OPPENHEIMER

# The CARES Act Provides Needed Retirement Account Relief

RETIREMENT SERVICES

The Coronavirus, Aid, Relief and Economic Security (CARES) Act has been signed into law by President Trump. Employers and individuals across the country are facing closures of offices and businesses, resulting in everything from required work at home arrangements to employee lay-offs and furloughs. This has raised important questions around IRAs and retirement plan administration, including the nature of relief that may be available for both IRA owners and plan participants.

**Below is a brief description of the key CARES Act provisions relating to retirement accounts, and are generally effective immediately.**

## Coronavirus-Related Distributions

Subject to certain requirements, distributions from IRAs and employer retirement plans are not subject to the 10% premature distribution penalty tax, and employer retirement plans may permit in-service coronavirus-related distributions from a participant's vested account balance without regard to the normal withdrawal restrictions. This relief is offered through December 31, 2020.

The following apply to these distributions:

- Limited to $100,000 per tax year, aggregated across all plans and IRAs in which the individual may participate.
- Plan distributions are not subject to 20% mandatory tax withholding upon distribution.
- Exempt from 10% early withdrawal penalty generally applicable to distributions made to participants who are 59½ or younger.
- Eligible to be indirectly rolled into an IRA or employer plan within 3 years from the date the distribution is taken.
- Amounts not indirectly rolled into an IRA or employer plan are included in gross taxable income, ratably, over 3 tax years (beginning with the tax year of the distribution), unless the participant elects to include all amounts in a single tax year.

Coronavirus-related distributions are available to "eligible" participants who:

- Are diagnosed with a coronavirus (COVID-19 or SARS-CoV-2) illness.
- Have a spouse or dependent diagnosed with a coronavirus illness.
- Experience "adverse financial consequences" as a result of a quarantine, furlough, lay-off, reduction in work hours, business closure, the lack of child care, or other factors determined by the IRS due to the coronavirus emergency.

A plan administrator may rely on a participant's certification of the above.

## Waiver of 2020 Required Minimum Distributions (RMDs)

RMDs are not required for 2020 from IRAs and qualified retirement plans.

- Individuals who turned age 70½ prior to 2019 will not be required to receive an ongoing RMD for 2020.
- Individuals who turned age 70½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020 will not have to receive their first (2019) RMD or their 2020 RMD.
- Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD.
- Beneficiaries who have an account balance in the plan subject to the five-year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death).

If a 2020 RMD is provided to any of the above, it may be rolled over to an IRA or employer plan. A participant's RMD or beneficiary's life expectancy RMD for 2021 will need to be paid.

## Coronavirus-Related Loan Relief

Two types of loan relief are provided:

1. Plans may allow eligible participants, as defined above regarding distributions, to take loans up to the lesser of $100,000 or 100% of the participant's vested account balance for the specified period.
2. Upon the request of an eligible participant, plan sponsors must suspend loan repayments due on outstanding loans that are in good order for a period of up to 12 months. This relief expires on December 31, 2020. The suspension period is to be added to the original loan term when repayments, including accrued interest, resume, regardless of the length of the loan's original term.

Participants who are furloughed or laid off but who continue to be considered active employees may also suspend loan repayments for up to one year of unpaid leave. Plan administrators should ensure that they are providing their plan recordkeepers and administrators with the correct employment status for these participants so that their loan repayment suspensions and other plan rights, including the in-service distribution options to which they are entitled, are properly administered.

## Defined Benefit Pension Plan Relief

***Delay in 2020 funding obligations.*** Under the CARES Act, all single-employer funding obligations due during 2020 are not required to be made until January 1, 2021, with interest for late payments.

***Benefit restrictions.*** Under the CARES Act, a plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020.

## Timing of Plan Amendments

The CARES Act includes a remedial amendment period giving plan sponsors additional time to amend their plans for this relief. Sponsors of non-governmental plans have until the last day of the plan year beginning in 2022 to amend their plans, i.e., December 31, 2022 for a calendar year plan. Sponsors of governmental plans have until the last day of the plan year beginning in 2024 to amend their plans.

The new rules require decisions to be made by employers who sponsor retirement plans. The coronavirus-related distribution and increased loan limits are optional plan provisions; consequently, plan sponsors will need to evaluate which of the following courses of action they wish to take:

1. Plan sponsors may elect to do nothing at this time. Because the coronavirus-related distribution and loan limit increase provisions are optional, they will not go into effect unless an employer affirmatively opts to add them to a plan. This may be a good choice if an employer has not furloughed, laid off, or reduced hours for any of its employees, and if an employee population and their families continue to remain healthy. In that case, these provisions may be added later if or as the COVID-19 situation worsens; however, the situation could worsen more quickly or more severely than anticipated, so it may be prudent to consider adding them sooner rather than later.

2. Plan sponsors may add the increased loan limit provision without offering the coronavirus-related distribution provision. It is permissible to add either the coronavirus-related distributions option or the increased loan limits independently of each other. Adding the expanded loan limit will permit participants to access more of their accounts without direct leakage from the plan; in addition, because loan repayments due in 2020 must be suspended for a period of up to a year, taking a loan will not create an immediate financial outlay for participants. However, if a participant takes an expanded loan, is subsequently terminated, and is unable to repay the full amount of the loan, the outstanding loan balance would default, and would be included in taxable income in the year of the default. Absent future relief, three year ratable taxation does not apply in this situation. Note also that, depending on the number of loans permitted at a time by the plan, adding this provision may also require relaxing any restrictions around the number of permissible loans that may be taken from the plan and/or the frequency with which they may be taken.

3. Plan sponsors may add the coronavirus-related distributions provision without offering the increased loan limit provision. Adding the expanded coronavirus-related distribution provision will create leakage, possibly substantial, from the plan, but ensures that affected participants can access their funds without the risk of taxation of the loan amount in a single plan year in the case of a subsequent termination of employment. Any or all of the withdrawn amounts may be repaid to the plan at a later date, which may mitigate some leakage, and the tax burden would be spread out over three years.

4. Plan sponsors may add both the coronavirus-related distribution and increased loan limit provisions. Adding both provisions would provide participants with the opportunity to make the decision between a coronavirus-related distribution or an increased loan, based on what they determine best for their particular situation. This may be a good opportunity to educate participants on the importance of preserving their retirement savings to the extent they are able and the accompanying advantages of a loan over a coronavirus-related distribution in that regard. They should also be informed of the potential tax consequences of both scenarios, and encouraged to repay any amounts they might need to withdraw.

## Administrative Items on which regulatory guidance is needed

Relief from the spousal consent requirements. To date, neither the IRS nor the DOL have provided any guidance that might relieve plans from their notarized spousal consent requirements; however, the industry has provided commentary to the regulatory agencies that relief in this regard is needed.

Unforeseeable Emergency. Another area in which we are awaiting guidance from the IRS is whether a coronavirus-related financial need may be included as part of a nonqualified plan's unforeseeable emergency distributions. Based on current guidance, a coronavirus-related distribution would not be included within this withdrawal right.

**We will continue to provide further updates as they become available.**

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