Legislative Update

The CARES Act is Enacted Into Law

Coronavirus Aid, Relief and Economic Security Act

The COVID-19/Coronavirus emergency is presenting new and unique challenges that most of us are facing for the first time. We are seeing closures of offices and businesses, resulting in everything from required work at home arrangements to employee lay-offs and furloughs. This has raised important questions around retirement plan administration, including the nature of relief that may be available for plan participants. In response, on March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law. Below is a brief description of the key CARES Act provisions, along with planning notes and applicable decision points.

Coronavirus-Related Distributions

- Plans may permit in-service Coronavirus-related hardship distributions from a participant's vested account balance without regard to the normal hardship withdrawal restrictions. This relief is offered through December 31, 2020.

- **These distributions are subject to the following requirements:**
  - Limited to a maximum of $100,000.
  - Not subject to 20% mandatory withholding.
  - Exempt from 10% early withdrawal penalty.
  - Remains Taxable Income subject to ordinary taxes based on the individual's filing status.
  - Can be indirectly rolled into an IRA or employer plan within 3 years from the date the distribution is taken.
  - For amounts not indirectly rolled into an IRA or employer plan, taxes may be paid in the year of distribution, or spread ratably over three tax years.

- **Coronavirus-related distributions are available to "eligible" participants who:**
  - are diagnosed with a Coronavirus illness.
  - have a spouse or dependent diagnosed with a Coronavirus illness.
  - experience "adverse financial consequences" due to a quarantine, furlough, lay-off, reduction in work hours, business closure or are providing childcare due to the Coronavirus emergency.

- The Plan Sponsor/Plan Administrator may rely on a participant's certification of the above.

❖ **Note for Hardships in a Declared Disaster Area:**
The updated 401(k) regulations from 2019 include a safe harbor hardship withdrawal financial need option for FEMA declared disasters. However, there has been no guidance issued regarding the documentation required to justify such a withdrawal, and there have been limited areas that have been declared a FEMA disaster area due to the Coronavirus. For those areas where a FEMA-declared disaster applies, a participant may elect to take a hardship withdrawal under those guidelines, however, it may be more advantageous for eligible participants to instead take Coronavirus-related distributions, which are not required to meet the stricter safe harbor hardship withdrawal requirements, are exempt from the 10% early withdrawal penalty, include an extended taxation period, and, importantly, may be repaid to the plan.

Coronavirus-Related Plan Loan Relief

- **Two types of loan relief are available:**

1. Plans may allow "eligible" participants, as defined above, to take loans up to the lesser of $100,000 or 100% of the participant's vested account balance for the specified period.

2. Upon the request of an "eligible" participant, plan sponsors must suspend loan repayments due on outstanding loans that are in good order for a period of up to 12 months. This relief expires on December 31, 2020. The suspension period is to be added to the original loan term when repayments, including accrued interest, resume, regardless of the length of the loan's original term.

❖ **Note for considering a loan:**
Participants who are furloughed or laid off but who continue to be considered active employees may also suspend loan repayments for up to one year of unpaid leave. Plan Sponsors/Plan Administrators should ensure they are reporting the correct employment status to their investment provider for these participants so their loan repayment suspensions and other plan rights, including the in-service distribution options are properly administered. For example, if a participant is granted a furlough without being terminated from employment, DO NOT report them as terminated to your investment provider and do not report a date of termination for them.

Waiver of 2020 Required Minimum Distributions (RMDs)

- **Qualified 401(a)/(k), 403(b), and governmental 457(b) plans will not be required to make required minimum distributions for 2020. Participants and beneficiaries will be provided the following RMD relief.**
  - Participants who turned age 70½ in 2019 will not be required to receive an ongoing RMD for 2020.
  - Participants who turned age 70½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020 will not have to receive their first (2019) RMD or their 2020 RMD.
  - Participants who are in pay status and receiving an annual RMD will not be required to take a distribution for the tax year 2020
  - Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD.
    - Beneficiaries who have an account balance in the plan subject to the 5 year distribution rule may extend their required distribution by one year (full distribution of the account must be made by the 6th anniversary of the participant's death).
    - Beneficiaries who have an account balance in the plan subject to the 10 year distribution rule may extend their required distribution by one year (a full distribution of the account must be made by the 11th anniversary of the participant's death).
  - If a 2020 RMD is provided to any of the above, it may be rolled over to an IRA or employer plan. A participant's RMD or beneficiary's life expectancy RMD for 2021 will still be required to be paid.

Defined Benefit Plan Relief

- **Delay in 2020 funding obligations.**
  - Under CARES, all single-employer funding obligations due during 2020 are not required to be made until January 1, 2021, with interest for late payments.

- **Benefit restrictions.**
  - Under CARES, a plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020.

Timing of Plan Amendments

- **The CARES Act includes a remedial amendment period giving Plan Sponsors additional time to amend their plans for this relief.** Sponsors of non-governmental plans have until the last day of the plan year beginning in 2022 to amend their plans, i.e., December 31, 2022 for a calendar year plan. Sponsors of governmental plans have until the last day of the plan year beginning in 2024 to amend their plans.

Plan Sponsor Considerations

The Coronavirus-related hardship distributions and increased loan limits are optional plan provisions; consequently, plan sponsors will need to evaluate which of the following courses of action they wish to take:

1. Plan Sponsors may do nothing at this time. Because the hardship withdrawal and loan limit increase provisions are optional, they will not go into effect unless you opt to affirmatively add them to your plan. This may be a good choice if you have not furloughed, laid off, or reduced hours for any of your employees, and if your employee population and their families continue to remain healthy. In that case, these provisions may be added later if or as the COVID-19 situation changes, however, the situation could change quickly, so it may be prudent to consider adding them sooner rather than later.

2. Plan sponsors may add the increased loan limit provision without offering the hardship withdrawal provision. It is permissible to add either the hardship withdrawal option or the increased loan limits independently of each other. Adding the expanded loan limit will permit participants to access more of their accounts without direct leakage from the plan; in addition, because loan repayments due in 2020 may be suspended for a period of up to a year, taking a loan will not create an immediate financial burden for participants. However, if a participant takes an expanded loan, is subsequently terminated, and is unable to repay the full amount of the loan, the outstanding loan balance would default, and would be included in taxable income in the year of the default. Absent future relief, three year ratable taxation does not apply in this situation. Note also that, depending on the number of loans permitted at a time by the plan, adding this provision may also require modifying the restrictions around the number of permissible loans that may be taken from the plan and/or the frequency with which they may be taken.

Plan Sponsor Considerations Cont.

3. Plan sponsors may add the hardship withdrawal provision without offering the increased loan limit provision. Adding the expanded hardship withdrawal provision will create leakage, possibly substantial, from the plan, but ensures that affected participants can access their funds without the risk of taxation of the loan amount in a single plan year in the case of a subsequent termination of employment. Any or all of the withdrawn amounts may be repaid to the plan at a later date, which may mitigate some leakage, and the tax burden would be spread out over three years.

4. Plan sponsors may add both the hardship withdrawal and increased loan limit provisions. Adding both provisions would provide participants with the opportunity to make the decision between a hardship withdrawal or an increased loan, based on what they determine best for their situation. This may be a good opportunity to educate participants on the importance of preserving their retirement savings to the extent they are able and the accompanying advantages of a loan over a hardship withdrawal in that regard. They should also be informed of the potential tax consequences of both scenarios and encouraged to repay any amounts they might elect to withdraw once this crisis is behind us.

Administrative Items on Which Regulatory Guidance is Needed

- ***Relief from the spousal consent requirements.*** To date, neither the IRS nor the DOL have provided any guidance that might relieve plans from their notarized spousal consent requirements; however, the industry has provided commentary to the regulatory agencies that relief in this regard is needed.

- ***Unforeseeable Emergency.*** Another area in which we are awaiting guidance from the IRS is whether a Coronavirus-related financial need may be included as part of a nonqualified plan's unforeseeable emergency distributions. Based on current guidance, a Coronavirus-related distribution would not be included within this withdrawal right.

Further updates will be provided as they become available. Please contact your dedicated consultant if you have any questions or would like to further discuss these options for your Company's Retirement Plan.

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