

Publication

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Senate Provided Expanded Benefits and Relief for Retirement and Health Plans

The stimulus bill ("Bill") passed by the Senate on March 25, 2020 contains important provisions that impact employee benefit plans. While the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") still must be passed by the House of Representatives and signed by the President, the following benefit plan provisions are expected to be retained in some fashion. Of course, we will provide an update if there are any changes contained in the final CARES Act.

RETIREMENT PLAN PROVISIONS

Special Distribution Provisions

The Bill provides for special distribution provisions. In particular, the Bill allows plan sponsors to give participants additional options to access funds on a tax-favored basis.

The Bill creates a special "coronavirus-related distribution" which is not subject to the 10% tax on most early distributions (generally, those taken before 59½). A special distribution is defined as one taken on or after January 1, 2020 and before December 31, 2020 by an individual (a "Qualifying Individual") who:

- is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 by a test approved by the

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Centers for Disease Control and Prevention (collectively, COVID-19); or

- whose spouse or tax dependent (under Internal Revenue Code Section 152) is so diagnosed; or
- who 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, closing or reducing hours of a business owned or operated by the individual due to COVID-19 or other factors as determined by the Secretary of the Treasury or the Secretary's delegate.

The coronavirus-related distribution to an individual may be up to a maximum of \$100,000 from the employer's retirement plans (based on controlled group rules.) Interestingly, the distribution amount may be repaid by the individual during the three-year period beginning the day following the date such distribution was received, to an eligible retirement plan in which the individual is a beneficiary and to which a rollover could be made.

The Bill also allows for a special loan provision that may be available under an employer plan. The special provision would run for the 180-day period after enactment of the CARES Act and would allow for a loan up to the lesser of \$100,000 or the full amount of the individual's non-forfeitable account balance. As well, the Bill provides for up to a one year extension of loan repayments on outstanding loans. To be eligible for this special loan, the individual must be a Qualifying Individual.

The Bill allows a retirement plan to permit the hardship withdrawals and loans described above, before making a formal amendment to the retirement plan. The



retirement plan would need to be amended at a later date to reflect any permitted withdrawals or loans.

Required Minimum Distributions

For 2020, the Bill allows defined contribution plans, 403(b) plans, governmental 457(b) plans and individual retirement plans to waive required minimum distributions that would otherwise be required to be made in 2020. This avoids distributions being made to participants based upon December 31 balances (for calendar year plans) when the account balance may have been significantly reduced by market losses.

Funding Relief for Defined Benefit Plans

The Bill allows plan sponsors to delay any contributions that are required to be made in 2020 until January 1, 2021. The plan sponsor will be required to pay interest on any delayed contributions.

In addition, the Bill allows a plan sponsor to treat a plan's adjusted funding target attainment percentage ("AFTAP") for plan years ending before January 1, 2020 as the AFTAP for plan years which include calendar year 2020. This will allow participants to avoid benefit restrictions that might otherwise apply based on the AFTAP for the 2020 plan year. For example, plan sponsors will be allowed to continue to make lump-sum distributions to plan participants if such distributions were permitted in the prior plan year.

HEALTH PLAN PROVISIONS

Telehealth Coverage

To be eligible to make contributions to a health savings account ("HSA"), an individual, among other requirements, generally must not have other "disqualifying" health coverage that pays for health services before the deductible of a high deductible

health plan is met. Coverage for preventive care or excepted benefits is not considered disqualifying. The Families First Coronavirus Response Act enacted on March 18, 2020 allows for COVID-19 testing, including telehealth visits related to such testing, to be covered, with no cost sharing, without jeopardizing an individual's ability to contribute to an HSA. This posed practical issues for telehealth visits since not all telemedicine providers were able to distinguish between COVID-19 and other telehealth questions. Moreover, telehealth visits have become a preferred method for obtaining medical advice to avoid the risk of COVID-19 exposure.

The Bill has a fix for these concerns. It provides that for plan years beginning on or before December 31, 2021, a plan will still be considered a high deductible health plan even if it provides telehealth coverage before the high deductible is met, regardless of the reason for the telehealth visit.

Expansion of Coronavirus Coverage

The Bill extends the types of coronavirus diagnostic tests that must be covered by group health plan and health insurers, with no deductibles, co-payments or co-insurance. In an effort to limit price gouging, the Bill requires that providers of COVID-19 diagnostic tests publicize the cash price for such test on their public internet website.

Group health plans and health insurance issuers will also be required to cover coronavirus preventive services (with no cost sharing) that are recommended by the United States Preventive Services Task Force (with an "A" or "B" rating) or an immunization that is recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. To ensure that such services are made available quickly, the Bill requires that group health plans and health insurance issuers make such services or immunization available no



later than 15 business days after the recommendation is made.

Feminine Products are Medical Care

The Bill contains a new category of over-the-counter medical products that qualify as medical expenses eligible for reimbursement by health savings accounts, Archer Medical Savings Accounts and health flexible spending accounts. Effective for amounts paid after December 31, 2019, menstrual care products such as tampons, pads, liners, cups and similar products are to be treated as amounts paid for medical care eligible for reimbursement.

OTHER BENEFIT PROVISIONS

DOL Authority to Postpone Certain Deadlines

The Department of Labor ("DOL") can provide plan sponsors, administrators, participants and other persons who are impacted by certain Presidentially declared disasters or a terroristic or military action an extension of up to one year to take a required or permitted action under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Bill extends this authority in the event of a public health emergency declared by the Secretary of Health and Human Services. This provision will allow the DOL to, for example, extend the deadline for filing Forms 5500s.

Tax-Free Payments by Employers of Student Loans

Under current law, employers are allowed to provide tax-free educational assistance to employees up to \$5,250 each calendar year. To qualify for this exclusion, the employer must, among other requirements, establish a separate written plan for employees and the eligibility provisions cannot discriminate in favor of highly-compensated employees.



The Bill extends the tax-free treatment of eligible educational expenses to include payments by an employer, whether paid to the employee or to a lender, of principal or interest on student loans for post-secondary education. To qualify for this exclusion, the student loan must meet the same requirements that apply in determining whether the student is eligible to take a deduction for interest on the loan.

If you have any questions about the stimulus bill or other Employee Benefits issues, please do not hesitate to contact Jeff Bakker, Patty Cain or Linda Hoseman or your Neal Gerber Eisenberg attorney.

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