

# Understanding the provisions of the CARES Act and other coronavirus-related regulatory guidance

Updated July 1, 2020

## Overview

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. The CARES Act is the largest rescue package in U.S. history, with \$2 trillion worth of economic relief for consumers and businesses. It includes support for small businesses, workers and families, health care systems, and distressed industries, businesses, states and municipalities.

Since the CARES Act was passed, several items of regulatory guidance have been issued providing further assistance related to eligibility and administrative guidelines. This report has been updated to incorporate the additional guidance. There may be additional legislative and regulatory activity related to the impact of the coronavirus. We will continue to monitor developments and provide updates, as applicable.

This expansive legislation has wide-ranging implications, with changes to tax rules applicable to retirement plans and accounts, comprising a significant component of this Act. In addition to addressing these retirement-related elements of the CARES Act, this report also addresses IRS regulatory guidance impacting retirement savings provided in response to the coronavirus impact on the economy.

All information in this report is as of July 1, 2020.

## Legislative changes under the CARES Act

### Provisions impacting IRAs and qualified plans

#### RMD Waiver

2020 required minimum distributions (RMDs) are waived for all types of defined contribution plans (including 401(k), 403(b), and governmental 457(b) plans) and IRAs (including inherited IRAs). Additionally, distributions that were required to be made by April 1, 2020, by reason of a required beginning date in 2019, but have not been distributed, are also waived. IRS Notice 2020-51 provides additional clarity on the application of the RMD waiver and the ability for individuals to re-contribute RMD amounts that may have been taken in 2020.

The Notice states that distributions taken in 2020 that would have otherwise been RMDs but for the CARES Act provisions:

- Are permitted to be rolled over to an eligible retirement account
- Have an extended rollover deadline of August 31, 2020, to be considered timely
- Do not count for purposes of the IRA account rollover restriction of one rollover per year rule
- Beneficiary RMDs paid to spouse and non-spouse beneficiaries may be repaid to the retirement plan by August 31, 2020

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## Penalty-Free Coronavirus-Related Distribution (CRDs)

The CARES Act creates a new distribution type available from a plan or IRA in 2020. The distribution must be taken after January 1, 2020, and before December 31, 2020. CRDs are limited to \$100,000 in the aggregate, from all IRAs and employer plans an individual may have. The 10% additional income tax penalty that usually applies to distributions prior to age 59½ is waived for CRDs as is the 20% mandatory withholding from employer plans. The CRD may be repaid to an eligible retirement plan within three years. Individuals who choose not to repay the distribution will bring the taxable portion of the distribution into income evenly over three years from the date of distribution, unless they elect otherwise. IRA account owners, employer plan participants, beneficiaries and alternate payees in employer plans are all permitted to take a CRD if they meet the eligibility requirements.

To be eligible for a CRD, you must be a “qualified” individual.

A qualified individual includes an employee:

- Who is diagnosed or whose spouse or dependent is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (“the virus”) by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or
- Who experiences adverse financial consequences as a result of the employee, employee’s spouse or member of the employee’s household (defined as someone who shares the employee’s principal residence):
  - Being quarantined, being furloughed or laid off, or having work hours reduced due to the virus
  - Being unable to work due to lack of childcare due to the virus
  - Closing or reducing hours of a business owned or operated by the individual, individual’s spouse or a member of the individual’s household (as defined above) due to the virus; or
  - Having a reduction in pay (or self-employment income) due to the virus or having a job offer rescinded or start date for a job delayed due to the virus

While CRDs are immediately available from an IRA, CRDs are an optional distribution from an employer plan. While a plan amendment is not required before plan sponsors permit participants to utilize the new distribution type, plan sponsors will need to decide to offer the CRD option and plans will need to be amended before the end of the 2022 plan year to incorporate the temporary provision. When processing a CRD request, employers may rely on an employee’s certification that the employee satisfies at least one of the eligibility conditions unless the employer has actual knowledge that the employee does not qualify. Employers’ “actual knowledge” that a participant is eligible for a CRD or coronavirus-related loan request is limited to their knowledge at the time of the request; the employer is not obligated to verify an employee’s eligibility.

Employer plans eligible to offer CRDs are 401(a) plans (including a 401(k) plan), 403(a) plan, 403(b) plan or governmental 457(b)

plans. CRDs are also available in money purchase plans and defined benefit plans, subject to applicable Internal Revenue Code restrictions on in-service distributions.

## Provisions impacting employer plans

### Loan Relief

The legislation provides for two kinds of loan relief for plans that offer, or add, participant loans. In both instances, if the plan adopts these loan provisions, a participant must meet the same eligibility requirements listed above for CRDs.

**Suspension of outstanding loan payment:** For eligible individuals, any loan payments due between March 27, 2020, and December 31, 2020, are delayed for one year (if a plan sponsor chooses to do so), even for loans that predate the CARES Act. Any subsequent repayments must be adjusted to reflect the delay and interest accrued during the delay.

**Temporary expanded loan limits:** If a plan sponsor chooses to do so, the standard loan limitation of 50% of the participants’ vested account balance not to exceed \$50,000 can be expanded to permit a loan for up to the lesser of 100% of the participants’ vested account balance or \$100,000. The expanded loan limits are in effect for loans to eligible individuals and must be taken no later than September 22, 2020. This is an optional plan provision, and while no immediate action is required by the employer, the plan amendment would be required by the end of the 2022 plan year. It is important to note that \$100,000 limit is reduced by the highest outstanding loan balance in the last 12 months, as required under existing regulations.

### Delay in Pension Funding and Benefit Restrictions

Single-employer funding obligations due during 2020 are not required to be made until January 1, 2021, with interest for late payments. Under the bill, a plan sponsor may elect to apply the plan’s funded status for the 2019 plan year in determining the application of benefit restrictions for plan years that include calendar year 2020. This provides relief from the funding rules that require certain benefit restrictions to be applied if a plan’s funded status dips below certain levels. For example, if the plan is less than 80% funded, lump sum payments are partially or completely restricted. NOTE: The bill does not include any provisions related to multiemployer plan funding.

## Provisions impacting Health Savings Accounts (HSAs)

### Health Savings Accounts

HSA-qualified high-deductible health plans (HDHPs) would temporarily be permitted to cover telehealth and other remote care services, below the deductible, for plan years beginning prior to December 31, 2021; this provision expires on December 31, 2021. During that time, telehealth and other remote care services will be considered “disregarded coverage,” so that employees would not lose their HSA eligibility.

The legislation eliminates a requirement under the Affordable Care Act (ACA) related to the purchase of over-the-counter (OTC) medication with HSA funds. The ACA requires that in order to use HSA funds for a qualified purchase of OTC medication for

the individual, their spouse or covered dependent, there must be a prescription for the OTC medication. The CARES Act eliminates this ACA requirement and permits qualified purchases of OTC medication with HSA funds without a prescription. These changes apply to expenses paid on or after January 1, 2020, and the provision is permanent. The CARES Act also eliminates this prescription requirement for Archer MSAs, FSAs and HRAs.

## Retirement regulatory guidance related to coronavirus impact on the economy

### IRS extended filing date to July 15, 2020, impact on IRA, HSA and employer plan

On March 20, 2020, the Treasury Department and Internal Revenue Service announced that the federal income tax filing due date had been automatically extended from April 15, 2020, to July 15, 2020, in IRS [Notice 2020-18 Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic](#).

In an online [announcement](#) on its website, the IRS provided a list of answers addressing questions related to the tax filing extension, including how it impacts IRAs, HSAs and employer plans as follows:

- **IRA and HSA contribution** Since the due date for filing federal income tax returns has been postponed to July 15, the deadline for making contributions to an IRA or HSA for 2019 is also extended to July 15, 2020. This also applies to contributions to Archer MSAs.
- **IRA and employer plan premature distribution penalty** The payment deadline for the 10% additional tax on premature distributions taken from an IRA or employer plan in 2019 is also July 15, 2020, because the 10% additional tax is calculated, reported and paid at the same time as the income tax owed on the amounts includible in gross income on the distribution.
- **Employer plan contribution due date grace period** Employers with a federal income tax return due date of April 15, 2020, now have a filing deadline of July 15, 2020. From this it follows that employers have until July 15, 2020, to make contributions to their qualified retirement plans on account of the 2019 plan year. It is important to note that this extension does not apply to employee elective deferrals.

### Non-retirement item of interest:

#### Employer Student Loan Reimbursements

The legislation permits employers to reimburse up to \$5,250 of a qualified education loan to an employee, tax-free under an “educational assistance program” for 2020. Employees receiving a tax-free payment cannot also take a deduction for the student loan interest on repayment amount.

- **IRS extends additional administrative deadlines through July 15, 2020.** The IRS issued Notice 2020-23 on April 9, 2020. As a result, the following plan deadlines are also extended to July 15, 2020:

- Removal of excess deferrals
- Corrective distributions of excess contributions due to a failed ADP or ACP test

#### HSA-qualified HDHP plans and coronavirus deductible and co-insurance exceptions

On March 11, 2020, the IRS released [Notice 2020-15](#) that provides relief for plans that otherwise meet the definition of a HDHP. The Notice clarifies that health plans that otherwise qualify as HDHPs will not lose that status merely because they cover the cost of testing for or treatment of the coronavirus before plan deductibles have been met. The IRS also noted that, as in the past, any vaccination costs continue to count as preventive care and can be paid for by an HDHP. The Notice applies only to HSA-eligible HDHPs.

#### FEMA-declared disasters and hardship distributions from employer plans

For defined contribution plans that have adopted the Federal Emergency Management Agency (FEMA)-declared disaster hardship withdrawal provision, participants in the plan whose principal place of employment or principal residence is in a state where FEMA has made a Major Disaster Declaration may be eligible for a hardship withdrawal from the plan. As of the date of publication, several states have had a coronavirus-related Major Disaster Declaration from FEMA. Plan sponsors can check an up to date list at the [FEMA website](#).

It should be noted that defined contribution plans are not required to provide hardship withdrawals, and when hardship withdrawals are made available, the plan can limit the circumstances under which participants will qualify the withdrawal.

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