# The CARES Act: Provisions Affecting Retirement and Health Plans

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**Overview**

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our main alert, the $2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history. The Act contains a number of provisions regarding retirement and health plans that are intended to alleviate the financial burden of the plan sponsors and participants affected by the COVID-19 pandemic. The key aspects of these provisions are discussed below.

**Key Points**

**<u>Retirement Plans</u>**

*Coronavirus-Related Distributions*

- *Waiver of 10% Penalty Tax.*The Act allows participants in certain eligible retirement plans to take distributions of up to $100,000 in 2020 without incurring the 10% penalty tax that otherwise would apply to certain distributions taken prior to turning age 59 ½."Eligible retirement plans" generally refer to tax-qualified retirement plans and accounts, such as "401(k)" plans and individual retirement accounts.To qualify for this waiver, the participant (or his or her spouse or dependent) must have been diagnosed with the coronavirus or the participant must have experienced adverse financial consequences as a result of certain adverse changes to his or her employment status due to the coronavirus.
- *Income Inclusion Over Three Years.*Coronavirus-related distributions may be included in the participant's taxable income ratably over a three-year period unless the participant elects to include them in the year of distribution.
- *Repayment as Rollover Contribution.*The Act permits coronavirus-related distributions to be repaid to an eligible retirement plan within three years after taking the distribution as if such repayment was a rollover contribution.

*Plan Loans*

- *Increased Maximum Loan Amount.*The Act increases the maximum amount that a participant can borrow from his or her account balance by increasing the applicable dollar limit from $50,000 to $100,000 and the applicable percentage limit from 50% to 100% of the participant's account balance.This provision is only available for 180 days following March 27, 2020.
- *Extension of Loan Due Date.*To the extent a participant has an outstanding loan from the plan and a repayment due date occurs at any time between the date the Act is enacted and December 31, 2020, such repayment date is delayed by one year.Any subsequent repayments must be appropriately adjusted to reflect the delay and the interest accrued during the delay.

*Required Minimum Distributions*

- The Act suspends the required minimum distributions in 2020 that otherwise would be required to be distributed to participants who turned age 70 ½.This relief is similar to the suspension that applied in the aftermath of the 2008 financial crisis.

*Funding Relief for Single-Employer Defined Benefit Plans*

- *Extension of 2020 Minimum Required Contribution*. Under the Act, any minimum required contribution (including any quarterly contribution) to a single-employer defined benefit plan that is otherwise due in 2020 may be delayed until January 1, 2021, but the delayed contribution will be adjusted to reflect the interest accrued during the delay.

- *2019 Funding Ratio May Be Used*.For purposes of determining whether any benefit and payment restrictions would apply to a defined benefit plan due to its funding status, the CARES Act allows the plan sponsor to elect to treat the plan's adjusted funding target attainment percentage (AFTAP) for the 2019 plan year as the AFTAP for the 2020 plan year.

**Health Plans**

- **Diagnostic Testing**.Group health plans and health insurance issuers are required to cover diagnostic testing for COVID-19 without any cost-sharing burden to the participants, generally at the negotiated in-network provider rate.
- **Preventive Services**.Group health plans and health insurance issuers are required to cover, without any cost-sharing burden to the participants, certain qualifying coronavirus preventive service as a preventive benefit under the Affordable Care Act, with such coverage to be effective no later than 15 days after a recommendation for the service is made.
- **Telehealth**.The Act provides that, for plan years beginning on or before December 31, 2021, a high deductible health plan may cover telehealth services before the applicable minimum deductible under the plan is satisfied without jeopardizing an individual's eligibility to contribute to a health savings account.
- **Over-the-Counter Products and Medications**.Over-the-counter products and medications are reimbursable from a health savings account (regardless of whether the eligible individual satisfies the deductible under the high deductible health plan) or from a health care flexible spending account.

**Looking Ahead**

With respect to retirement plans, it appears that the plan sponsors may, but are not required to, implement the relief outlined above (except for the extension of the loan due date, which appears to be mandatory). As such, plan sponsors should consider and coordinate with the plan's service providers to determine whether these new provisions are administratively practicable. Any plan amendments to reflect the new provisions under the CARES Act must be completed by the last day of the plan year beginning on or after January 1, 2022 (i.e. by December 31, 2022 for plans with calendar year plan years).

With respect to health plans, employers should consider the increased administrative and financial costs associated with providing these new benefits mandated by the CARES Act. Employers that maintain a self-insured health plan where claims are paid out of the employer's general assets will directly bear the cost of these new benefits, although employers that maintain a fully-insured health plan could still expect to see the increased cost reflected in higher premiums.

**Foley Hoag has formed a firm-wide, multi-disciplinary task force dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our Resource Page or contact your Foley Hoag attorney. For guidance on CARES Act retirement plan or health plan issues, please contact Terry Martland or Ellie Kang.**

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