



SARASOTA PRIVATE TRUST COMPANY

# Impact of COVID 19 and the CARES Act on your Retirement Plan

Presented by Mauldin & Jenkins, Sarasota  
Private Trust Company and Bass, Berry & Sims,  
PLC.





Dianne Kopczynski, CPA, CIA, is a Partner with Mauldin & Jenkins, LLC and works in our Bradenton office. She has over 25 years of experience in providing auditing, accounting and consulting services to many industries. Her focus is with not-for-profits, financial institutions, charter schools, higher education, construction, private entities and employee benefit plans. Dianne is also a Certified Internal Auditor and has extensive experience in internal auditing, internal controls and company processes and procedures.

Dianne currently serves as a member of the Firm's Assurance Committee and is also actively involved in many trade organizations, as well as being a Board and committee member for various not-for-profit entities. In addition, she is a member of FICPA conference planning committees and is a member of the Leadership Manatee Class of 2010. Dianne is a member of the American Institute of Certified Public Accountants (AICPA), Florida Institute of Certified Public Accountants (FICPA), Institute of Internal Auditors (IIA), the Florida Bankers Association (FBA), the National and Southern Associations of College and University Business Officers Associations (NACUBO and SACUBO), and the AICPA Employee Benefit Plan Quality Center.

Originally from Pittsburgh Pennsylvania, Dianne moved in 2005 to Bradenton Florida and enjoys spending time with her two kids Joshua and Emily, along with her family and friends, working out, outdoor activities and cheering for the Pittsburgh Steelers, Pirates and Penguins!

# Christian Bennett, CPA



Christian Bennett, CPA, is a Partner with Mauldin & Jenkins. He graduated in 2000 from the University of Tennessee at Chattanooga with a Bachelor of Science degree in Business Administration and a concentration in Accounting. Christian and his wife, Lisa, live in Hixson, Tennessee with their four children, Courtney, Madison, Christian and Haley.

Since starting his career in 2000, Christian has focused on providing auditing, accounting and consulting services for financial institutions, not-for-profit organizations and employee benefit plans.

Christian is a member of the American Institute of Certified Public Accountants and the Tennessee Society of Certified Public Accountants. He serves on the Board of Directors for the Tennessee Society of CPAs and is a past president of the Chattanooga Chapter of the TSCPA. Christian also serves on the TSCPA Council and the TSCPA Financial Institutions Committee.

# Doug Dahl

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Doug Dahl provides technical knowledge and advice to companies on a wide range of federal tax and ERISA matters regarding employee benefits, including qualified retirement plans, executive compensation arrangements and health and welfare plans. Doug regularly assists companies with employee benefit issues that arise during and following various corporate transactions and events, such as mergers, acquisitions, dispositions and bankruptcies.

Drawing on his experience as an attorney with the IRS, Office of Chief Counsel and his involvement with employee benefits at a National level in Washington, D.C., Doug represents companies in various interactions with the IRS, the Department of Labor, and the Pension Benefit Guaranty Corporation (PBGC). Doug's practice involves:

- ❖ Regularly assisting both private and public companies with the creation, administration and compliance of qualified retirement plans.
- ❖ Providing assistance with qualified plan conversions, terminations and corrections.
- ❖ Preparing various types of equity and non-equity deferred compensation plans and offering advice with respect to initial adoption and ongoing compliance.
- ❖ Preparing health and welfare plan documents and negotiating related contracts.
- ❖ Providing advice to ESOP trustees and sponsors regarding transactions involving company stock, as well as ongoing ESOP administration.

Doug was a member of the brief-writing teams for amicus briefs filed in two landmark Supreme Court cases involving employee benefits: *National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services* (the Health Care reform case), and *M&G Polymers USA, LLC, et al. v. Tackett et al.* (Case involving retiree medical coverage).

Prior to joining Bass, Berry & Sims, Doug was an associate with Proskauer Rose LLP in the Washington, D.C. office. From 2009-2011, Doug was an attorney with the IRS, Office of Chief Counsel in Washington, D.C.

#### **Memberships**

American Health Law Association (AHLA)

#### **Accolades**

*The Tax Lawyer* — Senior Staff Mentor

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Bradley D. Gayheart is a Managing Director at Sarasota Private Trust Company. Mr. Gayheart has over 20 years of experience in Wealth Management and Insurance. He is responsible for strategizing and aligning financial goals for high net worth individuals and families. Taking a consultative approach to advising clients and managing relationships, his focus includes wealth preservation and planning, investment strategies and philanthropy.

Mr. Gayheart's career accelerated after joining the flagship Los Angeles office of Merrill Lynch. He later moved to Checchi Capital Advisors in Beverly Hills, a boutique asset management firm, which specialized in bespoke portfolio management for ultra-high net worth families and family offices.

Recognizing deficits in the approach taken by most advisors, Mr. Gayheart founded The LTC Plan which utilizes planning-based analysis of a client's traditional insurance/risk management brokerage services along with non-traditional insurance services. He confers with accountants, attorneys and wealth bankers to assess a client's needs and objectives to create a plan that incorporates the expertise of product manufacturers, reinsurers and other professionals. This holistic approach results in a custom plan for each client providing protection for today and adaptability for future needs.

Mr. Gayheart attended the University of Kentucky studying Finance and received a Bachelor of Science in Computer Science from Life University.





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Brian Volner is a Managing Director with Sarasota Private Trust. His responsibilities include client relationship management and new business development. Mr. Volner has over 20 years of financial services experience, having held leadership roles in managing teams responsible for commercial lending, asset and liability management, private banking and treasury management. He has developed new markets via loan production offices and “de novo” branches. Most recently he led business development efforts in Southwest Florida, helping to grow a \$220 million privately owned company into a \$1.7 billion public company traded on the NYSE in less than five years.

Mr. Volner is past Chairman of the Board of the Lakewood Ranch Business Alliance. He has served on the Board of Manatee Sarasota SOLVE and the Bradenton Area Economic Development Corporation, where he is currently on the Board’s Executive Committee as Treasurer. Mr. Volner holds a BS degree in Financial Economics from Carson Newman University. He is a graduate of Leadership Manatee and the Florida School of Banking, through the University of Florida’s Warrington College of Business.

# Agenda

- Introductory Comments
- Plan Sponsor Considerations in Light of COVID-19
  - Furloughed vs. Laid Off Employee
  - Employer 401(k) Contributions
  - Health and Welfare Plan Considerations
- CARES Act Background
- CARES Act Provisions for Retirement Plans
  - Plan Participant Relief
  - Distributions
  - Loans
  - Required Minimum Distributions
- Plan Sponsor Relief
  - Defined Benefit Plan Funding Relief
  - IRS Tax Filing and Payment Deadline Extension
- CARES Act Plan Amendments
- Further Agency Guidance
- Additional Relief Proposed by American Retirement Association (ARA) – slides 12-14 & 31

# Furloughed Employee vs. Laid Off Employee

- Furloughed Employee: An employee placed on employer-mandated leave of absence without pay. A furloughed employee is available for work but not actively working and is not being paid.
- Laid Off Employee: An employee who has been terminated. The employee-employer relationship has ended, and unless rehired there is no possibility of returning to work.
- Whether an employee has been furloughed or laid off determines whether certain benefit options are available.



# Employer 401(k) Plan Contributions

- The determinative question: Is the 401(k) Plan a safe-harbor plan?
  - A safe-harbor plan requires that employers make certain levels of employer contributions each year in order to avoid nondiscrimination testing.
  - Different options are available depending on the plan's safe-harbor status.

# Employer 401(k) Plan Contributions

- The determinative question: Is the 401(k) Plan a safe-harbor plan?
  - If the plan is not a safe-harbor plan, then employer contributions can be reduced or eliminated going forward.
    - If employer contributions were purely discretionary, they can generally be eliminated completely
    - Fixed contributions, be careful
  - There may be formal requirements to reducing or eliminating the employer contributions, depending upon whether the contributions were discretionary or required.
  - **Audit Consideration?**

# Employer 401(k) Plan Contributions

- The determinative question: Is the 401(k) Plan a safe-harbor plan?
  - If the plan is a safe-harbor plan, then employer contributions can be reduced or eliminated in just two situations:
    - First, if the plan's annual safe-harbor notice stated that employer contributions could be reduced or suspended during the plan year.
    - Second, if the company is operating at an economic loss for the plan year.
  - Employees must be given at least 30 days notice before employer contributions are stopped.
  - The plan will need to undergo nondiscrimination testing for the plan year.

# Proposed Relief: Waive Required Employer Contributions

- The American Retirement Council has proposed relief for employer contributions.
- The proposed relief includes waivers for both non-safe-harbor plans and safe harbor plans.
- Note: This has not yet been written into any coronavirus-related legislation or included in guidance published by the Department of Labor or IRS.

# Proposed Relief: Waive Required Employer Contributions

- The ARA proposal includes the following relief for all defined contributions plans:
  - Allowing sponsors to waive required employer contributions for 2020
  - Allowing sponsors with fewer than 500 participants to waive required contributions from 2019 that have not yet been funded
  - The plan would be exempt from making any required top heavy minimum contributions

# Proposed Relief: Waive Required Employer Contributions

- The ARA proposal includes the following relief specifically for safe-harbor defined contribution plans:
  - Permitting sponsors to discontinue safe harbor contributions effective immediately
    - This would waive the normally required 30-day notice to employees
    - Instead, this would require notification to employees within 90 days of the discontinuance
    - An amendment would have to be adopted by last day of the plan year
  - Plans would remain exempt from top heavy minimum contribution requirements
  - Highly Compensated Employees would be prohibited from making salary deferral contributions for the remainder of the year

# Health and Welfare Plan Considerations

- Laid off employees would be eligible for health plan COBRA continuation coverage, and employers can pay a portion of the COBRA premiums.
  - Reductions in the hours an employee works may make them ineligible for health plan coverage, which would trigger COBRA eligibility.
- Furloughed employees may be eligible to stay enrolled in their health plan, depending on whether there are “actively at work” or minimum hours requirements.
  - If an employee loses eligibility because of a furlough, that triggers COBRA eligibility.
  - A plan sponsor can continue health plan coverage to furloughed employees, but should first get approval from the applicable insurer or stop-loss carrier.



# CARES Act Background

- Coronavirus Aid, Relief, and Economic Security (CARES) Act
- The CARES Act is \$2.2 trillion stimulus bill to rescue the U.S. economy from the effects of the coronavirus pandemic
- It was signed into law by President Trump on Friday, March 27, 2020.
- The CARES Act includes provisions providing relief to retirement plan sponsors and participants.

# Major CARES Act Provisions for Retirement Plans

## ➤ Plan Participant Relief

- Coronavirus-related distributions
- Loan relief for affected participants
- Waiver of 2020 RMDs

## ➤ Plan Sponsor Relief

- Defined Benefit Plan Funding Relief
- IRS Tax Filing and Payment Deadline Extension

## ➤ CARES Act Plan Amendment Deadline

- Last day of the plan year that begins in 2022

# Plan Participant Relief: Coronavirus Distributions and Loans

- Who is eligible: A **qualifying individual**.
- A “qualifying individual” is anyone who:
  - is diagnosed with COVID-19;
  - whose spouse or dependent is diagnosed with COVID-19;
  - who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, 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 Treasury Secretary.
- **The plan sponsor can rely on a participant’s certification that he or she is a qualifying individual.**

# Plan Participant Relief: Coronavirus Distributions

- Qualifying individuals can take coronavirus distribution(s) of up to \$100,000.
  - This amount is aggregated across all eligible plan accounts.
  - There is no limit to the number of distributions that can be taken, as long as all are taken by 12/31/20.
- Former employees who still have a balance in a plan are eligible to take a coronavirus distribution.

# Plan Participant Relief: Coronavirus Distributions

- What plans are eligible?
  - 401(a) qualified plans, 401(k)s, 403(b)s, 457(b)s, and IRAs are all eligible.
- Must a plan allow these?
  - No, coronavirus distributions are only permitted if the employer elects to allow them.
- When can coronavirus distributions be made?
  - Coronavirus distributions are allowed between 1/1/20 and 12/31/20.

# Plan Participant Relief: Coronavirus Distributions

- Participants can elect to pay income tax on the coronavirus distribution over a period of three years.
- Coronavirus distributions are not subject to penalties or withholding.
  - The 10% early withdrawal penalty does not apply.
  - The coronavirus distribution is not eligible for rollover, and so the 20% mandatory federal withholding does not apply.
- The distribution does not have to satisfy the plan's existing hardship withdrawal or other in-service distribution requirements.
  - If the participant is a "qualifying employee," that is all that is necessary to allow for the distribution.

# Plan Participant Relief: Coronavirus Distribution Repayment Options

- Coronavirus distributions may be repaid in full or in part over a three-year period.
  - The clock starts ticking the day after the distribution is received.
- Repayments can be made in a single amount or in multiple payments.
- Repayments are not adjusted for investment earnings.
- If an individual makes a repayment after 2020 they can later amend their 2020 tax return to recoup taxes paid.
- Repayment can be made to an IRA or another employer-sponsored plan that accepts rollovers.
  - Repayments to an employer-sponsored plan are allocated to the plan's "rollover" money source.
- **Audit Considerations?**



# Plan Participant Relief: Loans

- The CARES Act offers two coronavirus-related loan relief provisions:
  - First, loan limits for qualifying individuals are increased.
  - Second, qualifying individuals are granted a one-year delay in repaying their loans.
- Coronavirus participant loan relief is only offered if the employer elects to include these provisions.
- The plan must include a loan provision for the relief to apply.
  - Or at the very least, a Participant Loan Policy should be in place

# Plan Participant Relief: Increased Loan Amounts

- For qualifying individuals, the participant loan limit is increased to 100% of the participant's vested account balance up to a maximum of \$100,000.
- The participant loan limits are normally 50% of the participant's vested account balance up to a maximum of \$50,000.
- The increased loan amount only applies to loans made on or before 9/23/20 (i.e., 180 days from date of CARES Act passage).

# Plan Participant Relief: Loan Repayment Extension

- For qualifying individuals with *existing* loans, repayments due between 3/27/20 and 12/31/20 can be delayed for up to one year.
  - Interest will continue to accrue.
  - The loan term can be extended up to one year.
  - The loan repayment schedule can be re-amortized to account for interest accrued during the delay.
  - Recordkeepers are taking different approaches on this.
  - **Audit Considerations?**

# Plan Participant Relief: Required Minimum Distribution (RMD) Waiver for 2020

- All RMDs for 2020 are waived.
  - Also applies to 2019 RMDs that were paid in 2020 before 4/1/20.
- This relief applies to 401(a) qualified plans, 401(k)s, 403(b)s, 457(b)s, and IRAs.
  - This relief does not apply to defined benefit plans.
- This relief applies to all participants and accountholders—not only those affected by coronavirus.
- If a 2020 RMD was already made it can be restored/rolled back to the plan or rolled over to an IRA.
  - If a 60-day rollover is completed it will be considered the one eligible rollover during a 12-month period.

# Plan Sponsor Relief: Filing Deadline Extension

- For federal tax returns and payments due on 4/15/20, the deadline has been extended to 7/15/20.
  - Applies to sole proprietorships and C-Corps, but not to partnerships and S-Corps (for which the 3/15/20 deadline is not automatically extended).
  - Includes employer contributions made to the plan.
- If the employer filed for an extension, the extended tax filing deadline is not also extended by three months—the original extended deadline applies.

# Plan Sponsor Relief: DB Plan Funding Extension

- Any defined benefit plan employer contributions due in 2020 are not due until 1/1/21.
- This includes quarterly contributions.
- However, interest will accrue from the original due date to the actual funding date.

# CARES Act Plan Amendments

- CARES Act provisions may begin applying immediately as of the Act's 3/27/20 effective date.
- Plans must be amended to reflect the provisions that the plan sponsor wants to include.
- The CARES Act plan amendment deadline is the last day of the plan year that begins in 2022.
- Plan document practitioners (usually the plan's third-party administrator) will determine the CARES Act plan amendment defaults that will apply and employers will be given the ability to override defaults and customize their plan's CARES Act provisions
- **Audit Considerations?**



# Agency Relief

- Following the CARES Act, the Department of Labor, IRS, and PBGC have released guidance relaxing focused on pushing back deadlines and giving plan sponsors more time to meet the operational requirements of administering a benefit plan.
- Some of the most important extensions include:
  - Form 5500 filing deadlines for plans whose plan year ends on September 30, October 31, or November 30, 2019, or whose plan year ended on June 30 or July 30, 2019, and who filed for an extension;
  - Distribution deadlines for ERISA-required participant documents, such as summary plan descriptions, summary annual reports, blackout notices, and qualified default investment alternative notices; and
  - The deadline for depositing participant contributions withheld from paychecks, which usually must be deposited as soon as practicable, but only delays that are directly related to Covid-19 disruption.

# Additional Relief Proposed by the ARA

- The ARA estimates that over 200,000 employer-sponsored retirement plans, out of approximately 650,000 defined contribution plans in the U.S., are susceptible to plan termination without additional relief.
- The ARA has a proposal for further retirement plan relief, including:
  - Automatically extending the 2019 Form 5500 deadline to 10/15/20
  - Extending the loan default date of 2020 terminees to *at least* 12/31/20
  - Extending the deadline for required plan notifications and disclosures
    - This includes a 90-120 day extension for all notifications/disclosure required under ERISA
  - Waiving required employer contributions, as discussed above

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