



Walters & Sklyar LLP

## CARES Act: Changes to Retirement Accounts, Health Plans, and other Employee Benefits

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES ACT). The 2.2 trillion stimulus measure is the largest federal response in history aimed at providing much-needed relief to the American people and businesses in response to the coronavirus (COVID-19) outbreak. The measure provides direct financial help to Americans, immediate assistance for hospitals, healthcare first responders, and patients, support for small businesses, and assistance for distressed industries.

The CARES Act includes a host of provisions providing relief for both individuals and businesses with respect to retirement plans, health plans, and other employee benefits, including expanded availability of hardship withdrawals and plan loans and relaxed rules regarding first-dollar coverage of treatments related to coronavirus and telehealth services under high deductible health insurance plans (HDHPs). The following describes the provisions of the CARES Act impacting employee benefits.

### Special Rules for Retirement Plans

#### *Plan Distributions and Plan Loans (Sections 2202 and 2203)*

The CARES Act creates a new coronavirus-related distribution option and expands the availability of plan loans from retirement plans. These options are available to qualified plans such as 401(k) and profit-sharing plans, 403(a) and (b) plans, 457 plans, and IRAs. Note, these changes are permissive, not mandatory for qualified plans, so employers will need to decide whether to implement the changes.

- Participants may take **up to \$100,000** in “coronavirus-related distributions” from their retirement plan. These coronavirus-related distributions **are exempt from the 10% early withdrawal tax** and instead of being subject to income tax upon receipt. Taxation of these distributions may be spread out in equal parts over three years beginning in 2020, unless otherwise desired by the recipient. The distributions can be repaid over three years (in one or multiple installments) to any eligible retirement plan in which the participant is a beneficiary and will be treated as rollovers when repaid.
  - A “coronavirus-related distribution” is a distribution of funds from a plan, between January 1, 2020 and December 31, 2020, to a “qualified individual,” which is a person who is diagnosed with COVID-19; whose spouse or a dependent is diagnosed with COVID-19; who experiences adverse financial consequences because of coronavirus-related situations such as quarantine, termination, furlough, reduction in hours, or staying home to care for children; or due to the closing or reducing hours of a business owned or operated by the individual due to coronavirus. Plan administrators can rely on an employee’s certification that they meet one of these coronavirus-related situations to approve the distribution.

- The maximum amount that may be taken as a **plan loan** by a “qualified individual” is **increased from \$50,000 to \$100,000, beginning on the effective date of the CARES Act and ending 180 days later. During this period, participants can borrow up to the lesser of \$100,000 or 100% of their accrued benefits.**
  - In addition to increasing the maximum loan amount, the CARES Act also provides payment relief for outstanding loans. Current plan loans that call for payments to be made on or after the CARES Act enactment date through December 31, 2020, may be delayed for one year without penalty. However, interest continues to accrue during this period and repayment rates can be adjusted to reflect interest and the later due date.

### *Temporary Waiver of Required Minimum Distributions (Section 2203)*

The CARES Act temporarily waives required minimum distributions from retirement accounts for participants who were required to receive such distributions in 2020. Ordinarily, tax rules require that participants in 401(k) and profit-sharing plans, 403(a) and (b) plans, 457 plans, and IRAs begin taking minimum distributions from their plan accounts no later than April 1 of the year in which participants reach age 70-1/2. For participants who have already begun taking required minimum distributions or who reached age 70-1/2 in 2019 and were required to begin in 2020, their distributions are waived for 2020. It appears that plans would be permitted, but not required, to delay distributions.

### *Rules Applicable to Defined Benefit Pension Plans (Section 3608)*

The CARES Act gives sponsors of single-employer defined benefit pension plans additional time to make minimum funding contributions that were due in 2020. Ordinarily, payment of any required minimum contributions due to a plan must be made by the plan sponsor no later than 8-1/2 months after the end of the plan year, and any funding shortfalls from prior years must be paid quarterly. Section 3608 of the CARES Act extends the deadline to pay minimum funding contributions that were due in 2020 until January 1, 2021, although plans sponsors will owe interest on the delayed contributions.

The CARES Act also allows plan sponsors to use their 2019 adjusted funding target attainment percentage (AFTAP) to determine whether their plans are subject to benefit reductions under Section 436 of the Internal Revenue Code (Code) for any plan years that take place during the calendar year 2020.

**Plan administrators may begin operating plans to reflect the above changes immediately. Plan documents and/or separate loan policies will eventually need to be amended or revised to reflect any changes that are implemented. The CARES Act provides that retroactive amendments for these purposes generally must be made by the last day of the first plan year beginning on or after January 1, 2022 (December 31, 2022 for calendar year plans) for non-governmental plans and by the last day of the first plan year beginning on or after January 1, 2024 for governmental plans.**

# Rules Applicable to Group Health Plans and Health Insurance Issuers

## *Coverage for Coronavirus Preventive Services (Section 3203)*

The CARES Act requires that group health plans and health insurance issuers cover “qualifying coronavirus preventive services” without any cost-sharing. A “qualifying coronavirus preventive service” is an item, service, or immunization that is intended to prevent or mitigate coronavirus and that is either (1) an evidence-based item or service that is rated “A” or “B” by the United States Preventive Services Task Force, or (2) an immunization that is recommended by the CDC’s Advisory Committee on Immunization Practices. Health plans and policies must cover the qualifying coronavirus preventive service without cost-sharing within 15 days of the service becoming qualified.

## *Coverage for Coronavirus Testing (Section 3201 and 3202)*

The Families First Coronavirus Response Act (FFCRA) requires group health plans and health insurance to provide coverage for COVID-19 diagnostic testing, at no cost to covered individuals, and without prior authorization or other medical management requirements beginning March 18, 2020. COVID-19 diagnostic testing includes “in vitro diagnostic products,” items and services furnished to the individual during healthcare provider office visits (which include in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of COVID-19 diagnostic testing products, but only to the extent such items or services relating to the COVID-19 diagnostic testing or the evaluations to determine if a COVID-19 test is needed. **This means that there must be no cost to covered individuals, whether in the form of copayments, coinsurance or deductible, for the COVID-19 diagnostic testing and related services. All such costs must be covered by the plan.**

The CARES Act clarifies the COVID-19 diagnostic testing requirement of the FFCRA by expanding in vitro diagnostic products required to be covered to include certain tests that have not yet been approved under the Federal Food, Drug, and Cosmetic Act, unless and until approval is either denied or the developer fails to seek approval within a reasonable time.

The CARES Act also sets reimbursement rates that providers may receive for required COVID-19 diagnostic testing. If the rate applicable to a certain test was already negotiated by the health plan or issuer and the provider before the COVID-19 public health emergency, then the plan or issuer pays that rate. If there is no negotiated rate, then the plan or issuer pays the lesser of: (1) the price of the service posted by the provider on a public website; or (2) the rate negotiated by the parties. **While the COVID-19 public health emergency is in effect, healthcare providers are required to post the cost of their coronavirus testing on a public website and may be fined up to \$300 per day by the Department of Health and Human Services (HHS) for failing to do so.**

### *Expansion of Telehealth under HDHPs (Section 3701)*

The CARES Act amends the rules applicable to High-deductible health plans (HDHP) for plan years beginning on or before December 31, 2021, to allow HDHPs to cover telehealth and other remote care services before the applicable deductible being met, further promoting social distancing directives. This allows HDHP participants to receive first dollar coverage for telehealth and other remote care services without disqualifying them from being eligible to contribute to a health savings account (HSA). This provision expands upon the relief provided by the IRS earlier this year, which would only have covered telehealth services related to COVID-19 testing or treatment.

### *Over-the-Counter Products*

The CARES Act amends the rules applicable to HSAs, Archer MSAs and flexible spending accounts to allow funds from these accounts to be used to reimburse the cost of menstrual products, which were previously outside of the scope of expenses that may be reimbursed. This change is effective beginning January 1, 2020.

## **Miscellaneous Rules**

### *DOL Authority to Postpone Deadlines (Section 3607)*

Current law permits the U.S. Department of Labor to extend certain filing deadlines under ERISA by up to one year in the event of a federal disaster or a terroristic or military action. The CARES Act expands the circumstances under which filing deadline may be extended to include a public health emergency declared by the Secretary of HHS pursuant to the Public Health Service Act. This applies to both retirement and health plans. **The DOL could potentially extend the time for filing documents such as the annual return on Form 5500.**

### *Exclusion for Employer-Paid Student Loans (Section 2206)*

**Up to \$5,250 of student loan repayment assistance paid by an employer** after the date of enactment of the CARES Act through December 31, 2020, to or on behalf of an employee **may be excluded from the employee's income under Code Section 127.** The repayment assistance may be paid to a lender or directly to the employee, must be for the principal or interest on a qualified education loan incurred by the employee for his or her own education, and is combined with other employer provided-education assistance for purposes of applying the \$5,250 annual exclusion limit for such payments under Code Section 127.

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*Please reach out to us with any accounting, tax, and/or business questions you might have. We are here to support and assist you and your organization with the countless challenges that you are facing in responding to the coronavirus outbreak.*