

CARES Act to Provide Significant Employee Benefit Plan Relief for Participants and Plan Sponsors

The Coronavirus Aid, Relief, and Economic Security (CARES) Act has far-reaching impacts on employee benefit plans, providing relief for participants and plan sponsors of qualified plans and expanded benefits for participants in group health plans.

Relief for participants in qualified retirement plans

With respect to qualified retirement plans, the CARES Act:

- Provides for a special “coronavirus-related distribution” that is exempt from the 10% early withdrawal penalty, can be repaid over a three-year period without regard to the typical plan contribution limits, and is includable in taxable income over a three-year period to the extent not repaid. Such distributions generally may not exceed \$100,000 in total for an individual. A coronavirus-related distribution means a distribution made on or after Jan. 1, 2020, and before Dec. 31, 2020, to an individual:
 1. Who is diagnosed with COVID-19.
 2. Whose spouse or dependent is diagnosed with COVID-19.
 3. Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of child care as a result of COVID-19, the closing or reduction of hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

The plan administrator may rely on an employee’s certification that the employee satisfies the conditions noted above.
- Provides certain loan relief for a “qualified individual,” defined to include those noted in 1-3 above, including:
 1. Providing a temporary increase on the plan loan limit (generally, up to the lesser of the present value of the nonforfeitable accrued benefit of the employee under the plan or \$100,000) for loans made during the 180-day period following enactment of the CARES Act.
 2. Delaying for an additional year any plan loan repayment that comes due during the period beginning on enactment of the CARES Act and ending on Dec. 31, 2020. Any subsequent repayments must be adjusted to reflect the delay in due date and any interest accrued during the delay.
- Provides a waiver of required minimum distributions required to be made in calendar year 2020 from qualified retirement plans, defined contribution plans under Internal Revenue Code Section 403(a) or 403(b), and eligible deferred compensation plans under Internal Revenue Code Section 457(b) (excluding those maintained by tax-exempt entities).

Under the CARES Act, plans would have until the end of the plan year beginning on or after Jan. 1, 2022, to adopt a retroactive amendment to reflect these changes, and plans would not be treated as failing to meet the requirements of Code Section 411(d)(6) or Section 204(g) of the Employee Retirement Income Security Act of 1974 (ERISA) by reason of such amendment. Governmental plans would have an additional two years to adopt the amendment.

Expanded benefits for participants in group health plans

The CARES Act includes the following expanded benefits under group health plans:

- Group health plans and health insurance issuers shall be required to cover, without cost-sharing, any qualifying coronavirus preventive service. For this purpose, a “qualifying coronavirus preventive service” means an item, service or immunization that is intended to prevent or mitigate COVID-19 and that is (1) an evidence-based item or service that has in effect a rating of “A” or “B” in the current recommendations of the U.S. Preventive Services Task Force; or (2) an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved.
- The definition of COVID-19 diagnostic testing that is required to be covered by a group health plan or health insurance issuer without cost-sharing under the Families First Coronavirus Response Act has been expanded, and the group health plan or issuer shall reimburse the provider of the diagnostic testing as follows:
 1. At the negotiated rate, if the health plan has a negotiated rate for such service with the provider in effect before the public health emergency was declared pursuant to Section 319 of the Public Health Service Act.
 2. If there is not a negotiated rate, the cash price for such services as listed by the provider on a public website, or such plan or issuer may negotiate a rate with such provider for less than such cash price. Each provider of diagnostic testing for COVID-19 shall make available on a public website the cash price for such testing. Failure to comply with such internet posting may result in monetary penalties of up to \$300 per day.

- For plan years beginning on or before Dec. 31, 2021, a health plan shall not fail to be a high-deductible health plan for health savings account (HSA) purposes if the plan covers telehealth and other remote care services without application of a deductible.
- After Dec. 31, 2019, amounts paid for over-the-counter medicine and drugs, as well as menstrual care products, are treated as medical expenses for HSAs, healthcare flexible spending accounts, health reimbursement accounts and Archer Medical Savings Accounts.

Relief for companies that sponsor defined benefit pension plans

The CARES Act provides companies with cash flow concerns with additional time to meet their single-employer plan funding obligations by delaying the due date for “minimum required contributions” otherwise due during 2020 until Jan. 1, 2021, at which time the 2020 contributions plus interest will be due. The interest accrues from the original due date to the actual payment date using the effective rate of interest for the plan for the plan year that includes such payment date. Note, however, that this special rule permitting a delay in payment applies only to “minimum required contributions” (as defined in Internal Revenue Code Section 430(a)); it does not provide additional time to make contributions that are required for other reasons, such as contribution obligations associated with a corporate transaction or the plan sponsor’s increase in debt or plan closing. Plan sponsors that are obligated under a collective bargaining agreement or by the terms of an agreement with the Pension Benefit Guaranty Corporation to make plan contributions should discuss with appropriate counsel the ability to delay such contributions before taking action.

The CARES Act also provides plan sponsors with the option to use the plan’s funded status for the last plan year ending before Jan. 1, 2020, for purposes of determining the funding-based benefit limitations under Internal Revenue Code Section 436 for plan years that include calendar year 2020. This provision will enable plan sponsors to avoid the restrictions on future benefit accruals and on distributions in optional forms under Internal Revenue Code Section 436 where a plan has a decline in funding status resulting from the market downturn tied to the COVID-19 pandemic.

Additional special relief is provided to pension plans sponsored by certain nonprofit employers. Specifically, the CARES Act extends the special cooperative and small-employer charity pension plan rules to plans sponsored by an employer that satisfies the following four conditions: (i) is exempt from taxation under Internal Revenue Code Section 501(c)(3), (ii) has been in existence since 1938, (iii) conducts medical research directly or indirectly through grant-making, and (iv) has as its primary exempt purpose of providing services with respect to mothers and children.

Expansion of Department of Labor authority to postpone deadlines in the event of a public health emergency

The CARES Act amended Section 518 of ERISA to permit the Labor Secretary to provide extensions of certain ERISA compliance deadlines in the event of “a public health emergency declared by the Secretary of Health and Human Services.” Such compliance extensions likely would be akin to the types of compliance extensions authorized by the Labor Secretary in response to presidentially declared disasters, such as the recently declared hurricane and wildfire disasters. ERISA plan sponsors, administrators and fiduciaries should watch for Department of Labor declarations of compliance deadline relief pursuant to the amended ERISA Section 518 in the coming weeks and months.

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