



ALERTS

Why Retirement Plan Sponsors Should Care About The CARES Act

March 30, 2020

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) signed by President Trump on March 27 is a \$2 trillion stimulus package intended to provide financial aid to individuals and businesses negatively impacted by the COVID-19 global pandemic.¹

Among many other provisions, the CARES Act provides relief to certain participants in employer-sponsored retirement plans² in the form of expanded tax-preferred distribution and “re-contribution” rules, enhanced plan loan availability and repayment terms, and the optional waiver of certain required minimum distributions. The CARES Act also aids employers who sponsor retirement plans by delaying the minimum funding contributions for single-employer defined benefit plans until Jan. 1, 2021.

The following chart summarizes key terms of the CARES Act applicable to employer-sponsored retirement plans, identifies the types of plans and participants impacted and includes recommended action steps for plan sponsors.

Term	Plans Impacted	Participants Impacted	P S
"Coronavirus-related Distributions"	<ul style="list-style-type: none"> Qualified plans defined contribution plans 	Employee if: <ul style="list-style-type: none"> The employee, spouse or 	If
"Coronavirus-related			

RELATED PEOPLE



Lori L. Shannon

Partner
Chicago

P 312-214-5664
F 312-759-5646
lori.shannon@btlaw.com

RELATED PRACTICE AREAS

Benefits and Compensation
COVID-19 Resources

distributions" of up to \$100,000 (within controlled group) available for distributions made between 1/1/2020 and 12/31/2020

- May be in-service distributions
- Waiver of 10% early withdrawal penalty (usually applicable prior to age 59½) on distributions of up to \$100,000
- Income from distributions subject to tax over three years starting in year of distribution
- Re-contribution of funds to an eligible retirement plan or IRA within three years permitted without regard to that year's contribution cap (treated as if 60-day rollover requirement satisfied)

- 403(b) plans
- Governmental 457(b) plans

Available if permitted plan terms

dependent is diagnosed with the virus

- Employee has suffered a financial setback related to quarantine, furlough, permanent layoff, reduced hours or lack of childcare due to the virus or other factors determined by the Treasury Secretary. Participant certification of eligibility for distribution is sufficient.

Participant Loan Repayments

Participant loan repayments may be delayed

- Participants with a plan loan outstanding and repayment due from the date of enactment through 12/31/2020 may delay loan repayments for up to one year

Defined contribution plans that permit participant loans (e.g., profit-sharing, money purchase, 401(k), 403(b) and governmental 457(b) plans)

Employee if:

- The employee, spouse or dependent is diagnosed with the virus
- Employee has suffered a financial setback related to quarantine,

- Subsequent loan repayments must be adjusted to reflect the delay in the 2020 repayment(s) and related interest
- Five-year limit on loan repayment does not include one-year permitted delay
- Applies to plan loans outstanding on and after enactment

furlough, permanent layoff, reduced hours or lack of childcare due to the virus or other factors determined by the Treasury Secretary

Participant Loans

Plan loan limit for participant increased to lesser of

- \$100,000 (previously \$50,000) or
- 100% (previously 50%) of participant's vested account balance
- Applicable to loans made within 180 days of enactment

Defined contribution plans that permit participant loans (e.g., profit-sharing, money purchase, 401(k), 403(b) and governmental 457(b) plans)

Employee if:

If

- The employee, spouse or dependent is diagnosed with the COVID-19
- Employee has suffered a financial setback related to quarantine, furlough, permanent layoff, reduced hours or lack of child care due to the virus or other factors determined by the Treasury Secretary

Required Minimum Distributions

Qualified defined contribution plans,

Participants who have:

Certain required minimum distributions (RMDs) from specified defined contribution plans may be waived by participants

- RMDs with required beginning dates in 2020
- RMDs set to be made in 2020 because they were not made by 1/1/2020

Allows retirees to avoid taxable distributions when the stock market is down

Distributions made in 2020 that would have been RMDs but for the waiver are not eligible rollover distributions

For beneficiaries, the five-year and ten-year distribution periods that may be applicable are determined without regard to calendar year 2020

Section 403(b) plans and governmental Section 457(b) plans

- RMDs with required beginning dates in 2020
- RMDs set to be made in 2020 because they were not made by 1/1/2020

Minimum Funding

Defined Benefit Plans

N/A

Delays minimum funding contributions due in 2020 for single-employer defined benefit plans until January 1, 2021

- Amount of each minimum required contribution is increased by interest accruing from the original due date to the payment date
 - Applicable rate of interest is the plan's rate for the plan year in which
-

the payment is made

Plan sponsor may elect to treat the plan's adjusted funding target attainment percentage (AFTAP) for the last plan year ending before January 1, 2020, as the AFTAP for calendar year 2020 to avoid restrictions related to funding

Expansion of DOL Authority

Employee benefit plans subject to ERISA

Potentially all participants in employee benefit plans subject to ERISA

Notwithstanding

Permits DOL to postpone, up to one year, an ERISA filing deadline in the event of a "public health emergency"

- No specific deadline mentioned in CARES Act
- Suggests DOL may act to postpone deadlines

Amendment Deadline

Plans to which CARES Act provisions regarding coronavirus-related distributions, loan changes and RMD waivers apply

N/A

Delays the deadline for CARES Act plan amendments for coronavirus-related distributions, changes to loan provisions and 2020 RMD waivers

- Governmental plans: last day of the plan year beginning on or after January 1, 2024
- Non-governmental plans: last day of the plan year

beginning on or
after January 1,
2022

- Plan must be operated as if the amendment is in effect
- Amendment must be retroactive

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Lori Shannon at 312-214-5664 or lori.shannon@btlaw.com.

© 2020 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.

¹The CARES Act provides assistance related to the financial impact of the virus SARS-CoV-2 and the coronavirus disease 2019 (COVID-19).

²The CARES Act also includes changes to welfare benefit plans and certain executive compensation restrictions, which we will address in separate alerts.

³Plan sponsors may also consider expanding other in-service withdrawal provisions in plans to provide financial assistance to participants. Note that plan terms may also permit hardship withdrawals for any participant in a federally declared disaster area.

⁴Related to loan repayment compliance, discuss with third-party administrator: (i) methods of repayment besides payroll deduction (e.g., coupon books/checks, debits to checking accounts) and (ii) suspension of loan repayments during any leave of absence (which does not qualify for the above-described delayed repayment terms). Amendment to the plan and/or loan policy may be necessary.

⁵Applicable collective bargaining agreements and agreements with the PBGC should be reviewed to ensure ongoing compliance.

⁶Note related to defined benefit plan compliance: Sponsors of defined benefit plans should discuss with service providers temporary and permanent layoffs of plan participants that may result in a reportable event due to an active participant reduction, unless the PBGC grants relief (or a waiver is applicable).