



Benefits Planning and the Executive Orders of August 8, 2020

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Checking for Updates

September 23, 2020—We may update this document frequently. To check for the most recent version, visit [COVID-19 Resources from YTI](http://www.yti.cornell.edu/coronavirus# covid-benefits) at www.yti.cornell.edu/coronavirus# covid-benefits.

Introduction

The August 8 executive orders from President Trump continue to raise a lot of questions among Benefits Planners. What you’ll find here is written through the lens of benefits planning. I’ve provided a summary of each order, plus comments on how to apply it to your clients and notes on subsequent, related clarifications and orders.

Continued Student Loan Payment Relief

Student loan payments will continue to be deferred and interest will remain at 0% until December 31, 2020. Voluntary current payments can be made, and all such payments will reduce the principle of the loan balance.

Comments: This provides welcome continued relief to students with outstanding loans. We should take steps to explain that any loan payments made during this period will significantly speed up the full payment of a student loan. This is due to the 0% interest rate accrual. All funds paid during the emergency will reduce the principle amount owed. *A great financial literacy tip!*

Centers for Disease Control (CDC) Temporary Eviction Moratorium (revised 9/23)

This September 1 [CDC order](#) is not part of the August 8 Executive Order regarding renters and homeowners (discussed below), but it tags onto the end of that order to further extend the moratorium on certain evictions. It applies to all residential evictions (rent and mortgage). It was authorized under the auspices of a public health law. [USA Today described the CDC's moratorium](#) as the “latest measure by the administration to get a handle on the economic fallout from the coronavirus pandemic absent an agreement with Congress on a more far reaching package that would have the force of law.”

To take advantage of this moratorium, a renter must sign a declaration and give it to their landlord. The renter should keep a copy as well. The declaration can be found at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>

Providing Assistance to Renters and Homeowners

Renters Protections (updated 9/23)

The CARES Act rental moratorium has expired.

The secretaries of the Treasury and HUD shall consider whether temporary measures halting residential evictions for failure to pay rent are reasonably necessary to prevent further spread of COVID-19 from one state or possession to any other state or possession.

HUD will take action to avoid evictions resulting from financial hardships related to COVID-19. Such actions may include encouraging and providing assistance to Public Housing Authorities, affordable housing owners, landlords, and recipients of federal grant funds to minimize evictions and foreclosures.

Comments: A [recent New York Times article reports on confusion](#) among tenants, landlords, and housing courts as to the exact meaning of the CDC moratorium and the impact of the CDC affidavit (discussed above). Will it stop an eviction from being filed? Will it put a hold on a pending eviction? One housing court judge has questioned the constitutionality of the moratorium. The Pennsylvania state court administrator issued an instruction, saying that the CDC order prevents the filing of an eviction and suspends any pending cases. However, he followed up with another memo indicating that his earlier memo was not intended “to supplant judicial interpretation.”

To date, there is no word about any program or structure to provide financial assistance to landlords. This places much of the financial impact of the CDC moratorium on landlords. A federal court case has been filed in Atlanta, and we can expect legal action and lobbying from corporate landlords.

You should expect differing interpretations of the CDC order from state to state, county to county, and even judge to judge.

See above for the CDC affidavit link and process.

Mortgage Protections

HUD foreclosures for FHA mortgages were in place until July 31, 2020.

Under the auspices of the CARES Act, HUD had instructed the Federal Housing Finance Authority (FHFA) to order the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to suspend foreclosures for at least 60 days until July 31, 2020.

FHFA, FNMA, and FHLMC will now extend foreclosure protection until at least August 31, 2020.

Comments: This is welcome relief to homeowners, renters, and landlords. We have received no information about the impact of any foreclosures filed during the time after the moratorium expired on July 31, 2020, and before the executive order went into effect.

Deferring Payroll Taxes

This [memorandum](#) directs the Secretary of the Treasury to defer certain payroll tax obligations with respect to American workers most in need. The action will defer the withholding, deposit, and payment of taxes imposed on wages or compensation during the period of September 1, 2020, through December 31, 2020, subject to the following conditions:

- The deferral shall be made available to any employee whose wages or compensation payable during any bi-weekly pay period is less than \$4,000 calculated on a pre-tax basis, or the equivalent amount with respect to other pay periods.
- Amounts deferred shall be deferred without penalties, interest, additional amount, or addition to the tax.

The memorandum also says that the “ Secretary of the Treasury shall explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred.”

The Secretary of the Treasury has issued [Notice 2020-65](#) to further explain this payroll tax “holiday.” In this document, the “holiday” is more realistically referred to as a “deferral.” This is *not* a forgiveness of FICA payroll taxes. The notice states that employers are required to cease paying the employee’s share of FICA taxes to the Treasury and pay those funds to the employee “for purposes of relief described in the Presidential Memorandum.”

Here’s the catch. And it is significant for you as well as your consumers! When the deferral ends, the FICA taxes that were paid to the employee instead of being withheld and paid to SSA/Medicare, will be withheld by the employer from the employee’s paycheck during the period of January 1, 2021 through April 30, 2021. In other words, rather than the usual 7.65% withholding, employees will be subject to a 15.3% withholding for the first 4 months of 2021.

As [reported by Bloomberg](#), the IRS has now clarified that the deferral or withholding of an employee’s Social Security tax is *optional*. The employer (called the “affected taxpayer” by the IRS) makes this decision. The employer may also decide whether and how much to consider an employee’s preference.

Comments: The deferral began on September 1, 2020, and will end on December 31, 2020. [News reports](#) indicate that many employers and payroll services were not be ready for the required changes.

There continues to be no language that requires the employer to pay their 7.65% when their tax year ends. These funds are used to directly fund Social Security and Medicare insurance-based programs. This order is questionably unconstitutional as “only Congress” can impose and collect taxes and there is a significant legal question as to whether the president has authority to enforce this order.

Financial counseling will be required for all workers who see an increase in their take-home pay beginning September 1, 2021. Workers should prepare for the repayment of this take-home increase beginning January 1, 2021.

Authorizing the Other Needs Assistance Program for Major Disaster Declarations

From the memorandum: “Because many of the relief programs created by Congress have expired or will shortly expire, my Administration and the Republican leadership in the United States Senate have provided multiple options to continue to provide needed relief to Americans. But Democratic Members of Congress have twice blocked temporary extensions of supplemental unemployment benefits. Political games that harm American lives are unacceptable, especially during a global pandemic, and therefore I am taking action to provide financial security to Americans.”

This memorandum orders FEMA to use Disaster Relief Funds (DRF) and calls upon the states to use Coronavirus Relief Funds (CRF) to bring continued financial relief to Americans who are suffering from unemployment due to the COVID-19 outbreak. It calls for a \$400 weekly unemployment insurance supplement (75% federal cost and 25% state cost) to be paid from August 1, 2020 through December 27, 2020.

\$44 billion from the DRF to provide 75% of the cost of this unemployment compensation supplement.

It calls upon states to use CRF funds to meet the additional 25%. Regular state unemployment funds can be used to pay a portion of the 25% cost share.

In each state, the supplement is dependent upon the state’s request for grant assistance and the Governor’s cooperation in utilizing the state unemployment system to distribute the funds. Each state must also provide 25% of the cost of the unemployment supplement.

Eligible individuals mean claimants who receive at least \$100 per week of any of the following benefits:

- Unemployment compensation, including federal and ex-service member benefits;
- Pandemic Emergency Unemployment Compensation under the CARES Act;
- Pandemic Unemployment Assistance under the CARES Act;
- Short-Time Compensation;
- Trade Readjustment Allowance;
- Payments under the Self-Employment Assistant program; and
- Provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.

The lost wages assistance program described in this order shall be available to individuals “until the balance of the DRF reaches \$25 billion or for weeks of unemployment ending not later than December 6, 2020, whichever occurs first” [comment: language and dates inconsistent with earlier sections of the executive order]. Lost wages assistance will terminate according to the executive order or when legislation is passed that includes lost wages assistance.

Comment: The unemployment supplement depends on the cooperation of financially strapped state governments to provide 25% of the funding. Poorer states will simply not be able to agree to spend money they don’t have, and other states have already emptied their treasuries with prior expenses for COVID relief. Here, too, it is questionable whether this provision will withstand court review as it also subrogates Congress’ authority as the sole body that may impose and collect taxes.

Conclusion

At this time, benefits planners should only explain the provisions to their workers. Planners should also provide a strong statement that nothing is likely to happen until state governors take steps to cooperate, the Supreme Court issues a decision concerning the Constitutional issues involved, or Congress acts by passing a bill for the president's signature.

One more thing...did you notice that some of the executive orders from August 8 are actually memorandum? This [PBS article](#) does a nice job explaining the difference between these two executive actions (<https://www.pbs.org/newshour/politics/cheat-sheet-executive-orders-memorandums-proclamations>).

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