Retirement Plan Relief Under the CARES Act for Qualified Retirement Plans

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was signed into law, providing relief to those suffering as a result of the coronavirus pandemic. Included in the CARES Act were certain relief provisions regarding retirement plans. Employers should be aware of what these provisions are and consider which provisions they want to make available under their retirement plan.

Coronavirus-Related Distributions

The CARES Act permits an eligible retirement plan to now allow for "coronavirus-related distributions". "Coronavirus-related distributions" can only be made to "qualified individuals" and must be made in 2020 and before December 31, 2020. An individual’s “coronavirus-related distributions” are limited to a total of $100,000. A “qualified individual” for purposes of “coronavirus-related distributions” from employer-provided retirement plans is a participant who meets one of the following conditions:

- The participant is diagnosed with coronavirus by a CDC-approved test;
- The participant’s spouse or dependent is diagnosed with coronavirus by a CDC-approved test; or
- The participant has suffered financially as a result of:
  - Being quarantined, furloughed, laid off or having work hours reduced due to the coronavirus;
  - Being unable to work due to lack of child care because of the coronavirus; or
  - Having to close or reduce the hours of the business he or she owns or operates due to the coronavirus.

The CARES Act permits the plan administrator to rely on a participant’s certification that he or she satisfies one of the above conditions. If the plan allows for coronavirus-related distributions, beneficiaries of a deceased participant and alternate payees who meet one of the above conditions would also be eligible for a coronavirus-related distribution.

A coronavirus-related distribution would be subject to ordinary income taxation just like most other plan distributions are, but the qualified individual may spread the taxes over a 3-taxable year period, beginning with the 2020 taxable year. Additionally, the qualified individual may repay all or part of the coronavirus-related distribution to any eligible retirement plan that accepts rollover contributions within a 3-year period of the coronavirus-related distribution. Normally, a participant is subject to a 10% early withdrawal penalty for any distribution from a qualified retirement plan prior to the participant attaining age 59-1/2. However, under the CARES Act, a coronavirus-related distribution to a qualified individual who is not yet age 59-1/2 will not be subject to this 10% early withdrawal penalty. A coronavirus-related distribution will generally be subject to a 10% withholding, but the qualified individual can voluntarily waive the withholding.

The “eligible retirement plans” that can make coronavirus-related distributions include qualified retirement plans (e.g., 401(k) plans, profit sharing plans, defined benefit pension plans), IRAs, 403(b) plans and governmental 457(b) plans. There are, however, special distribution restrictions that apply to certain pension plans (specifically, money purchase pension plans and defined benefit plans, including cash balance plans). Generally, a participant may not take an in-service withdrawal (i.e., a withdrawal from the plan while still employed with the employer) from one of these types of pension plans prior to age 59-1/2. The CARES Act does not provide for an exception from this rule, so if the employer plan is a money purchase pension plan or a defined benefit plan, a qualified individual who is still employed by the company may not take a coronavirus-related distribution from such plan prior to age 59-1/2.
Participant Loans

A qualified retirement plan can, but is not required to, allow for participant loans. If a plan does allow for participant loans, the CARES Act gives the plan the option to temporarily increase the loan limit for “qualified individuals”. (See above discussion regarding coronavirus-related distributions for who is a “qualified individual”). The temporary new loan limit for a qualified individual is the lesser of (a) 100% of the qualified individual’s vested plan benefit or (b) $100,000. This new loan limit only applies to loans made during the 180-day period beginning on March 27, 2020 (i.e., from March 27, 2020 to September 23, 2020). After that, the loan limit returns to the lesser of (a) 50% of a participant’s vested benefit or (b) $50,000.

Additionally, for any qualified individual with outstanding participant loans, the CARES Act provides that any loan repayment due between March 27, 2020 and December 31, 2020 is delayed for one year. The 5-year repayment period is also extended for one year for qualified individuals. Interest accrues on the participant loan during the delay period. While most of the retirement plan provisions of the CARES Act are optional, there is a question of whether this loan repayment delay is actually mandatory rather than optional. Employers should discuss this with their third party administrator, ERISA attorney or record-keeper on this.

If an employer utilizes any of the loan relief provisions of the CARES Act, the employer should also check to see if their loan procedures need to be updated in connection with the loan changes. For example, if the loan policy limits the number of outstanding loans that a participant may have at one time (e.g., only one loan outstanding at a time), this may need to be revised if the employer wants to enable all participants who are qualified individuals to be able to take advantage of the higher loan limits.

Required Minimum Distributions

The CARES Act also waives the required minimum distributions (RMDs) due in 2020 for qualified defined contributions plans (e.g., 401(k), profit sharing and money purchase plans), 403(b) plans, IRAs and governmental 457(b) plans. Please note that this waiver does not apply to defined benefit plans. Additionally, if the RMD under the defined contribution plan is due to the participant’s death, 2020 is disregarded in determining the 5-year maximum distribution period. With regard to participants whose required beginning date (i.e., the due date for their first RMD payment) is April 1, 2020, the waiver also applies, but only if the distribution was not already paid in 2019.

If an individual has already taken a withdrawal to satisfy what would have been his or her 2020 RMD had there been no waiver under the CARES Act, he or she can roll it back within 60 days of the withdrawal into an IRA or other plan that will accept rollovers. If 60 days have already passed, the rollover cannot be made without a waiver of the 60-day rollover period. The IRS may issue a waiver of the 60-day period like it did for the 2009 RMD waiver but at the time of this writing, a waiver of the 60-day period has not been issued.

DB Funding Delay for Single-Employers

The due date for any required contributions for single-employer defined benefit plans (which includes cash balance plans) is extended to January 1, 2021. The plan must increase contributions for interest between the original due date and the actual payment date. Despite this relief, plan sponsors may want to consider whether freezing the defined benefit plan is a prudent option, especially if the plan has experienced significant losses this year.

Plan Amendment for CARES Act Provisions

Plan sponsors have until the last day of the plan year that begins in 2022 to amend the plan for the CARES Act provisions. The extended time period for amending the plans applies to the CARES Act provisions so if the changes are not limited to the CARES Act provisions, a plan amendment may be required earlier.

The above information is provided as of April 10, 2020. Future updates may be provided based on subsequent guidance from the IRS and/or DOL.