

Alert

401(k) and 403(b) Plans Under the CARES Act: Implementing Special Employee Relief

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Among the many aspects of the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) passed by Congress and signed into law, are those that cover tax-qualified retirement plans, including 401(k) plans and 403(b) plans. As described in greater detail in our prior [Alert](#), with respect to plan participants who are impacted by the pandemic, the CARES Act increases the amount available to be taken as a loan and permits special repayable in-service distributions (“coronavirus-related distributions”) of up to \$100,000, without early-withdrawal penalty taxes.

Should New Provisions Be Implemented?

- Like all in-service distributions, coronavirus-related distributions and higher loan amounts generally are unfavorable for long-term retirement saving.
- A coronavirus-related distribution is only available to a plan participant who has been affected by COVID-19 and might be eligible to take a “hardship withdrawal” if offered by the plan.
- Unlike a coronavirus-related distribution, a participant’s hardship withdrawal may be subject to a 10% penalty tax and will not be repayable.

Implementation of New Provisions

- The new CARE Act provisions can be implemented by plans immediately.
- For a plan to implement the new distribution and loan provisions, the plan sponsor will need to adopt appropriate plan amendments, however, the amendments to a plan can be adopted at a later time.
- Certain plan administrators, such as TIAA and Fidelity, that offer “pre-approved plans” (i.e., a form of plan document that has been determined by the Internal Revenue Service to meet tax requirements) are taking unilateral action to implement the CARES Act provisions automatically for all clients who have adopted their pre-approved plans.
 - A plan sponsor that does not want its plan to adopt one or more of the provisions must affirmatively opt out of the automatic changes by taking action, in some cases, within a very short time period.

We are available to assist you with analyzing the impact of the new changes for your plan.

Authored by [Mark E. Brossman](#), [David M. Cohen](#), [Ian. L. Levin](#), [Ronald E. Richman](#) and [Susan E. Bernstein](#).

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

Schulte Roth & Zabel
New York | Washington DC | London
www.srz.com

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