

EMPLOYEE BENEFIT PLANS

A COVID-19 UPDATE ON INDUSTRY DEVELOPMENTS

2020 Issue

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A summary of the key provisions impacting retirement plans including:

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law by the President of the United States on March 27, 2020. The CARES Act, among its many provisions, provides relief for both retirement plan participants and plan sponsors. A summary of the key provisions impacting retirement plans is provided below:

Coronavirus distributions

Section 2202 of the CARES Act introduces a new category of retirement plan withdrawals, referred to as coronavirus-related distributions (CRD). A CRD can be taken by a qualifying participant who meets one of the following criteria:

- The participant has been diagnosed with the virus SARS-CoV-2 or COVID-19 disease by a test approved by the Centers of Disease Control and Prevention (CDC),
- The participant's spouse or dependent is diagnosed with such virus or disease by a test approved by the CDC, or
- The participant experiences an adverse financial consequence as a result of:
 - Being quarantined,
 - Being furloughed or laid off,
 - Having work hours reduced,
 - Being unable to work due to lack of child care,
 - Closing or reducing hours of a business owned or operated by the participant, or
 - Other factors as determined by the Secretary of the Treasury

It is important to note that a participant does not have to experience a financial hardship to meet either of the first two criteria listed above.

CRDs must also be made from an eligible retirement plan on or after January 1, 2020 and before December 31, 2020, and, together with any other CRDs for the participant's taxable year, cannot exceed \$100,000.

CRDs also receive preferential tax treatment. Section 72(t) of the Internal Revenue Code (IRC) generally imposes a 10% additional income tax on any amount received by a participant as an early distribution from a qualified retirement plan. CRDs processed under the CARES Act are exempt from such penalty. Additionally, the normal 60-day rollover period has been extended specifically for CRDs to three years (ie. a participant, after receiving a CRD, has three years from the date of such CRD to make one or more contributions to an eligible retirement plan in an amount equal to the CRD), to provide an exemption from mandatory 20% withholding requirements.

Loans to plan participants

Additionally, Section 2202 of the CARES Act addresses loans made to participants. Eligible retirement plans may now issue loans to qualifying participants, as previously defined, in an amount equal to the lesser of (1) \$100,000 or (2) the participant's vested account balance. Previously, loan amounts were generally limited to the lesser of (1) \$50,000 or (2) 50% of the participant's vested account balance. The expansion of the loan limitation is effective for loans made to qualifying individuals during the period beginning March 27, 2020 through September 23, 2020.

Section 72(p) of the IRC generally states that a plan loan to a participant must be repaid within 5 years and the loan must require substantially level amortization over the term with payments no less frequently than quarterly. The CARES Act alters this guidance by delaying any loan repayment originally scheduled to occur during the period beginning March 27, 2020 through December 31, 2020 by 1 year. The 1-year period will be disregarded for purposes of determining whether the loan meets the maximum term and level amortization requirements set forth by Section 72(p).

Any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in due date and any interest accruing during such delay.

Required minimum distributions

Section 2203 of the CARES Act provides relief to certain types of defined contribution plans by allowing for a temporary waiver of the required minimum distribution (RMD) requirements under Section 401(a)(9) of the IRC. For calendar year 2020, RMD requirements do not apply to plans of the following types:

- Tax qualified defined contribution plans, such as 401(k) plans;
- IRC Section 403(a) and 403(b) plans;
- Certain eligible governmental employer-sponsored non-qualified deferred compensation plans; and
- Individual retirement plans (IRAs).

For plan participants scheduled to begin receiving an RMD during 2020 (ie. a participant who attained age 70 ½ during 2019 and whose required beginning date for their first RMD is in calendar year 2020), the CARES Act has eliminated the requirement for any RMD. Participants within one of the plan types listed above and who meet these criteria would see a waiver of their 2019 and 2020 RMD.

Note on plan amendments - While the provisions in the three previous areas can be implemented immediately, plans must formally amend their plan documents to allow for these provisions by the last day of the first plan year beginning on or after January 1, 2022 (or January 1, 2024 in the case of a governmental plan). During calendar year 2020, as long as the plan operates as though an amendment were being made to the plan immediately, plans will not be treated as failing to operating in accordance with their terms if they amend by this deadline.

Defined benefit plans

To assist sponsors of single-employer defined benefit plans in maintaining cash flow, Section 3608 of the CARES Act provides a deferral for minimum required contributions originally scheduled to be made during calendar year 2020 to January 1, 2021. This also includes quarterly contributions due in 2020. Contributions that are deferred will be adjusted for interest during the period between the original due date and when the payment is actually made. This interest adjustment is to be made based on the plan's effective interest rate for the plan year in which the contribution relates.

Additionally, Section 3608 of the CARES Act addresses a defined benefit plan's adjusted funding target attainment percentage (AFTAP). A plan's AFTAP can impact the level of benefit restrictions applicable to a defined benefit plan as specified by Section 436 of the IRC, including whether or not lump sum or other accelerated benefit payments may be paid, when plan amendments can take effect, and whether benefits can continue to accrue. Under the CARES Act, a defined benefit plan sponsor can elect to treat its plan's AFTAP for the last plan year ending before January 1, 2020 as the AFTAP for the plan years that include calendar year 2020. Since Section 3608 does not specifically address plans with non-calendar year-ends, we recommend consultation with your retirement plan administrator or plan attorney to determine applicability.

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