

Single Employer Benefits & Pension Alert

THE CORONAVIRUS, AID, RELIEF, AND ECONOMIC SECURITY ACT | APRIL 2020

BACKGROUND

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief, and Economic Security Act (the "CARES Act") to address the impact of COVID-19. The following summarizes several of the provisions of the CARES Act that should be of interest to employers and professionals who assist employer-sponsored retirement plans. The CARES Act provides employers with additional options, via their employer-sponsored retirement plan, to offer financial support to employees impacted by COVID-19.

WAIVER OF REQUIRED MINIMUM DISTRIBUTIONS ("RMDs") FOR 2020

The CARES Act waives required minimum distributions (RMDs) from many types of defined contribution plans (including 401(k) plans, governmental 457(b) plans, and 403(b) plans) that would otherwise need to be made in 2020, including distributions that would otherwise be required in 2020 in connection with a required beginning date of April 1, 2020.

The RMD waiver is not available for defined benefit plans.

RR Insight: A distribution paid in 2020 that is an eligible rollover distribution but would have been a RMD, except for the CARES Act waiver, is not subject to the direct rollover rules, 20% withholding, or 402(f) notice (10% withholding will apply unless the participant elects out of withholding).

CORONAVIRUS-RELATED DISTRIBUTION

The CARES Act allows a new distribution from a plan called a "coronavirus-related distribution" (a "CRD"). A 401(k), 403(b) or governmental 457(b) plan may allow a CRD notwithstanding the restrictions that would otherwise apply to in-service distributions.

- A Participant may receive a CRD of up to \$100,000 through the end of 2020.
- The term CRD means any distribution from an eligible retirement plan, made on or after January 1, 2020, and before December 31, 2020, to an individual:
 - (i) 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;
 - (ii) whose spouse or dependent (as defined in Code section 152) is diagnosed with such virus or disease; or
 - (iii) who experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off, or having work hours reduced, due to such virus or disease, being unable to work on account of lack of child care due to such virus or disease, the closing or reduction in hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.
- The 10% early distribution penalty will not apply to CRDs **AND** the 20% mandatory federal income tax withholding rules will not apply (meaning CRDs are

NOT treated as eligible rollover distributions and a 402(f) special tax notice is not required). Therefore, 10% withholding will apply unless the participant elects otherwise. Unless otherwise exempted by state law, participants may be subject to applicable state income tax withholding.

- Unless a participant elects otherwise, such CRDs will be included in a participant's gross income over a three-year period.
- A participant who takes a CRD may "recontribute" the CRD, in one or more contributions made within three years of the distribution, to any eligible retirement plan (including an IRA) that allows rollover contributions from the participant into the plan. The recontribution of a CRD will be "deemed" to meet any timing rules applicable to rollover contributions.

RR Insight: The easiest way to think about this new CRD is that it is essentially a "deemed" hardship withdrawal that may be taken under a defined contribution plan such as 401(k) plan), 403(a) plan, 403(b) plan, governmental 457(b) plan, or eligible multiemployer supplemental retirement plan. Additionally, a plan administrator of an eligible retirement plan may rely on an employee's certification that the employee satisfies one of the required conditions. The CRD appears to be an optional provision, so it will be up to the plan sponsor to decide whether to allow it. As discussed below, a plan may, in operation, allow CRDs prior to the actual amendment of the plan. Furthermore, whether or not a plan is amended to allow CRDs, the 10% early distribution penalty will not apply to a distribution that qualifies as a CRD. This can be illustrated by an example: a company implements lay-offs due to COVID-19 and a laid off employee who is under age 59 ½ takes a \$10,000 distribution from the plan due to his or her termination of employment. In such a case, the employee generally would have to pay the 10% early distribution penalty, but because the distribution satisfies the definition of a CRD, it would be exempt from the 10% early distribution penalty and the employee should be eligible to have the income tax on the distribution spread over three years.

LOAN RELIEF – EXTENSIONS FOR LOAN DUE DATES

For participants who are eligible for CRDs (as described above) and who take out loans during the 180-day period beginning on March 27, 2020, the CARES Act increases the loan maximum to the lesser of \$100,000 or 100% of a participant's nonforfeitable accrued benefit (increased from the lesser of \$50,000 or 50% of the participant's nonforfeitable accrued benefit).

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Additionally, the CARES Act provides that participants with outstanding loans on or after March 27, 2020, will not have to make loan repayments due between March 27, 2020 and December 31, 2020. These payments may be delayed for one year. Interest will still accrue during that time period, and remaining payments will be reamortized over the extended period.

Unlike the rules applicable to CRDs, the CARES Act does not definitively provide that plan sponsors can rely on employee self-certification that they are eligible for this loan relief. This may be an oversight that will be clarified in future guidance.

RR Insight: It is up to the plan sponsor to determine whether to increase plan loan limits, but, we need to wait for guidance from the IRS in order to resolve whether the extension of the dates for certain loan payments is up to the plan sponsor or is mandatory. The extension of applicable loan due dates may cause administrative headaches for plan administrators as they will likely be forced to update their loan repayment procedures and recalculate loans that are set to be paid back in 2020. Plan administrators will also have to pay close attention to many moving parts and be sure to notify adequately impacted participants. In addition, there appears to be somewhat of a disconnect between the employees this is intended to help and the terms of many participant loan agreements. Participant loan agreements often provide for the loan to come due when an employee is terminated and for it to default if not repaid. Employers considering whether to allow for the suspension of loan repayments may want to consider whether to enable employees terminated during this time frame, who do not elect to take a distribution from the plan, to delay loan repayments/default for a year.

PLAN AMENDMENT DEADLINES EXTENDED

Plan amendments related to the waiver of 2020 calendar-year RMDs, CRDs, and loan relief are not required until the last day of the first plan year beginning on or after January 1, 2022, with governmental plans having until the end of the 2024 plan year.

However, a plan that implements any of the above provisions must operationally comply with the terms of the amendment prior to the adoption date.

This edition of the Single Employer Benefits & Pension Alert was written by Brendan J. Butler, a member of the Single Employer Benefits & Pension practice at Reid and Riege, P.C. The practice works closely with clients to design and draft tax-qualified and nonqualified retirement plans.

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