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## CARES Act Affects Retirement Plans and Employee Benefit Programs

**Legal Update**

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By Compensation Planning &amp; Employee Benefits Group

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), which includes assistance for workers, families and businesses, support for the health care system to fight COVID-19, and programs to stabilize the economy. The CARES Act also contains several provisions related to retirement plans and other employee benefit programs. This advisory provides an overview of those provisions.

### Retirement Plan Provisions

**Penalty-Free Withdrawals**

The CARES Act waives the 10 percent early withdrawal penalty for distributions of up to \$100,000 from qualified retirement plans and IRAs, including 401(k) plans. The amount distributed may be repaid at any time over a three-year period. If it is not repaid, the distribution can be included in income over three tax years, beginning with the tax year in which the distribution was received. The distribution is available to an individual who has been diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC, has a spouse or dependent who has been diagnosed by such a test or experiences adverse financial consequences resulting from being quarantined, furloughed, laid off or reduced working hours or is unable to work because of lack of child care. As of March 30, the distribution is not available to individuals who continue to work with a reduced salary; however, the Secretary of Treasury has authority to expand the list of individuals to whom the distribution is available.

**Increased Loan Limits and Relief for Loan Payments**

The CARES Act increases the dollar amount available for participant loans from \$50,000 to \$100,000 and increases the percentage available from 50 percent to 100 percent of the participant's account balance or accrued benefit for a period of 180 days. If a loan payment is due between March 27, 2020, and December 31, 2020, the payment may be delayed for one year from the original due date. Future loan

repayments must be adjusted to reflect the delay and the corresponding accrued interest. The one-year delay will be disregarded for purposes of the five-year loan repayment period that is normally required. These special loan provisions apply to the same individuals who are eligible for the penalty-free withdrawals described above.

## Required Minimum Distributions

The CARES Act provides a one-year delay for required minimum distributions (RMDs) from defined contribution plans (e.g. 401(k) and profit sharing plans), 403(b) plans, 457(b) plans and IRAs. The delay applies to 2019 RMDs that must be distributed by April 1, 2020, and to RMDs that must be distributed during 2020. If an RMD has already been received in 2020, the amount may be rolled over to an IRA or qualified retirement plan.

## Delayed Due Date for Plan Amendments

Amendments required by the CARES Act do not need to be adopted until the end of the 2022 plan year. In the meantime, the qualified retirement plan must be administered as if the amendment is in effect. The Secretary of Treasury has the authority to delay the amendment deadline for the CARES Act. Note that, unless the deadline is delayed, this deadline is the same deadline that applies for amendments required by the SECURE Act.

## Delayed Minimum Funding

The CARES Act delays minimum funding contributions for defined benefit plans, including quarterly contributions, until January 1, 2021. Each minimum funding contribution must be adjusted for interest using the plan's interest rate for the period of the delay.

## Filing and Contribution Deadlines

The CARES Act expands the Department of Labor's authority to postpone certain filing deadlines by up to one year. Earlier, the IRS extended the tax filing and payment deadlines to July 15, 2020, and clarified that the due date for making 2019 IRA and qualified retirement plan contributions is also extended to July 15, 2020. The IRS has also extended the deadline for amending 403(b) plans from March 31, 2020, to June 30, 2020, and the deadline for defined benefit plans to adopt a pre-approved plan from April 30, 2020, to July 31, 2020.

## Health Plans and Other Benefits

### Health Plans

For plan years beginning on or before December 31, 2021, a high-deductible health plan can cover telehealth and other remote care services prior to the individual reaching the plan's deductible. Earlier, the IRS announced that high-deductible health plans could cover COVID-19 testing at no cost to the individual. Covering these expenses will not prevent the individual from contributing to a health savings account.

The CARES Act also repealed the ACA rule that prohibited treating over-the-counter medicines as "qualified medical expenses." As a result, individuals may be reimbursed for over-the-counter medicines, including those needed for quarantine and social distancing, from their health savings accounts and health flexible spending accounts.

### Student Loans

The CARES Act provides an exclusion of up to \$5,250 if an employer makes student loans payments on behalf of an employee. The exclusion applies to payments made between March 27, 2020, and December 31, 2020.

### Payroll Taxes

If certain conditions are met, eligible employers may be entitled to a refundable credit against their payroll taxes (e.g. Social Security taxes), equal to 50 percent of the first \$10,000 in wages per employee, including the value of group health benefits. The credit is available for wages paid after March 12, 2020, and before January 1, 2021. Further, the CARES Act postpones the due date for depositing employer payroll taxes for wages paid in 2020, with half of the deferred amounts due on December 31, 2021, and half due on December 31, 2022.

We expect that further guidance will be needed on many of these provisions. In the meantime, employers should contact their third-party administrators and other advisors to discuss how to implement the provisions of the CARES Act. If you have any questions, please feel free to contact a member of our Compensation Planning & Employee Benefits Group: