

# CARES Act Provisions Affecting Individuals

## August 2020 Update

On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the Act) was enacted into law.<sup>1</sup> The Act provides sweeping, record-breaking relief to individuals, small businesses, and others affected by the ongoing coronavirus emergency. This alert provides an overview of certain relief provided to individuals by the Act. Your PNC Wealth Management® team is available to discuss this summary with you, along with your tax and legal advisors to consider how the Act may affect you.

### Direct Payments to Taxpayers

The Act provides for direct payments to eligible individuals of up to \$1,200 per individual (up to \$2,400 for taxpayers filing a joint return) plus \$500 per qualifying child.<sup>2</sup> A qualifying child is (i) a child of the taxpayer who has not attained age 17, (ii) who is a citizen or non-citizen resident of the United States, (iii) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, (iv) who has not provided over one-half of such individual's own support for the

calendar year in which the taxable year of the taxpayer begins, and (v) who has not filed a joint return (other than only for a claim of refund) with the child's spouse.<sup>3</sup>

The current payment amount is phased out (but not below zero) by 5% of the amount of a taxpayer's adjusted gross income (AGI) as exceeds certain amounts: (1) \$150,000 in the case of taxpayers who file a joint return, (2) \$112,500 in the case of a taxpayer who files as head of household, and (3) \$75,000 in the case of any other taxpayer.<sup>4</sup> Table 1 illustrates the phase-out.

Not eligible to receive a payment are: (1) any nonresident alien individual, (2) any individual with respect to whom a deduction as a dependent is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and (3) an estate or trust.<sup>5</sup>

The current direct payment is, in reality, a refundable tax credit paid in advance for an individual's 2020 tax year, although the Internal Revenue Service (IRS) will determine eligibility based on taxpayers' 2019 or 2018 income tax returns, or other documents for taxpayers not filing those returns. If the payment exceeds the tax for 2020, it shall be treated as an overpayment of tax, except that no interest shall be paid thereon.<sup>6</sup>

### Retirement Plans

#### Waiver of Required Minimum Distributions for 2020

Generally, individuals who attained age 70½ in calendar year 2019 and prior years<sup>7</sup> are required to withdraw the required minimum distribution (RMD) from their retirement plans and IRAs each year.<sup>8</sup>

Table 1

#### Example of Phase-out of Certain Payment Amounts

Joint Filers (no Children)		Individual Filers (no Children)	
AGI	Payment	AGI	Payment
\$150,000	\$2,400	\$75,000	\$1,200
\$160,000	\$1,900	\$85,000	\$700
\$170,000	\$1,400	\$95,000	\$200
\$180,000	\$900	\$99,000	\$0
\$190,000	\$400		
\$198,000	\$0		

Source: Act § 2201, adding IRC § 6428(c).

<sup>1</sup> P.L. 116-136.

<sup>2</sup> Act § 2201 adding IRC § 6428(a).

<sup>3</sup> Act § 2201, adding IRC § 6428(a), applying IRC §§ 24(c) and 152(c).

<sup>4</sup> Act § 2201, adding IRC § 6428(c).

<sup>5</sup> Act § 2201, adding IRC § 6428(d).

<sup>6</sup> Act § 2201, adding IRC §§ 6428(a), (b), and (f).

<sup>7</sup> Although the SECURE Act, enacted as part of P.L. 116-94, increased the age at which RMDs must begin to age 72 beginning in 2020, mathematically a person who attains age 72 in calendar year 2020 would have already attained age 70½ prior to calendar year 2019, with the result that such person would already be required to take an RMD.

<sup>8</sup> IRC § 401(a)(9).

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The Act provides that individuals are not required to take an RMD that otherwise would be required to be made in calendar year 2020 from qualified retirement plans, defined contribution plans under Internal Revenue Code (IRC) Section 403(a) or 403(b), and eligible deferred compensation plans under IRC Section 457(b) (excluding those maintained by tax-exempt entities). Individuals who have taken some or all of an RMD before the Act became law may ask whether such distribution may be returned to the plan or IRA. Distributions that would have been RMDs in 2020 in the absence of the CARES Act (2020 RMDs) may be rolled over to an IRA or qualified plan (if all other requirements are met; for example, a rollover to a qualified plan may be made only if the qualified plan permits rollovers into the plan) no later than August 31, 2020. Also, note that the rule allowing rollovers only once per 12-month period with respect to IRA rollovers has been waived for 2020 RMDs. Although not originally allowed, the IRS has extended the availability to rollover 2020 RMDs to beneficiaries of inherited IRAs who are not a surviving spouse.<sup>9</sup> Unwanted 2020 RMDs not repaid by the extended deadline of August 31, 2020, are subject to the usual rollover requirements, i.e., the 60-day window for indirect rollovers, the once per 12-month period rule for IRAs, and the prohibition on rollovers by non-spouse beneficiaries of inherited IRAs.

Generally, the required beginning date (RBD) for taking an RMD is April 1 of the calendar year following the later of (i) the calendar year in which the employee attains age 72 [age 70½ for taxpayers who attained age 70½ in 2019 or prior years], or (ii) the calendar

year in which the employee retires. The RBD for a person who attained age 70½ in 2019 is April 1, 2020.<sup>10</sup> If a person who attained age 70½ in 2019 did not take the first RMD in that calendar year, such person is not required to take that RMD by April 1, 2020.<sup>11</sup>

### Penalty Free Early Withdrawals Resulting From the COVID-19 Emergency

An individual may be able to withdraw up to \$100,000 in the aggregate from eligible retirement plans as a coronavirus-related distribution.<sup>12</sup> A coronavirus-related distribution is not subject to the 10% early withdrawal penalty.<sup>13</sup> The distribution also is not subject to the 20% mandatory withholding on eligible rollover distributions.<sup>14</sup> Further, unless the taxpayer elects out, the coronavirus-related distribution (for any year) will be included in the taxpayer's income ratably over three years beginning with the year the coronavirus-related distribution is made, thus spreading out the tax liability for the amount distributed over three years.<sup>15</sup> Additionally, coronavirus-related distributions are not subject to the trustee-to-trustee transfer and withholding requirements.<sup>16</sup>

During the three years after the taxpayer receives a coronavirus-related distribution, the distribution can be repaid to a qualified plan or IRA. For plans that are not IRAs, the aggregate amount repaid may not exceed the aggregate amount of coronavirus-related distribution made from a plan, and must be made by individuals that are eligible to make contributions to a plan. In that case, the individual coronavirus-related distribution is treated as an eligible rollover distribution and then as a direct trustee to trustee

<sup>9</sup> Notice 2020-51, <https://www.irs.gov/pub/irs-drop/n-20-51.pdf>.

<sup>10</sup> IRC § 401(a)(9).

<sup>11</sup> Act § 2203(a), adding IRC § 401(a)(9)(I)(ii).

<sup>12</sup> Act § 2202(a)(2). The qualified individual receiving the distribution may designate it as a coronavirus-related distribution even though the plan from which the distribution was made did not. Employer-provided plans need not adopt changes that would treat distributions from the plan as coronavirus-related distributions. However, if an employer-provided plan adopts rules treating distributions as coronavirus-related distributions, the plan must treat similar distributions consistently. It is important to remember that even if an employer plan does not adopt rules treating certain distributions as coronavirus-related distributions, the plan participant, if a qualified individual, may treat a distribution that meets the requirements of a coronavirus-related distribution as such on the participant's personal federal income tax return. The full \$100,000 coronavirus-related distribution may be taken without regard to the qualified individual's need for funds, and the amount of the distribution need not be commensurate with the individual's need. Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

<sup>13</sup> Act §§ 2202(a)(1).

<sup>14</sup> Act § 2202(a)(6).

<sup>15</sup> Act § 2202(a)(5).

<sup>16</sup> Act § 2202(a)(6).

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A “coronavirus-related distribution” means any distribution from an eligible retirement plan up to the \$100,000 annual limit made:

- (i) on or after January 1, 2020, and before December 31, 2020;
- (ii) to an individual
  - a. who is diagnosed with the virus SARS–CoV–2 or with coronavirus disease 2019 (COVID–19) by a test approved by the Centers for Disease Control and Prevention;
  - b. whose spouse or dependent is diagnosed with such virus or disease by such a test;
  - c. who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the secretary’s delegate);<sup>17</sup> or
  - d. who experiences adverse financial consequences as a result of the individual having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded, or start date for a job delayed due to COVID-19; the individual’s spouse or a member of the individual’s household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or closing or reducing hours of a business owned or operated by the individual’s spouse or a member of the individual’s household due to COVID-19. For these purposes, a member of the individual’s household is someone who shares the individual’s principal residence.<sup>18</sup>

An employee may self-certify to the administrator of the retirement plan that the employee meets the requirements for a distribution to qualify as coronavirus-related distribution, and the plan administrator may rely on such certification.<sup>19</sup>

transfer within 60 days of the distribution. For IRAs if the amount is repaid, the original distribution is treated as a distribution that was rolled over within 60 days and as a direct trustee to trustee transfer within 60 days of the distribution.<sup>20</sup>

The IRS has released return filing guidance with respect to the repayment of coronavirus-related distributions, with examples.<sup>21</sup>

## Amount Available as Loans Increased

Certain loans to qualified individuals from qualified employer plans (including government plans) are not treated as distributions from the plan.<sup>22</sup> Prior to the Act the amount of any such loan was capped at the lesser of:

- (i) \$50,000, reduced by the excess (if any) of-
  - (a) the highest outstanding balance of loans

<sup>17</sup> Act § 2202(a)(4).

<sup>18</sup> Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

<sup>19</sup> Act § 2202(a)(4)(B); Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>. Plan administrators are entitled to rely on an individual’s certification that the individual satisfies the conditions to be a qualified individual unless the plan administrator has actual knowledge to the contrary. In Notice 2020-50, the IRS has provided a form of acceptable certification. The Notice warns that the individual may treat a distribution as a coronavirus-related distribution only if the individual actually meets the requirements to be a qualified individual. The requirement that the plan administrator not have “actual knowledge” that the individual does not meet the conditions to be a qualified individual does not impose a requirement on the plan administrator to investigate. Rather, the requirement that the plan administrator not have “actual knowledge” refers to sufficiently accurate information to make a determination that is already in the possession of the plan administrator. Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

<sup>20</sup> Act § 2202(a)(3).

<sup>21</sup> Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

<sup>22</sup> IRC § 72(p) imposes “certain requirements relating to plan loans. Unless these requirements are satisfied, an amount received by a participant as a loan is treated as having been received as a distribution from the plan (deemed distribution). Deemed distributions are includible in income and are subject to the 10% additional tax under [IRC] § 72(t), unless an exception applies.” Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

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For purposes of this provision, a qualified individual is an individual:

- (i) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
- (ii) whose spouse or dependent is diagnosed with such virus or disease by such a test;
- (iii) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate);<sup>23</sup> or
- (iv) who experiences adverse financial consequences as a result of the individual having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded, or start date for a job delayed due to COVID-19; the individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19. For these purposes, a member of the individual's household is someone who shares the individual's principal residence.<sup>24</sup>

from the plan during the 1-year period ending on the day before the date on which such loan was made, over (b) the outstanding balance of loans from the plan on the date on which such loan was made; or

- (ii) the greater of (a) one-half of the present value of the non-forfeitable accrued benefit of the employee under the plan, or (b) \$10,000.<sup>25</sup>

For a period commencing with the date of the passage of the Act and lasting for 180 days thereafter, the limits described above have effectively been doubled. The amount of any such loan is now capped at the lesser of:

- (i) \$100,000, reduced by the excess (if any) of (a) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over (b) the outstanding balance of loans from the plan on the date on which such loan was made, or
- (ii) the greater of (a) the present value of the non-forfeitable accrued benefit of the employee under the plan, or (b) \$10,000.<sup>26</sup>

## Plan Loan Repayment Dates Extended

Except with respect to a loan used for the acquisition of a principal residence, loans from employer plans must be repaid within five years. If a qualified individual's loan due date falls within the period beginning on the date of enactment of the Act and ending on December 31, 2020, then the due date shall be delayed for one year. Of course, loan repayment amounts are adjusted to reflect the later due date.<sup>27</sup> Effectively, the Act permits "a delay in certain plan loan repayments without causing the loans [to be treated as a distribution to the individual]. It does not, however, require a delay in plan loan repayments... Thus, an employer is permitted to choose to allow this delay in loan repayments under its plan with respect to qualified individuals, and, if it does, there will not be a deemed distribution to those individuals... due to the delay."<sup>28</sup>

## Enabling Retirement Plans to Act

The Act allows retirement plan sponsors to adopt provisions for coronavirus-related distributions and

<sup>23</sup> Act § 2202(b)(3).

<sup>24</sup> Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

<sup>25</sup> IRC § 72(p)(2)(A).

<sup>26</sup> Act § 2202(b)(1). Employer plans may be amended to implement this provision.

<sup>27</sup> Act § 2202(b)(2).

<sup>28</sup> Notice 2020-50 § 5B, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf>.

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plan loans based on the Act immediately as long as the plan is amended by the last day of the first plan year beginning on or after January 1, 2022, or such later date as the Secretary of the Treasury (or the secretary's delegate) may prescribe (or in the case of a governmental plan, the date which is two years after such date).<sup>29</sup>

## Charitable Contributions

### Deduction for Individuals Who Do Not Itemize

For tax years beginning in 2020, an individual who does not itemize deductions<sup>30</sup> may deduct "above the line" in determining AGI up to \$300 of qualified charitable contributions made by such individual during the taxable year.<sup>31</sup> A qualified charitable contribution is a charitable contribution:

- (i) which is made in cash;
- (ii) for which a deduction is allowable (without regard percentage limitations for deductibility);
- (iii) which is not made to a supporting organization or a donor-advised fund (DAF); and
- (iv) is not deductible due to certain increased percentage limitations or as a carry-over from a prior year.

### Contribution Limits on Deductibility Suspended for Certain Cash Contributions

An individual taxpayer who makes charitable contributions is permitted to deduct on the taxpayer's federal income tax return the amount of such contributions limited by the application of certain percentages to the taxpayer's contribution base.<sup>32</sup> The contribution base is the individual's AGI

(computed without regard to any net operating loss carryback to the taxable year).<sup>33</sup>

The Act suspends the percentage limitations for qualified contributions made in 2020.<sup>34</sup> Pursuant to the Act, qualified contributions are deductible on a taxpayer's federal income tax return up to the full amount of the taxpayer's contribution base over the amount of all other charitable contributions allowed. Excess qualified contributions may be carried forward and deducted (subject to limitations) over the next five years.<sup>35</sup>

A qualified contribution is a contribution paid in cash during calendar year 2020 to a charitable organization other than a supporting organization or a DAF for which the taxpayer has elected to apply these rules. In the case of qualified contributions flowing through to an individual's return from an entity subject to tax as a partnership or corporation taxed under subchapter S of the IRC, the election is made separately by each individual partner or shareholder.<sup>36</sup>

Contributions of food inventory in the case of any taxpayer other than a C corporation are generally limited to 15% of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year.<sup>37</sup> The Act increases the limitation to 25% of such aggregate net income.<sup>38</sup>

## Student Loans

### Employer Payments of Employee Student Loans Excluded from Gross Income

Certain educational assistance up to \$5,250 paid by an employer on behalf of an employee is excluded from

<sup>29</sup> Act § 2202(c). See also, Notice 2020-50, <https://www.irs.gov/pub/irs-drop/n-20-50.pdf> and Notice 2020-51, <https://www.irs.gov/pub/irs-drop/n-20-51.pdf> (and the Appendix thereto).

<sup>30</sup> That is, taxpayers who elect to claim the standard deduction.

<sup>31</sup> Act § 2204(a), adding IRC § 62(a)(22). According to the Joint Committee on Taxation — The above the line deduction applies to the tax-filing unit. The Committee states:

"The \$300 limit applies to the tax-filing unit. Thus, for example, married taxpayers who file a joint return and do not elect to itemize deductions are allowed to deduct up to a total of \$300 in qualified charitable contributions on the joint return."

Joint Committee on Taxation, *Description of The Tax Provisions of Public Law 116-136, The Coronavirus Aid, Relief, and Economic Security ("Cares") Act, JCX-12R-20, April 23, 2020, fn. 76, p. 22.*

<sup>32</sup> IRC § 170(b).

<sup>33</sup> IRC § 170(b)(1)(H).

<sup>34</sup> Act § 2205(a)(1).

<sup>35</sup> Act § 2205(a)(2)(A)(ii).

<sup>36</sup> Act § 2205(a)(3).

<sup>37</sup> IRC § 170(e)(3)(C)(ii)(I).

<sup>38</sup> Act § 2205(b).

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the employee's gross income. Payment by an employer in calendar year 2020 of principal or interest on any qualified education loan<sup>39</sup> incurred by the employee for education of the employee, whether paid to the employee or to a lender, is educational assistance and, within applicable limits, may be excluded from the employee's gross income.<sup>40</sup> No deduction is allowed to the taxpayer with respect to payment of interest on a student loan payment excluded from gross income pursuant to this provision.<sup>41</sup>

## Student Loan Forbearance

Payments due on student loans made pursuant to the William D. Ford Federal Direct Loan Program and the Robert T. Stafford Federal Student Loan Program (that are held by the Department of Education) are suspended through September 30, 2020. No interest shall accrue on such a loans for the period of the suspension.<sup>42</sup> For purposes of loan forgiveness or rehabilitation programs, during the period of suspension the borrower shall be deemed to have made payment with respect to such loan.<sup>43</sup>

During the period of suspension, the Department of Education shall not report nonpayments to consumer credit reporting agencies and shall treat the loan as if it were paid during such time. Involuntary collection procedures with respect to student loans shall be suspended, including:

- (i) a wage garnishment;
- (ii) a reduction of tax refund by amount of debt;
- (iii) a reduction of any other federal benefit payment by administrative offset; and
- (iv) any other involuntary collection activity by the Secretary of Education.

Commencing on August 1, 2020, the Department of Education shall provide at least six notices by postal mail, telephone, or electronic communication to borrowers indicating when the borrower's normal payment obligations will resume, and that the borrower has the option to enroll in income-driven repayment, including a brief description of such options.<sup>44</sup>

## Credit Reporting and Mortgage Foreclosure Forbearance

### Consumer Obligations

If a lender makes an accommodation to a borrower, then to the extent the borrower makes payments in compliance with such accommodation the lender shall:

- (i) report the credit obligation or account as current; or
- (ii) if the credit obligation or account was delinquent before the accommodation,
  - a. maintain the delinquent status during the period in which the accommodation is in effect, and
  - b. if the consumer brings the credit obligation or account current during 120 days following the enactment of the Act, report the credit obligation or account as current.

An accommodation includes an agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the coronavirus disease 2019 (COVID-19) pandemic during the period beginning on January 31, 2020 and ending on the later of: 120 days after the date of enactment of the Act; or 120 days after the date on which the national

<sup>39</sup> Under prior law, employer educational assistance was limited to expenses such as tuition, fees, and books.

<sup>40</sup> Act § 2206(a), adding IRC § 127(c)(1)(B) and redesigning former IRC § 127(c)(1)(B) as IRC § 127(c)(1)(C).

<sup>41</sup> Act § 2206(b), amending IRC § 221(e).

<sup>42</sup> "[A]ny payment you made during the administrative forbearance period (March 13, 2020, through September 30, 2020) can be refunded. Contact your loan servicer..." <https://studentaid.gov/announcements-events/coronavirus> (last accessed, August 3, 2020).

<sup>43</sup> Act § 3513. According to the US Department of Education, "[i]f you're already in a rehabilitation agreement, all of your suspended payments will count. If you enter a new rehabilitation agreement between March 13, 2020, and Sept. 30, 2020, suspended payments that would have been made from the beginning of your agreement until Sept. 30, 2020, will count. For example, if you enter a new rehabilitation agreement on May 5, 2020, and your payment due date is May 15, suspended payments will count toward your successful rehabilitation for May, June, July, August, and September. You will not get credit for suspended payments for March and April, the months before you entered your new rehabilitation agreement." <https://studentaid.gov/announcements-events/coronavirus> (last accessed, August 3, 2020).

<sup>44</sup> Act § 3513.

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emergency concerning the COVID-19 outbreak declared by the president terminates.

The reporting provisions shall not apply with respect to a credit obligation or the account of a consumer that has been charged-off.

## Mortgage Forbearance

During the covered period, a borrower with a federally backed mortgage loan experiencing a financial hardship due directly or indirectly to the COVID-19 emergency may request forbearance on the federally backed mortgage loan, regardless of delinquency status, by submitting a request to the borrower's servicer and affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency. Federally backed mortgage loans include:

- (i) certain loans insured by the Federal Housing Administration;
- (ii) certain loans insured under the National Housing Act;
- (iii) certain loans guaranteed under the Housing and Community Development Act of 1992;
- (iv) loans guaranteed or insured by the Department of Veterans Affairs;
- (v) loans guaranteed or insured by the Department of Agriculture;
- (vi) loans made by the Department of Agriculture; or
- (vii) loans purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Forbearance on the federally backed mortgage loan, regardless of delinquency status, may be requested by submitting a request to the borrower's servicer and affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency. Upon a request for forbearance, it shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower (which period the borrower may request be shortened). During a period of forbearance, no

fees, penalties, or interest except those scheduled or calculated as if the borrower made all contractual payments on time and in full shall accrue on the borrower's account.

The loan servicer shall extend forbearance without additional fees and based upon the borrower's attestation to a financial hardship caused by the COVID-19 emergency (and no other documentation) provided that the borrower's request for an extension is made during the covered period.<sup>45</sup>

Except with respect to a vacant or abandoned property, a servicer of a federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.

## Expanded Unemployment Compensation

The Act expands unemployment compensation to provide unemployment benefits to persons who are unable to work as a direct result of the COVID-19 emergency. The Act also provides enhanced benefits for all workers eligible for unemployment. The Act also expands unemployment benefits to workers who would not ordinarily be eligible for such benefits: those that are self-employed, seeking part-time employment (if permitted under state law), do not have sufficient work history, or otherwise would not qualify for regular unemployment under state or federal law and become unemployed or cannot find work due to the COVID-19 emergency, including independent contractors.<sup>46</sup>

Covered individuals are those who are not eligible for regular compensation or extended benefits under state or federal law or pandemic emergency unemployment compensation from a state pursuant to an agreement with the Secretary of Labor,<sup>47</sup> including an individual who has exhausted all rights to regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation

<sup>45</sup> Act § 4022.

<sup>46</sup> For a summary of the provisions of the unemployment insurance programs under the Act, see US Department of Labor, Unemployment Insurance Program Letter No. 14-20, April 2, 2020.

<sup>47</sup> Act § 2107.

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are unemployed, partially unemployed, or unable to work (as self-certified by the employee) because:

- the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- a member of the individual's household has been diagnosed with COVID-19;
- the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- the individual has to quit his or her job as a direct result of COVID-19; or
- the individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

It is important to note, again, that covered individuals also include an individual who is self-employed,

is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation and meets the self-certified requirements of inability to work due to COVID-19 described above.

Covered individuals will receive benefits for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 beginning on or after January 27, 2020 and ending on or before December 31, 2020, for as long as the unemployment, partial unemployment or inability to work caused by COVID-19 continues.

The Act also enhanced unemployment compensation to include an additional \$600 per week (even if this took the employee above the employee's pre-unemployment earnings level). All 50 states and the District of Columbia entered into agreements with the US Secretary of Labor to provide this additional federal pandemic unemployment compensation,<sup>48</sup> for which such states would be fully reimbursed.<sup>49</sup>

States that enter into an agreement with the Secretary of Labor may eliminate waiting periods and also provide an additional 13 weeks of eligibility for benefits (39 weeks in total).

Employees of nonprofit organizations and religious organizations are covered by the federal expansion of benefits under the Act. State governments will determine how to administer those provisions.

Tax-exempt entities often are "Reimbursing Employers," permitted by Congress to self-insure claims for unemployment benefits, rather than contributing to state unemployment trust funds. These employers reimburse state unemployment insurance funds for benefits paid to former employees. Under the Act, the federal government will pay 50% of the cost of COVID-19-related claims charged to Reimbursing Employers. The US Department of Labor has provided the following guidance with respect to Reimbursing Employers: "upon payment from the Reimbursing Employer of the

<sup>48</sup> US Department of Labor, Employment and Training Administration, News Release, 20-808-NAT, April 29, 2020. <https://www.dol.gov/newsroom/releases/eta/eta20200429> (last accessed, August 3, 2020).

<sup>49</sup> As of July 31, 2020, the \$600 per week additional benefit has expired.

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amount owed in lieu of contributions, the state may remit to the employer up to one-half of the amount of compensation paid by the state attributable to service with the employer.”<sup>50</sup> Accordingly, self-insured nonprofits must pay their unemployment claims and then seek partial refunds.

The Act provides funding to support states that develop a “short-time compensation” program for employers that reduce hours in lieu of a layoff

(but not for seasonal, temporary, or intermittent employees).

Employees who are able to telework with pay and those who are receiving emergency paid sick leave or FMLA public health emergency leave under the Family First Coronavirus Response Act<sup>51</sup> or are receiving paid leave under an employer plan or state or local law, cannot simultaneously receive unemployment benefits under the Act.

<sup>50</sup> US Department of Labor (DOL) Unemployment Insurance Program Letter No. 18-20 (April 27, 2020). [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_18-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_18-20.pdf) (last accessed August 3, 2020).

<sup>51</sup> P.L. 116-127.

**For more information, please contact your Wealth Management advisor.**

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