

To: Clients and Colleagues
From: Chimento & Webb, P.C.
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Re: CARES Act / benefit plan features

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1. **Background**

The CARES Act¹ became law on March 27. Much of its \$2.2 trillion cost is meant to help individuals and their employers through the next four months. It also includes helpful features (some optional) for retirement plans and individuals who participate in them.

Unlike the Families First Coronavirus Response Act (“Families First Act”), which was passed on March 18, the CARES Act is not limited to employers with fewer than 500 employees. The SECURE Act, enacted on December 20 with even more changes is seeming like old news.

To help clients keep these three laws straight, our website is a work in progress, with special pages for these new laws, our guidance, and links to important government sources. We will be updating, but strongly recommend individual consultation.

¹ The Coronavirus, Aid, Relief, and Economic Security Act

2. **Coronavirus-Related Distributions (“CRDs”)**

This is an optional feature which employers may add to 401(k) and other qualified profit sharing plans and employer-sponsored 403(b) plans. It can be administered now, provided that amendments are adopted by the extended deadlines described in Section 9.

CRDs get special tax treatment and can also be withdrawn from individual retirement vehicles, such as IRAs and 403(b)s. Withdrawals from 457(b)s sponsored by tax-exempt non-governmental employers do not qualify.

A. CRDs defined

A CRD is a distribution in calendar year 2020 to an individual who:

- has been diagnosed with “COVID-19,” meaning either the virus, SARS-CoV-2, or its disease, Coronavirus Disease 2019, by a test approved by the Centers for Disease Control and Prevention (“CDC”); or
- has a spouse or dependent who is so diagnosed by a CDC-approved test; or
- experiences adverse financial consequences because of COVID-19, due to being quarantined, furloughed, laid off, or having hours reduced, being unable to work because of lack of child care, or the closure or reduced hours of a business owned or operated by the individual; or
- satisfies other requirements as the IRS may designate in its guidance.

B. CRDs may not exceed \$100,000 in the aggregate for all of an employer’s plans.

C. There is no need for a demonstration of financial incapacity.

A plan administrator may rely on employee certification that it is a coronavirus-related distribution, with no additional documentation required.

D. Plan administrators will not be required to withhold income taxes, unless elected by the employee.

E. Special tax rules for CRDs

- The CRD amount can be rolled over, in whole or in part and with taxes avoided, in the three years starting with the distribution date. Rollover can be back to the Plan or other source, if it allows for that, or to an IRA.
- Unless the employee elects to have everything taxable in 2020, the distribution is deemed to be received at the rate of 1/3 per year, starting in 2020.

MEMORANDUM

- The overall CRD individual limit for these special tax rules is \$100,000. An individual cannot double-dip the limit, for example by taking \$100,000 from a qualified plan and \$100,000 from the plan of another employer or an IRA.

3. CRD Loans

Qualified plans, including 403(b) plans, may provide for higher loan limits and easier repayment rules for CRD Loans.

A. CRD Loans defined

- A CRD Loan must be granted under the same conditions as apply for CRDs described in Section 2. In other words, they must be to an individual who meets the COVID-19 and employee certification conditions.
- A Loan is a CRD Loan only if granted in the period between March 27, 2020 and September 23, 2020.
- If from a qualified plan or employer-sponsored 403(b) plan, it must be amended by the deadline in Section 9.
- Loans from individual 403(b)s – but not IRAs – would also qualify if permitted by the 403(b) sponsor.

B. Expanded CRD Loan limit

A CRD Loan will be allowed even if it exceeds the general IRS limit. Loans for other purposes are still subject to the general limit.

General loan limit	50% of vested account, but not more than \$50,000 reduced by the highest loan balance in previous 12 months
Special CRD Loan Limit	Taking other loans into account, 100% of vested account, but not more than \$100,000 reduced by the highest loan balance in the previous 12 months

C. Easier payment terms for CRD individuals for all loans

An individual who meets the requirements for a CRD Loan gets a longer period to repay all loans, including loans which are not CRD loans.

Any payment which comes due from March 27, 2020 to December 31, 2020 can be delayed for up to one year. When payments resume, the statute is not real clear what happens.

Our initial view is that there will be flexibility to renegotiate the loan for an additional period equal to the postponement period. The renegotiated loan would then pay off the postponed payment and its interest, and the remaining balance would then be paid off over the extended period. This would alleviate the cash flow problem if a person had to pay back the postponed payment and still be forced to continue with the original amortization schedule.

We will need IRS guidance on this.

4. **Required Minimum Distributions: some are suspended**

Required minimum distributions (“RMD’s”) owed for 2020 can be suspended for some – not all – tax favored vehicles that are subject to RMD rules. This is similar to the relief granted in 2009 after the last market crash.

A. Which employer plans are allowed to suspend ?

- All defined contribution plans, including 403(b) plans.
- Defined benefit plans are not eligible.
- 457(f) plans sponsored by non-profit organizations are not eligible.

B. This is optional for employer plans

A plan can continue to pay RMDs without suspension. However, employers may amend to suspend the payments, under the extended amendment deadline of Section 9. If this follows the IRS procedure in 2009, a suspension can be unilateral (without choice) or allow employees to have choice. Choice is clearly the preferable alternative.

C. This applies to all individual arrangements

This includes IRAs, 403(b) contracts, and government sponsored 457(b)s. Individuals who are able to control payments without employer involvement can call the vendors now to suspend further 2020 RMDs.

D. This will apply to RMDs already paid.

In 2009, the IRS allowed persons who had received RMDs to roll them over without regard to the normal 60 day rollover deadline, or the rule that generally prevents rollovers of RMDs. We expect IRS will issue similar guidance to permit rollovers of 2020 RMDs for which the 60 day rollover clock has already run out.

5. **Delayed Pension Plan Contributions**

Single-employer defined benefit plan sponsors will be able to delay their minimum required contribution until January 1, 2021.

Plan sponsors are generally required to make a contribution to satisfy minimum funding standards within 8 ½ months after the close of the plan year. For sponsors who had a funding shortfall in the prior year, contributions must be made quarterly during the plan year. The CARES Act change applies to either type of payment, as long as the payment was otherwise required to be made in the 2020 calendar year. For a calendar year plan that had a funding shortfall and has to make quarterly payments in 2020, that would mean the first three payments (April 15, July 15, and October 15, 2020) could be made on January 1, 2021. The delayed payments must be increased to include interest at the plan's effective rate of interest for the plan year.

In calculating the Adjusted Funded Target Attainment Percentage for Code section 436 funding-based benefit restrictions, a plan sponsor can elect to use the plan year that ended before January 1, 2020.

6. **High Deductible Health Plan Safe Harbor**

The Families First Act allowed High Deductible Health Plans (HDHPs) to cover diagnostic testing and treatment of COVID-19 without a deductible, and now the CARES Act adds telehealth and "other remote care services" to the list of acceptable no-deductible services for HDHPs. The telehealth care does not have to relate to COVID-19 treatment. Plans that provide these health services prior to application of a deductible will not lose their qualified status. This provision expires for plan years beginning on and after December 31, 2021. In addition, Health Savings Accounts and Health Flexible Spending Accounts may allow for payment of over the counter menstrual products after December 31, 2019.

7. **Employer Payment of Student Loans**

The CARES Act has added a temporary feature to Code 127 education assistance plans. Ordinarily, these plans allow employers to pay or reimburse employees for certain education

expenses, such as tuition, fees, and course materials. The education does not have to be job-related or for the employer's benefit, but is limited to \$5,250 per year and cover a group that does not discriminate in favor of highly compensate employees.

The CARES Act adds student loan payments as an eligible expense that can be paid through these plans, either directly to the lender or as reimbursement to the employee. The overall annual benefit limit of \$5,250 remains, and payments may be made only for the employee (not a spouse or dependent) and only between March 27, 2020 and December 31, 2020.

These reimbursements are in lieu of any deduction of student loan interest the employee would otherwise be able to claim on a tax return.

8. Extended ERISA Filing and Other Deadlines

We do not know yet how this will be applied by the DOL, but ERISA and the CARES Act give authority to the DOL to extend the deadline for a variety of plan sponsor and administrator actions for sponsors and plans "affected by ... a public health emergency declared by the Secretary of Health and Human Services." This would include the current coronavirus crisis, as well as any future public health crisis.

The actions that could be affected by a delay include:

- Filings with the IRS, DOL, or PBGC, such as tax payments or 5500 forms;
- Premium payments to the PBGC;
- Contributions to meet minimum funding amounts (already delayed by statute);
- Distribution of benefits;
- Participant's election for continuation of coverage or a form of benefits.

The DOL has discretion to determine which, if any, deadlines it will extend. The agency will likely be releasing guidance soon.

9. Required Amendments

Plan sponsors may administer their plans according to the new hardship, loan, and RMD rules before amending their plans. The amendment deadline is the last day of the first plan year beginning on or after January 1, 2022, and the amendments will be retroactive provided the affected plans have been administered throughout the period as if the amendment were in effect.

10. **Future Guidance and Legislation**

We expect to see lots of guidance from the IRS and DOL in the weeks to come. There is already talk in Congress of a fourth relief package that will add more complexity. We are here to help our clients navigate through this.

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