

## INSTANT INSIGHTS

In response to the COVID-19 pandemic, Congress passed the CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES Act) on March 27, 2020. The bill provides financial aid for individuals and companies. The CARES Act also has provisions allowing access to retirement savings and suspension of required minimum distributions. These provisions are summarized below.

### Special Rules for Use of Retirement Funds

1. Waiver of the 10% early distribution penalty tax (for distributions made before age 59½) for coronavirus-related distributions
  - The 10% penalty tax does not apply to coronavirus-related distributions up to \$100,000 per individual (limit applied across all plans and IRAs). Plan sponsors are obligated to enforce the limit for all plans in the same controlled group.
  - The waiver applies to distributions from IRAs, 401(k) and other 401(a) plans, governmental 457(b) plans, and 403(b) plans.
  - A distribution can be repaid within three years of the date of distribution to any plan or IRA to which a rollover contribution can be made. Repayments will be treated as rollover contributions.
  - Regular income taxes due on the distribution will be spread over three years unless the person taking the distribution elects otherwise. The 20% withholding is not required, and there is no requirement to provide a 402(f) notice or offer a direct trustee-to-trustee transfer.
  - A “coronavirus-related distribution” includes any distribution made in 2020 to a person who has one of the following:
    - A personal diagnosis of COVID-19 by a test approved by the Centers for Disease Control and Prevention
    - A spouse or dependent who has been so diagnosed
    - Adverse financial consequences due to being furloughed, quarantined or laid off or having their paid work hours reduced due to coronavirus or the close or reduction of a business due to coronavirus.

An employer can rely on an employee’s certification that these conditions are satisfied.

  - Plans may be amended to allow for in-service withdrawals of coronavirus-related distributions without violating any Internal Revenue Code provisions. Offering in-service withdrawals appears to be optional.

2. Increased loan limit and extension of repayment period

- A qualified loan is any new or pre-existing loan to a person who would be eligible to receive a coronavirus-related distribution as defined on page 1.
- The maximum loan amount for qualified loans is increased from \$50,000 or 50% of the vested account balance to \$100,000 or 100% of the vested balance. This increase applies to loans taken for a period of 180 days after date of enactment.
- For any person who meets the coronavirus-related distribution definition (see page 1) who has an outstanding loan balance on or after the date of enactment and loan payments due from date of enactment through December 31, 2020, payments are delayed by one year (or, if later, 180 days after enactment).
- All subsequent payments will be adjusted to take into account the delay and the interest accrued during the delay. The five-year loan limit may be disregarded for this purpose.
- This applies to 401(k) and other 401(a) plans, 403(b) plans, and any governmental plans.
- These changes are optional.

3. Plan amendments for CARES Act provisions

- The amendment deadline for non-governmental plans is the last day of the 2022 plan year.
- The amendment deadline for governmental plans is the last day of the 2024 plan year.
- The Treasury Department is given the authority to extend these deadlines.

**Temporary Waiver of RMDs**

4. Waiver of required minimum distributions (RMDs) due in 2020

- Any RMD required to be made in calendar year 2020 is waived. This includes RMDs due as a death benefit in accordance with the five- and 10-year rules, and those time limits are extended by one year.
- If a distribution is made in 2020 that would have been treated as an RMD but for the 2020 waiver, it can be rolled over in accordance with the 60-day rollover rules.
- This applies to 401(k), 403(b) and governmental 457(b) plans and IRAs.

**Expansion of DOL Authority**

5. DOL granted authority to waive ERISA-imposed deadlines up to one year

- This could impact salary deferral contribution deadlines, participant notices, etc.
- DOL must take action in order for this to have an impact.

The bill also contains a provision allowing for delays in funding single-employer defined benefit plans.

It is likely that Congress may consider additional measures in the days to come. As always, we at Empower Retirement will keep you apprised of all new developments.

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