

COVID-19 STIMULUS LEGISLATION: BENEFIT PLANS HIGHLIGHTS

Hodgson Russ Employee Benefits Alert
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On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief and Economic Security (CARES) Act (the “Act”). There are number of provisions relevant to employer-sponsored retirement and welfare benefit plans intended to deliver relief in connection with the Coronavirus pandemic. Those provisions include:

Retirement Plan Distribution Provisions

Distribution Relief. For eligible retirement plans, the Act prescribes special relief for “Coronavirus-related distributions.” Making Coronavirus-related distributions available to retirement plan participants is optional.

Definition. A “Coronavirus-related distribution” is a distribution from an eligible retirement plan (including IRAs, qualified retirement plans, governmental 457(b) plans, and 403(a) and (b) plans) made on or after January 1, 2020, and before December 31, 2020 to a “qualified individual”:

- Who is diagnosed with the virus SARS-CoV-2 or with Coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC).
- Whose spouse or dependent is diagnosed with such virus or disease by a test approved by the CDC.
- Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of a business owned or operated by the individual due to such virus or disease.

Employee Certification. The administrator of an eligible retirement plan may rely on an employee’s certification that the employee satisfies any of the above conditions in determining whether a distribution is a Coronavirus-related distribution.

\$100,000 Cap. *The aggregate amount of Coronavirus-related distributions received by a qualified individual may exceed not \$100,000.* A Coronavirus-related distribution will not be treated as violating any requirement of the Internal Revenue Code, unless the aggregate amount of the distributions from all plans

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maintained by the employer (and any member of the employer's controlled group) to the qualified individual exceeds \$100,000.

Special Tax Treatment. The special tax treatment afforded to Coronavirus-related distributions includes the following:

- No 10% Penalty Tax. The 10% additional income tax applicable to early distributions will not apply.
- Tax-Deferred Rollover Treatment if Distribution Is Repaid. Coronavirus-related distributions may be repaid at any time, in one or more contributions, over the three-year period commencing on the date the distribution was received. The repayments may be made to an eligible retirement plan that covers the individual and to which a rollover contribution of the distribution may be made. Distributions that are repaid are taxed as follows: the recipient of the distribution will be treated as having received the Coronavirus-related distribution as a distribution eligible for rollover and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within the 60-day rollover period beginning on the date of the distribution.
- Income Inclusion Over Three-Year Period. Coronavirus-related distributions that are not repaid and are otherwise includable income may be (but are not required to be) included income ratably over the three taxable years beginning with the taxable year in which the distribution was received.
- Deemed Satisfaction of Distribution Restrictions. Coronavirus-related distributions will be treated as satisfying one of the permissible distribution triggering events that normally restrict distributions from 401(k), 403(a) and (b) plans, and governmental 457(b) plans.
- Administrative Exemptions. Coronavirus-related distributions are not eligible rollover distributions and therefore are not eligible for purposes of the direct and automatic rollover rules, are exempt from the 20% mandatory withholding rules, and are not subject to the Internal Revenue Code Section 402(f) special tax notice rules.

Retirement Plan Loan Relief. The Act provides temporary enhanced plan loan in a couple of respects:

- Temporary Increase to Plan Loan Dollar Limit. During the 180-day period beginning on March 27, 2020, qualified employer plans that offer participant loans *may* (but are not required to) grant loans to "qualified individuals" (defined above), up to the lesser of \$100,000 (normally \$50,000) or 100% (normally 50%) of the participant's nonforfeitable accrued plan benefit. For participants with outstanding plan loans, the \$100,000 dollar limit still can be reduced based on outstanding loan balances during the preceding 12 months.
- Delayed Repayment Available. For "qualified individuals" (defined above) who have outstanding plan loans from qualified employer plans, the due date of any repayments payable during the period beginning on March 27, 2020 and ending on December 31, 2020 will be delayed for one year. Any subsequent loan repayments must be appropriately adjusted to reflect the delay in the repayment due date and any interest accruing during that delay. Most plan loans are subject to a five-year term limit and, in determining that five-year term limit, the one-year delay in the due date for the relevant 2020 loan repayments is disregarded.

Minimum Required Distribution Relief.

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- Temporary MRD Waiver for 2020. The Act provides a temporary waiver of the calendar year 2020 minimum required distributions (MRDs) payable by IRAs, qualified *defined contribution* retirement plans, governmental 457(b) plans, and 403(a) and (b) plans. The temporary waiver also would apply to participants who attained age 70½ in calendar year 2019 and have not received that 2019 required minimum distribution by the April 1, 2020 required beginning date. Note that the temporary waiver is not available to qualified *defined benefit* retirement plans.
- Administrative Exemptions. If a distribution during 2020 would not have been treated as an eligible rollover distribution had the minimum distribution requirements under section 401(a)(9) had applied during 2020, then that distribution will not be treated as an eligible rollover distribution for purposes of the direct and automatic rollover rules, is exempt from the 20% mandatory withholding rules, and is not subject to the Internal Revenue Code Section 402(f) special tax notice rules. Similar relief was granted in 2009, and we expect the IRS will issue further guidance providing more details for implementing the 2020 MRD waiver.

Plan Amendments. Plan amendments needed to reflect the changes related to the distribution relief provisions described above, including the provisions relating to Coronavirus-related distributions, plan loans and MRDs, generally will not need to be made until the last day of the plan year beginning on or after January 1, 2022 (or such later date as the Treasury Department may prescribe). Governmental plans have two additional years to make the necessary plan amendments.

- Operational Compliance. The delayed deadline for preparing and executing plan amendments is conditioned on operating the plan as though the amendments already are adopted and in effect for the period during which the applicable relief is made available. Plan sponsors nevertheless will need to coordinate with their governing committees and third party administrators to make relevant decisions regarding the implementation and communication of any plan changes.

Defined Benefit Pension Plan Provisions

- 2020 Funding Relief. The Act offers temporary funding relief for sponsor of single-employer defined benefit pension plans. For any minimum required plan contributions (including quarterly contributions), as prescribed by Internal Revenue Code Section 430(a), that would otherwise be due during calendar year 2020, the due date for those contributions has been pushed back to January 1, 2021. Any such contributions that have been deferred by a sponsoring employer *will be due on January 1, 2021, with interest* (at the effective rate of interest for the plan for the plan year that includes the payment date).
- Benefit Restrictions. To the extent a defined benefit pension plan might be subject to benefit restrictions relating to the plan's funding status, a plan sponsor is provided the option to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020. Accordingly, a defined benefit pension plan that had its funding status adversely affected by the Coronavirus-related market decline might be able to avoid the application of Internal Revenue Code Section 436 restrictions on optional forms of distributions and benefit accruals that would otherwise be applicable.

Health/Welfare Plan Provisions

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- *Expansion of COVID-19 Testing.* Under the Families First Coronavirus Response Act, group health plans were required to provide coverage of COVID-19 testing without cost sharing (including deductibles, copayments, and coinsurance). The Act expands on this provision to additionally require coverage for certain COVID-19 testing not yet approved under the Food, Drug, and Cosmetic Act.
- *Regulation of COVID-19 Testing Cost.* The Act includes a provision regulating the cost of COVID-19 diagnostic testing. If available, healthcare providers and group health plans are required to use an existing negotiated rate. If a rate has not yet been negotiated with respect to the COVID-19 testing, a group health plan will not be required to pay more than the rate publicly listed by the healthcare provider on its website.
- *Coronavirus Preventive Services.* Group health plans and insurers are required to cover qualifying Coronavirus preventive services without cost sharing. This would presumably include a vaccine once one becomes available.
- *Telehealth Coverage.* Until the end of the 2021 plan year, high deductible health plans are permitted to cover telehealth services without cost sharing or requiring participants to satisfy a deductible.
- *Health Savings Account Eligible Expenses.* Health Savings Accounts are permitted to reimburse medicine and insulin obtained without a prescription as qualified medical expenses. The Act also permits coverage of menstrual care products as qualified medical expenses.

Expansion of Authority to Extend Deadlines in a Public Health Emergency

- ERISA Section 518 already grants the Secretary of Labor authority to extend by one year the deadline for completing any action (e.g., compliance deadlines) required or permitted by ERISA in the event of certain presidentially declared disasters, or terroristic or military actions. The Act modifies ERISA Section 518 and extends that authority to include public health emergencies. The Coronavirus pandemic was declared a public health emergency in late January.

For any questions regarding how these provisions would affect your employer-sponsored retirement and welfare benefit plans, please contact Peter Bradley (716.848.1446) or Amy Walters (716.848.1446).

Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.

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