

MEMORANDUM

To: Board of Trustees

From: Klausner, Kaufman, Jensen and Levinson

Subject: Federal CARES Act - Special Rules for Use of Retirement Funds

Date: April, 2, 2020

Important Note: Guidance from the IRS concerning the application of the CARES Act (H.R. 748) has been changing daily. This memo represents our considered view as of the date issued to the proper application after reviewing the Act and available resources. Many sections call for Treasury Regulations which have not been issued. If you have any questions, email Bonni Jensen (bonni@robertdklausner.com) or Bob Klausner (bob@robertdklausner.com). This memo will be posted on our website, <https://klausnerkaufman.com> and will be updated as additional guidance becomes known.

§2202

- The 10% early distribution penalty under IRC Section 72(t) is waived for the 2020 calendar year for any corona virus related distributions which are less than \$100,000.
- The amount distributed can be repaid within 3 years if the member makes contributions in an equal amount to the plan from which the distribution was taken or to another qualified plan in which the person who received the distribution is a beneficiary. In that case, the amount repaid will be treated as a trustee-to-trustee transfer. Plans will need guidance from the IRS as how to track the contributions and how to report the distribution on the 1099-R or other IRS approved form as may be developed.
- A coronavirus related distribution is any distribution made from an eligible retirement plan from January 1, 2020 and before December 31, 2020 to an individual who is

Special Rules for Use of Retirement Funds
Page 2 of 3

diagnosed (including spouse or dependent) with SARS-CoV-2 or COVID 19 by a test approved by the CDC.

In addition, a coronavirus distribution can mean any distribution to a participant or spouse who has suffered adverse financial consequences as a result of:

- being quarantined;
- being furloughed;
- having work hours reduced;
- being unable to work due to lack of childcare; or
- closing or reduced hours of a business owned or operated by individual due to such virus or disease.

Employee Certification: Administrator of a plan may rely on the certification of an employee that the distribution was a Coronavirus related distribution.

An eligible retirement plan includes a governmental defined benefit or defined contribution plan as defined in IRC 408(c)(8)(B):

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

- The taxation of any Coronavirus related distribution can be spread over three taxable years, starting in the current year, unless the tax payer opts out.
 - Coronavirus related distributions are not rollover eligible; and
 - Are treated as meeting the distribution requirements of 457 and IRA
- Loans from Qualified Employer Plans (from plans which permit loans):
 - There is an increase in the amount of permissible loans during the 180 day period beginning with the enactment of CARES (Enacted March 27, 2020 so 180 days is September 23, 2020). The maximum loan is \$100,000, instead of \$50,000.00. Additionally, the rule regarding the loan not being more than ½ of the non-forfeitable accrued benefit is changed to not more than the present value of the nonforfeitable accrued benefit. All of the other rules still apply (cannot be more than \$100,000 out in the last year etc.).
 - Repayment can be delayed for qualified individuals (individuals eligible for a Coronavirus distribution) with an outstanding loan.
 - If the paid in full due date is between March 27, 2020 and December

31, 2020, the due date is delayed for one year.

§2203

The Temporary Waiver of Required Minimum Distribution Rules only applies to defined contribution plans.

- For 403(a), 403(b), 457(b) governmental plans, and IRAs only and only for calendar year 2020.
- Eligible Rollover Distributions are amended to change the dates from 2009 to 2020 for purposes of allowing the required minimum distribution being treated as an eligible rollover distribution.

§3608

The delay in payment of minimum required contributions is applicable only to ERISA plans and not governmental plans.