In its ongoing effort to help individuals affected by the Coronavirus (COVID-19) pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 27, 2020. The president signed the CARES Act into law the same day. This historic stimulus package provides wide-ranging relief for both employers and employees, and includes rules that affect health and welfare, retirement and executive compensation plans and programs.

IN DEPTH

For retirement plan sponsors, the CARES Act relief includes relaxed plan distribution and loan rules designed to provide participants with greater access to, and control over, their retirement plan funds, as well as rules that suspend required minimum distributions (RMDs) for 2020. The CARES Act also provides pension plan funding relief for cash-strapped employers, and a long-sought-after, but temporary, opportunity for employers to provide tax-free student loan repayment benefits for the first time. Click here for details about the key health and welfare provisions of
Read on for a summary of the key retirement-plan-related provisions of the CARES Act.

**COVID-19-Related Distributions and Loans**

The CARES Act is specifically designed to provide relief to individuals actually affected by COVID-19, including not only those who are diagnosed with COVID-19, but also those who experience adverse financial consequences as a result of, among other things, being quarantined, furloughed or laid off. The CARES Act includes special COVID-19-related in-service withdrawal and distribution rules designed to provide participants with greater access to their retirement plan benefits, and more flexibility to receive those funds without adverse tax consequences. In addition, the new law includes rules designed to provide loan repayment relief for individuals affected by COVID-19.

**Does the CARES Act require employers to add COVID-19-related distributions and/or loans to their plans?**

No. This relief is optional. Employers may, but are not required to, offer COVID-19-related distributions and loan relief under their plans. However, many employers likely will implement all or part of this relief for their plan participants.

Plan sponsors that want to implement all or part of this relief should contact their recordkeepers for more details regarding the administration of the new rules.

**Can employers provide special retirement plan distributions and/or loans to individuals affected by COVID-19?**

Yes, but only to “qualified individuals.” A “qualified individual is an individual who meets either of the following requirements:

- A participant who is, or whose spouse or dependent is, diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the Centers for Disease Control and Prevention
- A participant who experiences adverse financial consequences because of being quarantined, furloughed or laid off, or having work hours reduced due to the virus; being unable to work due to lack of childcare on account of the virus; the closing or reduced hours of a business owned or operated by the individual due to the virus; or other factors determined by the Secretary of the Treasury.

**Can employers provide special retirement plan distributions to qualified individuals under the CARES Act?**

Yes. The CARES Act allows employers to permit qualified individuals (as described previously) to take COVID-19-related distributions, including both in-service withdrawals and post-termination distributions, from their retirement plans, including 401(k) plans, profit sharing plans and 403(b) plans. The new law allows a
qualified individual to withdraw up to $100,000 and receive more favorable tax treatment than would otherwise normally apply. The new law also waives the 10% penalty tax on these distributions, assuming the distribution is made prior to December 31, 2020.

The CARES Act also suggests that employers may be able to provide similar tax-favored treatment to certain types of distributions from defined benefit pension plans. However, given the special rules and restrictions that apply to distributions from such plans (including QJSA and in-service distribution restrictions), providing such relief under a defined benefit plan poses unique challenges for employers considering this option.

Are there special rules regarding how COVID-19-related distributions will be taxed under the CARES Act?

Yes. Unless they elect otherwise, participants who receive COVID-19-related distributions will include the distribution in their taxable income ratably over a three-year period (one-third of the distribution each year), beginning with the year the COVID-19-related distribution is received. In other words, a “qualified individual” (as described above) will spread out her tax payments on COVID-19-related distributions over three years. In addition, COVID-19-related distributions are exempt from the 20% mandatory withholding that normally applies to certain retirement plan distributions.

Can COVID-19-related distributions be repaid under the CARES Act?

Yes. COVID-19-related distributions can be repaid by a qualified individual within three years and will not be treated as taxable income if repaid. To date, there is no guidance on how to reverse any income tax previously paid on such amounts, but it is likely that the approach will mirror the rules previously established by the Internal Revenue Service for similar hurricane-related disaster relief.

Does the CARES Act expand access to participant loans?

Yes. The new law doubles the maximum amount a qualified individual may borrow from a tax-qualified retirement plan. A qualified individual may borrow the lesser of $100,000 or 100% of the qualified individual’s vested benefit under the plan (reduced by prior loan balances). This provision greatly expands the amount available for loan. Prior to the new law, the loan limit was the lesser of $50,000 or 50% of the participant’s vested benefit under the plan (reduced by prior loan balances). For example, a participant with a $10,000 vested account balance was previously limited to a $5,000 loan; if this participant is a qualified individual, he can now borrow the full $10,000 from his account. To qualify for the higher loan limits, a retirement plan must make the loan to a qualified individual before September 24, 2020.

Does the CARES Act allow employers to suspend loan repayments for new loans?
Yes. If a qualified individual receives a new loan on or after March 27, 2020, payments due before December 31, 2020 may be delayed for one year.

**Does the CARES Act allow employers to suspend loan repayments for existing loans?**

Yes. If a “qualified individual” already has an existing plan loan as of March 27, 2020, loan repayments due before December 31, 2020 may be delayed for one year. The loan repayments must resume upon the end of the COVID-19-related suspension period. However, the term of the loan may be extended by the duration of the COVID-19-related suspension period. Interest accruing during the COVID-19-related suspension period must be added to the remaining principal of the loan, which in effect means the loan must be reamortized.

**Will employers that offer COVID-19-related distributions and/or loans need to amend their retirement plans to implement these changes?**

Yes. If an employer wants to provide the COVID-19-related distributions or plan loans to qualified individuals, the employer will need to amend its plans for these changes by last day of the plan year beginning on or after January 1, 2022 (i.e., for calendar-year plan years, by December 31, 2022).

**Suspension of 2020 Required Minimum Distributions**

The CARES Act waives all RMDs from defined contribution plans and IRAs otherwise required to be made in 2020. This optional form of relief allows participants to delay RMDs and avoid taking a distribution while the value of their investments is significantly reduced.

**Does the CARES Act allow employers to suspend RMD payments from defined contribution plans?**

Yes. The new law allows employers to waive any RMD payment that otherwise would have been required to be paid in 2020. Although the language included in the new law is a bit unclear, it appears the intent is for this relief to apply both to participants whose required beginning dates would otherwise be April 1, 2020, and to participants already receiving RMDs and scheduled to continue receiving those payments in 2020.

**Does the CARES Act allow employers to suspend required minimum distribution (RMD) payments from defined benefit plans?**

No. Employers may suspend RMDs under defined contribution plans but may not suspend similar payments under their defined benefit pension plans.

**Does the CARES Act require employers to suspend RMDs due in 2020?**

No. As of the publication of this article, this relief appears to be optional. Employers may, but are not required to, suspend RMD payments due in 2020. The new law does
not specifically address the options for implementing RMD suspensions for 2020. However, the 2020 RMD suspension rules mirror similar relief provided in 2009. Therefore, plan sponsors should have the same options, i.e., to forego the optional waiver of RMDs and continue paying 2020 RMDs as planned, to waive 2020 RMDs unless a participant elects (opts in) to receive a distribution of such amounts, or to distribute 2020 RMDs unless a participant elects (opts out) a waiver. The options available to employers may depend upon the options supported by their plan’s recordkeeper. Plan sponsors should contact their recordkeepers for more details regarding the administration of the new rules.

**Will employers need to amend their retirement plans to implement these changes?**

Yes. If an employer wants to suspend RMDs, it will need to amend its plans for these changes by the last day of the plan year beginning on or after January 1, 2022 (i.e., for calendar-year plan years, by December 31, 2022).

**Pension Plan Funding Relief**

The market volatility caused by COVID-19 is having a significant impact on pension plan funding. To help address the concerns of cash-strapped employers, the CARES Act includes much-needed pension plan funding relief designed to reduce the need for minimum required contributions to such plans for 2020.

**Does the CARES Act include pension plan funding relief?**

Yes. Under ERISA, pension plan sponsors are required to ensure that their plans are funded at certain set levels. To avoid benefit restrictions, plans generally must be at least 80% funded. To meet this funding requirement, most plan sponsors must make required minimum contributions to their plans each year.

Under the CARES Act, employers may delay minimum funding contributions due during 2020, including quarterly contributions, until January 1, 2021. In addition, for purposes of determining whether a plan is at least 80% funded for purposes of applying benefit restrictions, the plan sponsor may elect to use the plan’s 2019 AFTAP for the 2020 plan year.

Importantly, this relief only delays the minimum funding contributions due in 2020. The amounts will be due on January 1, 2021, and will also be increased for interest.

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**Tax-Free Student Loan Benefits**

The CARES Act includes a temporary tax-free student loan repayment benefit. Employers continue to look for new ways to provide tax-advantaged student loan repayment benefits to their employees, as described in our *On the Subject*. Although the relief is not permanent, it will give employers a way to provide this long-sought-after relief during a period of potentially greater need for employees.
Does the CARES Act include a student loan repayment benefit?

Yes. The new law allows employers to pay up to $5,250 per year for certain educational expenses, which will include student loan payments made by the employer after the law is passed and prior to January 1, 2021. Employers can make these payments to the employees or directly to the lenders. The $5,250 per year is calculated by adding several different education expenses together, including existing tuition assistance programs and student loan repayments. This relief is not permanent—it sunsets at the end of 2020.

Does the student loan repayment benefit affect the student loan interest deduction for employees?

Yes. Any interest paid by an employer may not be deducted by the employee under the student loan interest deduction (i.e., the CARES Act specifically denies a “double benefit” of a tax-free payment from the employer and a tax deduction for the employee).

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