
The CARES Act: What Retirement & Health Plan Sponsors Need To Know

The Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”) is intended to provide individuals and businesses with much-needed economic relief during the current national emergency. The CARES Act includes several provisions that plan sponsors can (or, in some cases, are required to) implement immediately in connection with their retirement plans and group health plans in order to benefit their plan participants.

Retirement Plans

Penalty-Free Coronavirus-Related Distributions

Most significantly, the CARES Act allows a participant in a qualified plan, a 403(b) plan, a governmental 457(b) plan, or an IRA to take distributions of up to \$100,000 from their accounts in 2020 without incurring the 10% penalty for early distributions (*i.e.*, generally those distributions taken before age 59½). These penalty-free “**coronavirus-related distributions**” are available only for “**qualified individuals**,” defined as plan participants who have experienced adverse financial consequences resulting from a reduction in work hours, lay off, quarantine, or furlough, or who are unable to work due to lack of childcare on account of the coronavirus, and plan participants, spouses, or dependents who have been diagnosed with the coronavirus.

The CARES Act allows employers to rely on an employee’s self-certification regarding whether he or she is a “**qualified individual**” for reporting purposes. A plan sponsor may choose to use electronic certification if it is available from its recordkeeper.

A coronavirus-related distribution must be made on or after January 1, 2020 and before December 31, 2020 (this may be corrected through a technical amendment to “on or before December 31, 2020”), and can be repaid by the participant to the plan within three (3) years. A repayment of a coronavirus-related distribution would be treated as a rollover contribution and can be made to the distributing plan or to any eligible plan that will accept the rollover, including an IRA. Additionally, unless a participant elects to have the distribution treated as taxable income during 2020, the distribution will be taxed ratably over a period of three (3) years to the extent it has not been repaid.

Assuming the participant is a qualified individual and the other conditions noted above are met, this individual tax relief is available with respect to existing distribution features in your eligible retirement plans (including, for instance, distributions after severance from employment and in-service withdrawals available from rollover accounts or upon meeting specified conditions such as hardship and age 59 ½), as well as any new distribution feature available only for qualifying coronavirus distributions that is added to your plan under the CARES Act. If a plan sponsor decides to expand an existing distribution feature or add a new coronavirus-related distribution feature to make account balances more accessible

to participants, plan amendments can be adopted as late as the end of the plan year beginning on or after January 1, 2022 (or January 1, 2024 for governmental plans).

Due to the urgency of the current situation, your retirement plan service provider may accelerate the decision-making process by treating these distributions as an automatic plan feature and requiring sponsors to actively opt-out of providing coronavirus-related distributions from all account balances (including elective deferrals and safe harbor contributions) if they do not wish to allow such distributions. Accordingly, it is paramount that plan sponsors connect with their service providers as soon as possible to determine how their plans will address these distributions.

Plan Loans

The CARES Act increases the maximum amount a qualified individual (a person meeting the criteria established above for coronavirus-related distributions) is permitted to borrow as a plan loan to the lesser of \$100,000 or 100% of the participant's vested account balance (up from \$50,000 or 50% of the account balance). This temporary increase runs from March 27, 2020 to September 23, 2020 (*i.e.*, 180 days after enactment). Our review of the CARES Act does not indicate plan sponsors are required to increase plan loan limits; rather, this appears to be an optional plan feature.

If a participant has an outstanding plan loan, including a loan that is outstanding as of March 27, 2020, and has loan repayments which are due between now and December 31, 2020, each outstanding repayment during 2020 has a one-year extension before a deemed distribution will occur. The CARES Act requires subsequent loan repayments, including interest, to be re-amortized to reflect the one-year repayment extension, and the general five-year limit on plan loan repayments will not take into account this one-year repayment extension.

Required Minimum Distributions

The CARES Act allows defined contribution plans and IRAs to suspend the 2020 required minimum distributions ("**RMD**") altogether, as well as 2019 RMDs for those participants whose required beginning date is April 1, 2020 (*i.e.*, participants who reached age 70 ½ in 2019). Any RMDs that are suspended for 2020 under this provision will not be treated as eligible rollover distributions, which means they will not be subject to required rollover withholding or Section 402(f) notices. The CARES Act also provides that 2020 is disregarded for purposes of determining the 5-year period for certain death beneficiaries whose RMDs do not begin by the year following the year of the participant's death.

Minimum Required Contributions for Single-Employer Defined Benefit Plans

For single-employer defined benefit plans, any minimum required contribution that is due in 2020 can be postponed until January 1, 2021. Any postponed minimum required contribution will include interest accrued between the original due date and the postponed payment date. For purposes of determining the minimum funding requirements for plan years that include any portion of 2020, plan sponsors are permitted to use their plan's adjusted funding target attainment percentage ("**AFTAP**") for the last plan year ending before January 1, 2020.

Amendments

To the extent your plan is amended to reflect any of these CARES Act provisions, any amendment should be adopted 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) for non-governmental plans and January 1, 2024 for governmental plans.

Health Plans

The CARES Act requires employer-sponsored group health plans (and health insurers) to address several health care services related to the coronavirus:

- Group health plans and insurers are required to cover approved diagnostic testing for the coronavirus, including in vitro diagnostic testing, without any cost-sharing to participants, at their in-network negotiated rate (or if no negotiated in-network rate, an amount that equals the cash price for such tests as publicly listed by the provider).
- Group health plans and insurers are required to cover any qualifying preventative services related to the coronavirus without cost-sharing to participants. Preventative services would include an item, service, or immunization that is intended to prevent or mitigate the coronavirus and is evidence-based with an “A” or “B” rating in the U.S. Preventive Services Task Force’s recommendations; or an immunization with a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. Plans are required to cover these services within 15 days after the date upon which a recommendation is made regarding the preventative service.
- Effective March 27, 2020, employers with a high-deductible health plan (“**HDHP**”) and accompanying health savings account (“**HSA**”) can provide coverage for telehealth services before a participant reaches his or her deductible without disqualifying them from being eligible to contribute to their HSA. This provision is only available for plan years beginning on or before December 31, 2021 (*e.g.*, calendar years 2020 and 2021). This is consistent with the IRS’s previous announcement that an HDHP will not fail to be an HDHP solely because it provides coverage for coronavirus-related diagnostic testing and services prior to a participant satisfying his or her deductible.
- Employers can also permit participants to use their HSA, Health Reimbursement Account, Archer Medical Savings Account, and/or Flexible Spending Account dollars to purchase certain over-the-counter medications (including menstrual care products and other products necessary for quarantine and social distancing) that have generally not been considered to be “qualified medical expenses.”

Plan Sponsors should consider whether they will need to amend their plans or policies and/or update their Summary of Benefits and Coverage to reflect any of these health plan provisions of the CARES Act.

Please reach out to a member of [Maynard Cooper's Employee Benefits Practice](#) if you have any questions or need assistance with your employee benefit plans in light of COVID-19 and coronavirus-related legislation.

[Maynard Cooper's COVID-19 Coronavirus Task Force](#) is closely monitoring all updates to pending legislation related to the COVID-19 pandemic. We are dedicated to providing client-focused services, and it is the goal of the Task Force to continue this level of service to each and every client as they face challenges about planning for and responding to the threats posed by the virus. If you have any questions, please reach out to your relationship partner or any of the attorneys serving on the [Task Force](#).

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