

ANNUAL  
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& SHOWCASE  
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VIRTUAL  
**2020**

**NATIONAL COUNCIL OF  
STATE HOUSING AGENCIES  
Employee Healthcare  
Under COVID-19**

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# CARES Act Changes Employee Benefit Plans

- Plan Distributions and Plan Loans (Sections 2202)
- Temporary Waiver of Required Minimum Distributions (Section 2203)
- Coverage for Coronavirus Preventive Services (Section 3203)
- Coverage for Coronavirus Testing (Section 3201 and 3202)
- Expansion of Telehealth under HDHPs (Section 3701)
- Over-the-Counter Products (Section 3702)
- DOL Authority to Postpone Deadlines (Section 3607)
- Limitation on Employee Compensation for Business Receiving Emergency Relief (Section 4404)
- Exclusion for Employer-Paid Student Loans (Section 2206)

# Plan Distributions and Plan Loans

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. These changes are permissive.

A “qualified individual” is a person who meets the following criteria:

- They are diagnosed with COVID-19;
- They have a spouse or a dependent diagnosed with COVID-19;
- They experience adverse financial consequences as a result of the individual, the individual’s spouse, or a member of the individual’s household

Plan administrators can rely on an employee’s certification that they meet one of these coronavirus-related situations to approve the distribution unless the plan administrator has “actual knowledge” to the contrary. IRS Notice 2020-50

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.

# Temporary Waiver of RMDs

- Generally, participants in 401(k) and profit-sharing plans, 403(a) and (b) plans, 457 plans, and IRAs must 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.
- Plans may begin operating in accordance with this change, provided they are amended no later than the last day of the plan year beginning on or after January 1, 2022 (i.e., for calendar year plans, by December 31, 2022)

# Rules Applicable to Pension Plans

- 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
- 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 for any plan years that take place during the calendar year 2020

# Coverage for Coronavirus Preventive Services

- 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:
  - An evidence-based item or service that is rated “A” or “B” by the United States Preventive Services Task Force
  - 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

- The FFCRA requires group health plans and health insurance to provide coverage for COVID-19 diagnostic testing, at no
- 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
- Thus, there can be no cost to covered individuals, whether in the form of copayments, coinsurance or deductible, for the COVID-19 diagnostic testing and related services

# Expansion of Telehealth under HDHPs

- The CARES Act amends the rules applicable to high deductible health plans (HDHPs) 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
- HDHP participants are permitted 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 (via [IRS Notice 2020-15](#)), which would only have covered telehealth services related to COVID-19 testing or treatment.



# Over-the-Counter Products

- Funds held in HSAs, Archer MSAs, health reimbursement arrangements (HRAs) and health flexible spending accounts (health FSAs) may be used to reimburse the cost of over-the-counter drugs and medicine and menstrual products
- Previously, a prescription was required for over-the-counter drugs and medicine to be eligible, and menstrual products were outside of the scope of expenses that may be reimbursed
- This change is effective beginning January 1, 2020

# DOL Authority to Postpone Deadlines

- 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

# Exclusion for Employer-Paid Student Loans

- The CARES Act amends Section 127(c) of the Code to exclude from an employee's income any payments made by his or her employer before January 1, 2021, toward principal or interest on any qualified education loan incurred by the employee, whether paid to the employee or directly to the lender
- This change does not increase the total amount of educational assistance that an employee may exclude from income under Section 127(c) or the other requirements that apply
- The total exclusion is still capped at \$5,250 per calendar year

# Limitation on Officer Compensation

- For any employee or officer who received total compensation of over \$425,000 in 2019, PPP loan-recipient companies are prohibited from doing the following:
  - Paying such employee or officer total compensation in any 12-month period that exceeds the total compensation received by such employee or officer in 2019; or
  - Paying severance pay or other termination benefits that exceed twice the employee or officer's total 2019 compensation
- For any employee or officer who received total compensation of over \$3,000,000 in 2019, loan-recipient companies are prohibited from paying such employee or officer total compensation in any 12-month period that exceeds \$3,000,000 plus 50% of all compensation over \$3,000,000 the employee or officer received in 2019

# Cancellation of NQDC Deferral Elections

- Notice 2020-50 provides that nonqualified deferred compensation plans are permitted to treat coronavirus-related distributions as hardship distributions for purposes of determining whether employees or other service providers can cancel their deferral elections under Section 409A.
- NOTE: The deferral election must be canceled, not merely postponed, to comply with Section 409A

# 401(k) Plans

- Safe Harbor vs. Non-safe harbor plan
- Sponsors of non-safe-harbor plans generally have the ability to reduce or even eliminate *employer* contributions prospectively
- Safe-harbor plans may reduce or suspend employer contributions if:
  - The annual safe-harbor notice stated that employer contributions could be reduced or suspended during the plan year; or
  - If the plan sponsor is operating at an economic loss for the plan year.

# 401(k) Plans (cont'd)

- Suspension of safe-harbor contributions requires at least a 30 day notice to participants
- Also, the plan will need to pass nondiscrimination testing for the plan year
- Plans that counts employees' actual hours of service to determine vesting, will have to take furloughs into account, but plans that use the elapsed time method will not be affected
- NOTE: Under the elapsed time method, an employee's vesting service is counted from his or her first day of employment and continues to run until the employee is terminated

# Laid Off and Terminated Employees

Generally, the same rules would apply as in a normal termination of employment

Plan Coverage	COBRA	Other benefits
Some employers keep coverage in place, which require coordination with the carrier (in the case of a fully insured plan) of the stop loss vendor (in the case of a self-funded plan)	The termination of employment would be considered a COBRA qualifying event with respect to employer-provided group health plan (e.g., medical, dental and vision) coverages, provided it results in a loss of coverage.	For other welfare plan coverages (e.g., life insurance, long- or short-term disability), the terms of the applicable policies generally will govern (for example, some may require the employee to be “actively at work” to continue to receive coverage).



# Cafeteria Plan Elections

## Notice 2020-29

Under Notice 2020-29, employers are provided with increased flexibility regarding mid-year election changes made under a Section 125 cafeteria plan for calendar year 2020 as it relates to employer-sponsored health coverage, health flexible spending arrangements (FSAs), and dependent care assistance programs (DCAPs)

Unlike most IRS relief granted for other programs, the relief granted under this notice is not limited to those directly affected by the pandemic

## IRS Notice 2020-33

Notice 2020-33 increases the amount that may be carried over at the end of a plan year in a health FSA. Under the notice, the carry-over amount (currently \$500) is increased by 20 percent to reflect the indexed amounts that can be contributed to health FSAs each year. For 2020, the amount that may be carried over into 2021 is \$550 (20 percent of the \$2,750 contribution limit

# Bonus: Some Emerging Issues/Responses

Association Health Plans	Narrow Networks and Surprise Billing	The Prospects for the ACA
<p>Association health plans to multiple employers (including the self-employed)</p> <p>Where the association qualifies as a “large group” health plan, the association can negotiate better rates from healthcare providers and insurers</p> <p>These plans have encountered stiff resistance from state regulators</p>	<p>“Narrow networks” promise to drive down costs, but early adopters have been burned:</p> <p>Example: As more individuals enroll in cheaper plans with access to fewer doctors, they are less likely to be treated by in-network doctors and more likely to receive a “surprise bill” after an emergency</p>	<p>The U.S. Supreme Court will take up <i>California v. Texas</i> (<i>Texas v. U.S.</i> in the lower courts) on Tuesday, November 10, 2020</p> <p>This ongoing litigation challenges the ACA’s minimum essential coverage provision (known as the individual mandate) and raises questions about the entire law’s survival</p>

# Questions and Answers

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