by the coronavirus (or COVID-19). This is not a measure that is primarily focused on retirement plans. Any provisions in the CARES Act dealing with retirement plans are only incidental to, and in furtherance of, the primary purpose of the measure.

II. Hardship distributions

2.1. In general. Section 2202(a) of the Act provides for tax-favored withdrawals from retirement plans in the case of a coronavirus-related distribution. Specifically, Internal Revenue Code (“IRC”) section 72(t) does not apply to any coronavirus-related distribution.¹ IRC 72(t)(1) states that if any taxpayer receives any amount from a qualified retirement plan [as defined in IRC 4974(c); i.e., qualified plans under IRC 401(a) and 403(a), tax-sheltered annuities under IRC 403(b), and IRAs under IRC 408(a) and (b)], the taxpayer’s tax for the taxable year in which such amount is received is increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income. IRC 72(t)(2) contains a list of distributions that are excepted from the general 10 percent tax imposed by IRC 72(t)(1).

2.2. Aggregate dollar limitation. An individual may receive aggregate coronavirus-related distributions for any taxable year in an amount not to exceed \$100,000 and have those distributions be exempt from IRC 72(t).² The \$100,000 yearly limit is computed by taking into account distributions from plans of the employer and from any plan maintained by a member of a controlled group of corporations or businesses under common control that includes the employer of the affected individual.³

2.3. Amount distributed may be repaid.

2.3.1. In general. An individual who receives a coronavirus-related distribution may, at any time during a three-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan mentioned in IRC 402(c)(8)(B) [i.e., IRAs described in IRC 408(a), (b); qualified plan and trust described in IRC 401(a) and 501(a); qualified annuity plan described in IRC 403(a); a governmental 457(b) plan; and a tax-sheltered annuity described in IRC 403(b)] of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made.⁴

2.3.2. Treatment of repayments. There is a technical distinction made in the Act for treatment of repayments of distributions from eligible retirement plans other than IRAs and distributions from IRAs, but the practical effect is the same. Distributions are treated as having been transferred to the eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.⁵

2.4. Coronavirus-related distribution.⁶ A “coronavirus-related distribution” means any distribution from an eligible retirement plan that is made on or after January 1, 2020 and before December 31, 2020 to an individual: (i) who is diagnosed with COVID-19; (ii) whose spouse or dependent is so diagnosed; or (iii) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced due to such virus, or who is otherwise unable to work as a result of child care duties or the closing or reducing of hours at a business owned by such individual.

2.5. Income inclusion spread over three years.⁷ Unless the taxpayer elects otherwise, any amount required to be included in gross income for the taxable year of the coronavirus-related distribution is included ratably over the three-taxable-year period beginning with the taxable year of the distribution.

2.6. Special rules.⁸ A coronavirus distribution is not treated as an eligible rollover distribution for purposes of the trustee-to-trustee transfer rules and the withholding rules. Such a distribution is treated as meeting the distribution requirements/limitations for purposes of the following types of plans: (i) IRC 401(k); (ii) IRC 403(b); and governmental IRC 457(b).

III. Loans from qualified plans

3.1. Increase in limit on loans not treated as distributions.

3.1.1. There is an increase in the dollar limit (from \$50,000 to \$100,000) in the amount of a loan made from a qualified employer plan [for this purpose, plans described in IRC 401(a), 403(a), 403(b), and governmental 457(b)] to a qualified individual [a person described in subsection 2.4] during the 180-day period beginning on the date of enactment of the Act (i.e., March 27, 2020).⁹ This means the expanded dollar limit for loans from plans is in effect for loans made until September 23, 2020. Another aspect of this temporary change in the plan loan rule to accommodate the coronavirus financial crisis is that limitation on the amount that could be borrowed was raised from one-half of a participant's nonforfeitable accrued benefit to the entire amount of the nonforfeitable accrued benefit.

3.1.2. After modifications by the Act, during the temporary period ending September 23, 2020, the amount that a participant may borrow from his or her accrued benefit under the plan is an amount (when added to the outstanding balance of all other loans from such plan), does not exceed the lesser of: (i) \$100,000, reduced by the excess (if any) of—(1) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over (2) the outstanding balance of loans from the plan on the date on which such loan was made, or (ii) the greater of (1) the present value of the nonforfeitable accrued benefit of the employee under the plan, or (2) \$10,000.¹⁰

3.2. Delay of repayment.¹¹ In the case of any qualified individual [a person described in subsection 2.4] with an outstanding loan, on or after March 27, 2020, from a qualified employer plan [for this purpose, plans described in IRC 401(a), 403(a), 403(b), and governmental 457(b)] and who has a payment due date between March 27, 2020 and December 31, 2020, such due date is delayed for one year. Any subsequent repayments are to be adjusted for any interest accruing during the period of the delay. In determining the five-year period for the length of the loan, the one-year delay in making a loan payment as a result of the coronavirus is disregarded.

IV. Provisions relating to plan amendments¹²

The Act provides that any amendments to a plan or annuity contract required by the Act may be made not later than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024, in the case of a governmental plan), unless the Secretary of the Treasury or the Secretary of Labor, by regulation prescribe a later date (i.e., the remedial amendment period). During the period from the effective date of the Act or of any regulation issued pursuant thereto until the last day of the remedial amendment period, the plan or contract must be operated as if such plan or contract amendment were in effect. Also, any amendment must apply retroactively for the remedial amendment period.

V. Temporary waiver of required minimum distribution rules

5.1. In general.¹³ The Act amends IRC 401(a)(9) by adding a new subparagraph thereto entitled Temporary Waiver of Minimum Required Distribution.

5.1.1. Basically, the new language suspends the requirement to take a minimum required distribution for the 2020 calendar year for certain defined contribution plans that are subject to the minimum distribution requirements of IRC 401(a)(9). This includes qualified retirement plans [IRC 401(a) and 403(a)], tax-sheltered annuities [IRC 403(b)], IRAs, [IRC 408(a) and (b)], and governmental IRC 457(b) plans.

5.1.2. This waiver also applies to any distribution that is otherwise required to be made in calendar year 2020 by reason of a required beginning date occurring therein and such distribution not having been made before January 1, 2020. NOTE – this is narrow relief only for those individuals whose required beginning date occurs in calendar year 2020. For those individuals whose required beginning date occurs before or after calendar year 2020, there is no waiver.

5.1.3. The language of the new subparagraph makes it clear that the required beginning date for any individual for calendar years after 2020 shall be determined without regard to this special provision.

5.2. Eligible rollover distributions.¹⁴ The last sentence of IRC 402(c)(4) reads as follows (after amendment by the Act): “If all or any portion of a distribution during

2020 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2020, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.”

5.3. Effective dates.¹⁵ The amendments described in this Section V apply for calendar years beginning after December 31, 2019. The Act provides a remedial period for the affected plan or contract to adopt an amendment to implement the provisions described in this Section V. The remedial amendment period ends on the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024, in the case of a governmental plan). During the period beginning on the effective date of the plan amendment and ending on December 31, 2020, the plan or contract must be operated as if the plan or contract amendment were in effect.

VI. Expansion of DOL authority to postpone certain deadlines¹⁶

ERISA 518 states that, in the event of a Presidentially-declared disaster, the Secretary of Labor may, notwithstanding any other provision of law, prescribe by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under ERISA. The Act amends ERISA 518 to add a public health emergency as being one of the reasons that the Secretary of Labor can use as a reason to postpone deadlines, such as the filing of the Form 5500.

VII. Single-Employer plan funding rules

Delay in payment of minimum required contributions.¹⁷

In the case of any minimum required contribution under a defined benefit plan (including quarterly required contributions) during calendar year 2020, the due date for such contributions is January 1, 2021 and the amount of each such minimum required contribution is increased by interest accruing for the period between the original due date for the contribution and the payment date, at the effective rate of interest for the plan for the plan year which includes such payment date. Plan sponsors should consult with the affected plan’s actuary for further guidance as to how this delay created by the Act may affect them.

VIII. Application of cooperative and small employer charity pension plan rules to certain charitable employers whose primary exempt purpose is providing services with respect to mothers and children¹⁸

This is a limited scope amendment of ERISA 210(f)(1) and IRC 414(y)(1) by the Act to provide that the special rules that apply to plans of cooperative and small

employer charity (CSEC) pension plans also apply to those employers whose primary exempt purpose is to provide services with respect to mothers and children. This change applies to plan years beginning after December 31, 2018.



¹ Act section 2202(a)(1).

² Act section 2202(a)(2)(A).

³ Act section 2202(a)(2)(B).

⁴ Act section 2202(a)(3)(A).

⁵ Act section 2202(a)(3)(B), (C).

⁶ Act section 2202(a)(4).

⁷ Act section 2202(a)(5).

⁸ Act section 2202(a)(6).

⁹ Act section 2202(b)(1).

¹⁰ IRC 72(p)(2)(A), as modified by Act section 2202(b)(1).

¹¹ Act section 2202(b)(2).

¹² Act section 2202(c).

¹³ Act section 2203(a).

¹⁴ Act section 2203(b).

¹⁵ Act section 2203(c).

¹⁶ Act section 3607.

¹⁷ Act section 3608(a).

¹⁸ Act section 3609.

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