

COVID-19 Legislative Proposal Affecting Retirement Plans — Senate CARES Act

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In an effort to offer financial relief to plan participants affected by COVID-19 and the resulting economic crisis, the Senate has now included provisions in pending legislation (the Coronavirus Aid, Relief and Economic Security or CARES Act) that would affect retirement plans. The proposals are moving quickly, so what is listed below may change at any time. However, we wanted to alert our clients to changes on the horizon so they can be prepared. Following is a general overview of the CARES Act (the Act).

- **Penalty-Free Coronavirus-Related Distributions in 2020.** The Act would allow participants in eligible retirement plans to take distributions in 2020 of up to \$100,000 from their plan benefits (including distributions of 401(k) deferrals) without incurring the 10% early distribution tax that would otherwise generally apply to payments made prior to age 59-1/2. “Eligible retirement plans” would include retirement plans such as 401(k) or profit-sharing plans, and IRAs. The distribution must qualify as a “coronavirus-related distribution,” which can only be made to a “qualified individual.” A “qualified individual” includes (i) a participant who has experienced adverse financial consequences resulting from a reduction in work hours; been laid off, quarantined, or furloughed; or is unable to work due to lack of childcare on account of the disease; and (ii) a participant, spouse or dependent who has been diagnosed with the virus. Employers can rely on a certification from an employee that the distribution was a coronavirus-related distribution. It appears that plans would be permitted, but not required, to offer these distributions. The distribution would need to be made between January 1 and December 31, 2020.
- **Repayment of Coronavirus-Related Distributions.** The Act would allow a qualified individual who takes a coronavirus-related distribution to repay it to an eligible retirement plan within three years of taking the distribution. Such repayment would be treated as a rollover contribution to such eligible retirement plan.
- **Income Inclusion Over Three Years for Coronavirus-Related Distributions.** A coronavirus-related distribution under the Act would be included in the qualified individual’s taxable income ratably over a three-year period, unless the individual elected to have it taxed in the year of distribution. The distributions would not be treated as eligible rollover distributions, so mandatory 20% withholding would not apply.
- **Plan Loan Dollar Limits Increased Temporarily.** The Act would temporarily increase to \$100,000 the maximum amount that a qualified individual may borrow from his or her plan account balance, starting on the date the Act is enacted and ending 180 days later. The Act would also allow qualified individuals to borrow up to the lesser of

\$10,000 or 100% of their account balance, rather than 50% of their account balance under current rules. It appears that plans may, but are not required to, incorporate these limit increases.

- **Extension for Loan Due Dates.** The Act would provide a one-year extension of time to repay a plan loan if the due date occurs between the date the Act is enacted and December 31, 2020. It appears that remaining payments, plus applicable interest, can be reamortized over the extended period, and that these extension rules are mandatory. It is not clear whether employees are allowed to opt-out of having their loan due dates extended.
- **Required Minimum Distributions.** Plan participants age 70-1/2 and older have complained that they are faced with receiving required minimum distributions in 2020 from defined contribution plans that would be based on the value of their accounts at the end of 2019, but which would be distributed from balances decimated by recent market declines. To address this situation, the Act would allow plans to suspend making required minimum distributions in 2020. This suspension would also apply to participants who turned age 70-1/2 in 2019 and had not yet received their 2019 distribution. Amounts distributed in 2020 that would have been required minimum distributions but for the Act would not be treated as eligible rollover distributions, and would not require employers to provide the special tax notice under 402(f) of the Internal Revenue Code applicable to eligible rollover distributions. The suspension of required minimum distributions under the Act is similar to the suspension that applied in 2009 after the financial crisis of 2008. It appears that plans would be permitted, but not required, to suspend required minimum distributions in 2020.
- **Plan Amendments.** Plans would need to be amended to reflect these new rules under the Act 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).

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The proposed changes to the required minimum distribution rules should not present significant difficulties for plan sponsors and administrators, as they are similar to rules that applied to required minimum distributions in 2009 after the financial crisis of 2008. The extension of loan due dates in the Act could be more problematic for employers to administer, requiring communication with employees, updated loan procedures, and reamortization of loans due in 2020. Since it appears that plan sponsors may voluntarily decide to adopt the coronavirus-related distribution provisions of the Act, they will need to decide, along with their plan service providers, whether their plans can administer the new distributions.

As of this writing, the Act has not yet been approved by Congress. However, a version of the retirement provisions described above is likely to be included in any upcoming coronavirus-related legislative package. Congressional talks resume today.

For more information, contact the authors, or your Winston & Strawn relationship attorney.

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