

# Coronavirus CARES Act Concerns For Plan Sponsors

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The Coronavirus COVID-19 pandemic is probably the greatest challenge of our life in terms of the impact on our health and finances. As retirement plan sponsors, the pandemic has led to the signing of the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act with substantive retirement plan changes. This article is all about retirement plan law changes that will affect you and your participants under the CARES Act.

## Distributions free from the early distribution penalty.

Ordinarily, with limited exception, plan participants who receive a distribution from their retirement plan in cash (not a tax-free rollover) will be subject to an early distribution penalty of 10% under Internal Revenue Code Section 72(t), if they are under age 59 ½. Under the CARES Act, Coronavirus-related distributions that don't exceed \$100,000 won't be subject to that 10% early distribution penalty under Code Section 72(t). The early

distribution penalty won't attach to any distribution from a qualified retirement plan that is made on or after January 1, 2020, and before December 31, 2020, to an individual participant who is one of the following: (1) an individual who is diagnosed with COVID-19 or SARS-CoV-2; (2) an individual whose spouse or dependent is diagnosed with COVID-19 or SARS-CoV-2; or (3) an individual who experiences adverse financial consequences as

a result of being quarantined, furloughed, laid off, experiencing a reduction of work hours, inability to work due to lack of child care caused by COVID-19 or SARS-CoV-2, the closing or reduction of hours by a business owned or operated by such participant due to COVID-19 or SARS-CoV-2, or other factors determined by the Treasury Secretary. You just have to rely on the affected participant's certification

over the next three-year period which begins on the date following the distribution.

## Plan Loan Changes.

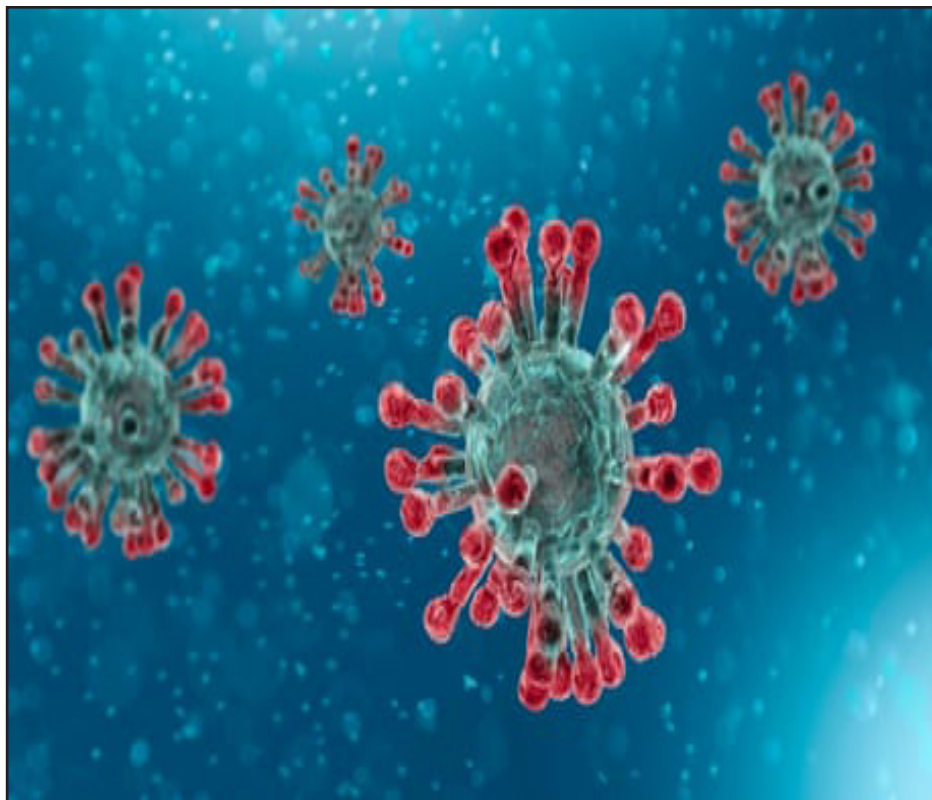
Plan loans are an effective method for participants to get cash for an immediate need by borrowing against their account balance. If you do offer plan loans, the CARES Act expanded the rights of participants to borrow against their accounts. The

CARES Act expands access to plan loans for "qualifying individuals," a group defined to include only those individuals who qualify for a Coronavirus-Related Distribution (as described above). The maximum loan that can be taken is increased to the lesser of \$100,000 or 100% of an individual's vested account balance. This Coronavirus related limit is double the current limit under the law (which is the lesser of \$50,000 or 50% of an individual's vested account balance.) Also, affected individuals with outstanding loan balances on or after the

date of the enactment of the CARES ACT may be allowed to delay their loan repayments for up to one year regardless of the five-year repayment period. So that means that future payments (after the year suspension) will be adjusted to reflect interest accrued for the period of delay and the term of the length of the loan will be extended.

## Minimum Distributions Waived.

Required minimum distributions from re-



that he or she falls under this exception to the early distribution penalty. That doesn't eliminate the need for you as a plan sponsor and plan administrator to substantiate hardship distribution requests from these affected participants. Tax on these COVID-19 related distributions can be spread pro-rata over three years, instead of paying all the tax in 2020. The plan participant also has an opportunity to repay the coronavirus distribution to the retirement plan



tirement plans are required for 5% owners who are still working and those other employees who are not if they have attained age 70 ½ (in 2019) or 72 (in 2020). The required minimum distribution requirements will be waived for distributions that should have been made in 2020 for a required beginning date that occurs in 2020. That means any plan participants who would be getting their first required minimum distribution in 2020, won't have to receive it. This provision offers zero relief to those who have already taken their first required minimum distribution in 2020 before the CARES Act was signed and any participants who have already received their required minimum distributions before 2020.

#### **Relief for pension plans.**

If you sponsor a money purchase or defined benefit plan, you have required minimum contributions because these are pension plans that required minimum funding. Minimum contributions to single-employer pension plans which would be due in 2020 (for the 2019 Plan Year) shall be due (plus accrued interest) January 1, 2021, instead of your tax due date (including extensions). Any extension of the minimum funding contribution deadline is beneficial if you have a tough time making ends meet. However, if you have a tough time coming up with the required contributions for the 2019 plan year, you should consider freezing accruals or contributions to your pension plan for the 2020 plan year. The problem is that with notice requirements to plan participants, time is of the essence as any cessation of contribu-

tions needs to be put in place before June 1.

#### **The negative part of the distribution and loan changes.**

While I'm glad that distributions to participants negatively impacted by Coronavirus won't get the early distribution penalty (for those under 59 ½) and that loan maximums have been increased, the inevitable leakage from participant accounts isn't good for plan participants. Plan participants will lose out because they will invade their retirement savings for money they need today and they will do so after the market has gone down around 20-30% (depending on when they get their distribution). This is the reality that we currently live in. People negatively impacted by this pandemic need relief, but Participants who need the money now, aren't going to be doing better by taking a distribution after a "haircut" from a down stock market.

#### **Changes are optional.**

Your third-party administrator (TPA) will contact you about the changes brought forth by the CARES Act and they will ask you whether you want to implement some or all of the changes. I'm sure many plan sponsors, looking after a participant, may not want to allow participants to take out greater loans or get a distribution-free from the early distribution penalty. While I think any major leakage from a retirement plan isn't good for participants or plan sponsors, I think it's something you're just going to have accept and adopt for your plan. While you may not have had to terminate or furlough employees, you don't know

how this pandemic has affected the household of each of your employees. In the end, it's the accounts of plan participants we're talking about and if they need access to their money, I suggested that you give it.

#### **Plan Amendments.**

While the CARES Act is applicable now, you don't have to worry about having any plan amendment in place to conform the plan document to current law. Your retirement plan won't have to be amended until the last day of the first plan year commencing on or after January 1, 2022. So expect your ERISA Attorney or TPA to contact you about an amendment in 2022.

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