

COVID-19 NEWS OF INTEREST

# CARES Act Relaxes Rules for Use of Retirement Funds

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On March 27, 2020, President Trump signed into law the \$2 trillion Coronavirus Aid, Relief, and Economic Security Act (the “*CARES Act*”), which, among other provisions intended to provide economic assistance in response to the COVID-19 pandemic, provides certain relief to qualified retirement plan participants and owners of individual retirement accounts (“*IRAs*”).

### ***Tax-Favored Withdrawals from Retirement Plans and IRAs***

The CARES Act allows for participants in eligible retirement plans (such as 401(k), profit-sharing and tax-sheltered annuity plans) and owners of IRAs to take distributions of up to \$100,000 (in the aggregate from all plans and IRAs) without triggering the 10% early distribution penalty or mandatory 20% tax withholding, so long as the distributions occur in 2020 and qualify as “coronavirus-related distributions.” A coronavirus-related distribution is a distribution made to an individual who:

- is diagnosed with COVID-19 (or whose spouse or dependent is diagnosed with COVID-19); or
- experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to COVID-19, being unable to work due to lack of child care due to COVID-19, the closing or reduction of hours of a business owned or operated by the individual due to COVID-19 or other factors as determined by the Internal Revenue Service (a “*qualified individual*”).

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The administrator of an eligible retirement plan may rely on the individual's certification with respect to whether the individual is a qualified individual. Although an eligible retirement plan is not required to provide for coronavirus-related distributions, it is expected that most defined contribution plans will make such distributions available to plan participants, and certainly with respect to employee elective contributions.

Any amount required to be included in income as a result of a coronavirus-related distribution must be included in income ratably over three years, beginning with the year of distribution, unless the qualified individual elects to include the full amount in the year of distribution. In addition, a qualified individual may recontribute a coronavirus-related distribution to an eligible retirement plan or IRA within three years of the distribution, and the distribution will be treated as an eligible rollover distribution so that it will not be subject to the limitations on retirement contributions.

### ***Loans from Qualified Plans***

A loan from an eligible retirement plan (such as a 401(k), profit-sharing or tax-sheltered annuity plan) to a qualified individual described above that is made during the 180-day period commencing on March 27, 2020 will not be treated as a taxable distribution (taking into account all existing loans), up to the lesser of: (i) \$100,000 (increased from \$50,000), or (ii) the greater of the present value of the qualified individual's non-forfeitable plan balance (increased from 50% of such present value) or \$10,000. In addition, for any qualified individual with an outstanding loan from an eligible retirement plan, any payments due during the period commencing on March 27, 2020 and ending on December 31, 2020 will be delayed one year, and subsequent repayments, including interest, will be appropriately adjusted to reflect the delay.

### ***Temporary Waiver of Required Minimum Distribution Rules***

Qualified defined contribution plans (such as 401(k), profit-sharing and tax-sheltered annuity plans) must generally require that a participant's account commence retirement distributions no later than April 1st of the year following the later of the year in which the participant retires or turns 70-½ years of age. The minimum distribution amounts for 2020 are generally based on the December 31, 2019 account balance. In order to avoid having to make minimum distributions from accounts that have incurred dramatic losses using the 2019 year-end value, the CARES Act provides that the minimum distribution requirement will not apply to distributions that would be required beginning in calendar year 2020 or that were required prior to calendar year 2020, but that were not made prior to January 1, 2020. Any subsequent required minimum distributions will be delayed one year. As with the delay in required minimum distributions that was permitted in 2009 in response to the 2008 financial crisis, distributions made in 2020 that would have been required minimum distributions but for this provision of the CARES Act will not be treated as eligible rollover distributions.

### ***Delay in Payment of Minimum Funding Contributions***

The CARES Act provides for a delay in making minimum funding contributions (including quarterly contributions) relating to any single employer defined benefit plan to the extent that such contributions would otherwise be due during 2020. The

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new due date for these contributions is January 1, 2021, and such delayed contributions must be increased by interest accruing for the period from the original due date for the contribution to the payment date, at the effective rate of interest for the plan for the plan year that includes the payment date.

### ***Avoidance of Benefit Restriction Status***

Single employer defined benefit plans are subject to various benefit restrictions when the plan funding level falls below 80%. In order to avoid these restrictions as a result of market declines during the COVID-19 crisis, the CARES Act provides that a plan sponsor may treat the plan's adjusted funding target attainment percentage ("*AFTAP*") for the last plan year ending before January 1, 2020 as the AFTAP for the 2020 plan year.

### ***Plan Amendments***

The retirement plan changes enacted by the CARES Act may, to the extent adopted by the plan sponsor, require amendments to the governing plan documents. To the extent that a plan document must be amended to incorporate a specific change, the change must be reflected in the plan document by the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Internal Revenue Service may prescribe. The delayed amendment date is conditioned on the plan's having been maintained and administered as if the change were included in the plan document as of the applicable effective date. Any such required change may be made without regard to the anti-cutback rules of the Employee Retirement Income Security Act and the Internal Revenue Code.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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