

April, 2020

**CLIENT ALERT**  
**CARES Act Delivers Qualified Retirement Plan Relief**

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law on March 27, 2020. This sweeping measure provides significant relief to qualified retirement plans, their sponsoring employers and participants, including:

- temporary access to up to \$100,000 of retirement funds for participants directly affected by coronavirus and beneficial tax treatment for such distributions,
- temporary increase in the plan loan maximum to \$100,000 for such participants,
- delayed payment of new and outstanding loans for such participants,
- waiver of 2020 required minimum distributions from defined contribution plans and IRAs for ALL participants, and
- delay of minimum funding contribution deadline for defined benefit plans.

In general, these changes can be implemented operationally now. Calendar year plans do not need to be amended to incorporate CARES Act changes until December 31, 2022.

**Coronavirus-Related Distributions**

A “coronavirus-related distribution” is a new distributable event that may, but is not required to, be added to a qualified retirement plan. Plans are permitted to operationally add coronavirus-related distributions immediately; the deadline to amend calendar year plans to permit such distributions is December 31, 2022. It appears that coronavirus-related distributions can be added only to 401 (k) and profit sharing plans, not defined benefit pension plans, cash balance plans or money purchase pension plans.

*D&M’s Perspective.* We understand that some investment platforms have announced that they are automatically making coronavirus-related distributions available immediately unless a plan sponsor affirmatively opts out.

Coronavirus-related distributions have the following characteristics:

- may only be made to individuals (referred to below as qualified individuals):
  - diagnosed with coronavirus by a CDC-approved test, or whose spouse or dependent is so diagnosed, or
  - who experience adverse financial consequences from being quarantined, laid off or furloughed or work hours reduced due to the virus, being unable to work due to lack of child care, or closing or reducing hours of a business due to the virus

*D&M's Perspective:* Under existing law, many defined contribution plans allow participants who experience a financial hardship to take a distribution to satisfy their financial need. If a participant in such a plan is not a qualified individual under the Act, but works or resides in a federally-declared disaster area (such as New York or New Jersey), then the participant would be eligible to take a hardship distribution for expenses or losses incurred as a result of the COVID-19 situation.

- employers can rely on employee self-certification that the employee satisfies these conditions

*D&M's Perspective:* This will avoid the administrative burden on employers to determine whether a participant is eligible to receive a coronavirus-related distribution.

- a participant can withdraw up to a maximum of \$100,000 as coronavirus-related distributions
- an employer is responsible for ensuring that a participant's coronavirus-related distributions from all plans within its controlled group do not exceed this \$100,000 limit

*D&M's Perspective:* Note that when the maximum loan amount of \$100,000 (described below) is considered along with coronavirus-related distributions, qualified individuals can access meaningful amounts -- up to \$200,000 -- in their retirement accounts to help with financial difficulties arising during the COVID-19 situation.

- distribution can be taken at any time in 2020 (participant can retroactively treat distributions back to January 1, 2020 as coronavirus-related distributions)
- not subject to 10% additional tax on early distributions
- participant can repay the amount withdrawn to a qualified plan or IRA within 3 years after the distribution, and such repayment is treated as a tax-free rollover
- if not so repaid, distribution is subject to income tax ratably over the 3-year period beginning with the year of such distribution (although a participant could elect to be taxed all at once)

*D&M's Perspective:* The income tax consequences of coronavirus-related distributions are relatively straightforward at a high level, but the devil will be in the details. We anticipate guidance from Internal Revenue Service explaining how these distributions will be administered, e.g., tax reporting and payment.

- mandatory 20% income tax withholding applicable to eligible rollover distributions does not apply
- 10% withholding applicable to non-periodic payments that are not eligible rollover distributions will apply unless the participant elects out of withholding
- participant does not need to receive the special tax notice.

### **Plan Loans to Coronavirus-Affected Individuals**

The Act temporarily eases limitations on loans from qualified retirement plans to qualified individuals. For loans to qualified individuals through September 23, 2020, the maximum loan amount is the lesser of:

- \$100,000 (increased from \$50,000) or
- the greater 100% (rather than 50%) of the vested accrued benefit or \$10,000

It appears that plans may, but are not required to, incorporate these eased limitations.

*D&M's Perspective:* If your plan does not allow loans, you might consider amending the plan to add a loan feature. If any participants are maxed out on their loans under the pre-CARES Act limits, you might consider amending your plan to allow multiple loans per participant to allow qualified individuals to access more of their retirement funds through loans.

For qualified individuals, the due date for any loan repayment that otherwise falls between the date of enactment and December 31, 2020 is delayed for one year. Delayed payments are adjusted for accrued interest. The maximum statutory repayment period (five years for a loan not used to purchase a primary residence) is extended by the delay period. Unlike suspension of repayment for an unpaid leave of absence, this provision does not suspend repayment, but instead extends the repayment period. Also, this extension of the repayment period appears to be mandatory.

*D&M's Perspective:* The grace period for missed loan repayments extends to the end of the calendar quarter following the calendar quarter in which the missed payment occurs. One would think that this grace period would be tacked on to end of the delay period, but this may be clarified in IRS guidance.

## **2020 RMD Waiver for Defined Contribution Plans and IRAs**

By law, qualified retirement plan participants and individual retirement account (IRA) owners must receive certain annual minimum distributions, referred to as “required minimum distributions” or RMDs, after attaining age 72 (70½ for individuals born before July 1, 1949). RMDs are not eligible for tax-deferred rollover to another tax-qualified plan or IRA.

The Act waives all RMDs from defined contribution plans and IRAs for 2020, including initial RMD payments for the 2019 year that were deferred to the first quarter of 2020.

*D&M’s Perspective:* A participant who has taken a pre-CARES Act RMD in 2020 can now elect to roll the distribution back into a plan or IRA and not recognize income. Under existing law, a participant has 60 days after receiving the distribution to do so. IRS may see fit to extend this rollover period in light of present circumstances. Plan sponsors should coordinate with affected participants to determine whether the participant wishes to retain the distribution or redeposit it.

The RMD waiver is not limited to qualified individuals. The RMD waiver does not apply to defined benefit plan participants.

## **Minimum Funding Contribution Delay**

For defined benefit pension plans and cash balance plans, employers have until January 1, 2021 to make any minimum funding contributions otherwise due during the 2020 calendar year. This relief applies to quarterly contributions and any year-end contributions. When paid, contributions will include interest for late payment at the plan’s effective interest rate for the plan year to which the contribution relates.

*D&M Perspective:* Thus, for example, a defined benefit pension plan contribution which is due on September 15, 2020 for calendar year 2019 may be deposited as late as January 1, 2021. However, any contribution made after the due date of the plan sponsor’s tax return, with extensions, would not be deductible for 2019.

## **Benefit Restrictions**

When determining whether benefit restrictions for defined benefit plans under the tax code apply to any plan year that includes the 2020 calendar year, sponsors can choose — but are not required — to use the plan’s adjusted funding target attainment percentage (AFTAP) for the plan year ending in 2019.

*If you have any questions concerning the CARES Act, please feel free to contact Andrew Roth, Partner, Danziger & Markhoff LLP, (914) 220-8033, aroth@dmlawyers.com*