

# Retirement Plan Provisions in CARES Act



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*On March 27<sup>th</sup>, President Trump signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act. The purpose of the Act is to provide emergency assistance and health care response for individuals, families and businesses that are dealing with the consequences of illness and business closures and lay-offs due to the COVID-19 pandemic.*

The Act contains over 800 pages that address a number of issues, including keeping workers paid and employed; an emergency increase in unemployment benefits; 2020 tax rebates that will be pre-funded via stimulus payments to be made in the next few weeks; dealing with the shortage of necessary medical supplies; emergency paid sick leave; and foreclosure moratoriums for people who aren't able to make their house payments.

There are also a number of provisions intended to help retirement plan participants who have been impacted by the pandemic by increasing access to retirement funds and providing relief with respect to loans and taxes.

The following are the provisions and decision points affecting retirement plans:

**Tax-Favored Withdrawals:** Typically, distributions from an IRA or retirement plan are subject to a 10% early withdrawal penalty for anyone who is under the age of 59 ½. However, the CARES Act allows for participants to take a penalty-free coronavirus-related distribution of up to \$100,000. The \$100,000 individual maximum is determined by aggregating all of the employee's retirement plans and IRAs. This is NOT a hardship withdrawal. Rather, it is a special distribution option that will be available for a specific time. Any participant who qualifies may request this distribution (if the plan allows it), including participants who are laid-off or terminated. *Plans are NOT required to add this withdrawal provision, it is optional.*

Plans from which the withdrawals may be taken include pension, profit sharing, 401(k), stock bonus plans, IRAs, 403(a) and 403(b) plans and 457(b) plans.

A "coronavirus-related withdrawal" means any distribution made between January 1, 2020 through December 31, 2020 for the following individuals:

- Any individual diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC or whose spouse or dependent is so diagnosed;

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- An individual who experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off; having work hours reduced; being unable to work due to lack of child care; being the owner of a business that closes or has reduced hours due to COVID-19; or
- other factors as determined by the Secretary of the Treasury.

It is our understanding that, with respect to the 2nd bullet point item above, the actual participant must be the affected individual. In other words, if a participant's spouse has been laid off or had work hours reduced, that would not allow the participant to request the distribution from his/her plan.

Because this provision applies to distributions made back to January 1, 2020, employees who have already taken a coronavirus-related withdrawal will be exempt from the 10% early withdrawal penalty. The employer may rely on the employee's certification that the employee satisfies one of the above conditions.

No 402(f) special tax notice is required to be given. The distribution is treated as if it is not an eligible rollover distribution, meaning that there is no mandatory upfront 20% withholding due from the payment. The distribution will be subject to tax withholding at the taxpayer's normal tax rate when the 2020 tax form is filed. However, the legislation does permit individuals to choose to include one-third of the taxable amount in their income each year for three consecutive years in order to spread the tax burden over a longer period of time.

Any individual who receives a distribution under this provision may repay all or part of the distribution back to their employer plan or personal IRA during the 3-year period beginning on the day after the distribution is received. The repayment may be made as 1 or more contributions which do not, in the aggregate, exceed the amount of the distribution. If the distribution is repaid before the end of the 3-year period, it will be treated as if it were an eligible rollover, meaning it is not subject to taxes. It is not clear at this time how this provision will work, but we assume that to the extent that the individual has already paid taxes on the distribution for any tax year, then once the distribution is repaid, the individual may have to refile their taxes for the affected tax year(s) in order to reclaim the taxes that were paid.

Note that even if the employer does not choose to add the Coronavirus Related Distribution option to the plan, if a participant qualifies for such distribution and is able to take a distribution under some other provision of the plan (like a hardship), then the participant will get the same tax treatment as if the plan did allow for a Coronavirus Related Distribution (ie, no 10% early withdrawal penalty and the ability to pay taxes back over a 3-year period).

**Plan Loans:** For 180 days beginning on the date of the enactment of the Act (i.e., through September 22, 2020), the limit on loans is increased. Normally, plans may not grant a loan for more than 50% of the vested account balance, up to a maximum of \$50,000. However,

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for this specific time period, loans of 100% of the vested account balance, up to \$100,000, are allowed.

In addition, individuals with outstanding loans, including loans that are taken on or after the enactment of this Act, are allowed to suspend their loan payments for up to 1 year. The suspension only applies to loan payments due from March 27, 2020 through December 31, 2020. Although plan loans must normally be paid back within 5 years of the date of the loan, the one-year period that loan payments are allowed to be suspended will not count toward the 5-year maximum loan term. Therefore, individuals who take advantage of the loan payment suspension will have their loan re-amortized over the extended period when the suspension ends. Individuals eligible for these special provisions are the same individuals described above for tax-favored withdrawals. Please note that interest continues to accrue during the suspension period, so when payments resume the loan must be re-amortized to reflect the interest that accrued.

*Plans are NOT required to add these loan provisions, they are optional.* However, if the employer does not choose to add the enhanced loan provisions to the plan, if a participant who would otherwise meet the qualifications noted above is unable to make loan payments, the plan cannot trigger a default of the loan because of nonpayment.

**Plan Amendments:** The new rules described above may be put into practice immediately, even if the plan does not currently allow for hardship distributions or loans, 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. The plan may operate immediately as if the amendment were in effect, and the amendment will be retroactive.

**Temporary Waiver of Required Minimum Distributions (RMDs):** RMDs for calendar year 2020 for 401(a), 401(k), 403(a), 403(b), 457(b) and IRA plans may be waived. Also, RMDs for individuals who attained age 70½ in 2019 which were due to be paid by April 1, 2020, but were not paid before January 1, 2020, may be waived.

If a participant takes a distribution in 2020 that would have been an RMD had the RMD rules still been in place, then it is not subject to 20% withholding, it may not be directly rolled over and no 402(f) tax notice is required. However, the distribution will be treated as an eligible rollover distribution in that it may be indirectly rolled over to a plan or IRA within 60 days from the date that the individual received the distribution. The IRS may extend the 60-day rollover period, but we have not yet received guidance on that.

For participants who turned 70½ in 2019 and were due to receive a RMD by April 1, 2020:

- If the distribution has not been paid then no distribution is required in 2020 for the 2019 distribution year.

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- If a distribution was taken after December 31, 2019, it is subject to the waiver for 2020 and can be rolled over.
- If the distribution was taken in 2019, no relief is available.

If a deceased participant's account is being distributed under the 5-year rule, then the 5-year period is determined without regard to calendar year 2020.

**Single-employer Plan Funding Rules:** Single-employer defined benefit plans will have until January 1, 2021 to meet their funding obligations for any contribution otherwise due during 2020. This allowable delay includes quarterly contributions due during calendar year 2020. The amount of each required contribution will be increased by interest that accrues between the original due date and the actual payment date. In addition, the plan sponsor may choose (but are not required) to treat the plan's adjusted funding target attainment percentage (AFTAP) or the last plan year ending before January 1, 2020 as the adjusted funding target attainment percentage for plan years which include calendar year 2020.



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