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The CARES Act: Key Changes Affecting Retirement Plan Sponsors

On Friday, March 27, President Trump signed into law an updated version of a congressional response to the COVID-19 pandemic, entitled the Coronavirus Aid, Relief, and Economic Security Act (the “Act”). The Act includes important changes for retirement plan sponsors as they navigate through the current public health crisis.

In evaluating these important changes, plan sponsors will need to consult with their record keepers as soon as possible to discuss administrative feasibility.

Tax-favored in-service withdrawals up to \$100,000

Under the Act, a plan sponsor is permitted to allow “coronavirus-related distributions,” i.e., in-service distributions of up to \$100,000, to “qualified individuals” that are taken before December 31, 2020. A coronavirus-related distribution may be taken from a 401(k) plan without having a “hardship” as defined in the 401(k) plan regulations, before the participant attains age 59½. Similar rules apply to profit sharing plans, 403(b) and 457(b) plans, but not to defined benefit plans. An employee can self-certify that he or she is a qualified individual.

A “qualified individual” is anyone who has been diagnosed with COVID-19, whose spouse or dependent has been diagnosed with COVID-19, or who has suffered adverse financial consequences from diagnosis, furlough, quarantine, inability to work because of loss of child care, termination of employment or reduction in hours.

Although plan sponsors are not required to permit coronavirus-related distributions, if the plan already permits in-service distributions, any in-service distribution made to a qualified individual of up to \$100,000

(measured with respect to distributions from all plans within the plan sponsor's controlled group) is subject to the rules below:

Distributions are not subject to the 10 percent penalty on early distributions and are not subject to mandatory withholding. Taxation on coronavirus-related distributions may be spread over 2020, 2021, and 2022.

A qualified individual is permitted, but is not required, to repay a coronavirus-related distribution in one or more contributions over the 3-year period from the date of distribution. Any repayment is treated as a rollover contribution without regard to the 60-day time limit on rollovers.

Plan amendments are required by the end of the 2022 plan year (two years later in the case of a governmental plan).

Increase in loan limits for qualified plans

The Act permits plan sponsors to increase the limits for plan loans to "qualified individuals." Plan sponsors are not required to permit plan loans or to increase existing limits on plan loans. The new limits are the lesser of \$100,000 or 100 percent of the participant's vested account balance (increased from the current limit of the lesser of \$50,000 or 50 percent of the participant's vested account balance).

For those plan sponsors that already permit plan loans, the Act requires the plan sponsor to permit extended repayment of existing loans, as well as loans made within 180 days of enactment, by qualified individuals. Any repayments due after the date of enactment through December 31, 2020, are automatically extended for one year. The loan will be re-amortized to reflect the missed payments, together with interest due on the missed payments, and the term of the loan extended for the period of missed payments.

Delay in required minimum distributions (RMDs)

The Act permits a one-year delay in RMDs for 401(k) plans, 403(b) plans, other tax-qualified defined contribution plans, and 457(b) plans. The delay applies to both 2019 RMDs that need to be taken by April 1, 2020 and 2020 RMDs, whether they need to be taken by December 31, 2020, or by April 1, 2021. Waived 2020 RMD amounts may be rolled over to another qualified plan or IRA.

The Act delays the due date for an amendment to a plan document, provided that the plan is operated as if the amendment is in effect. Any such amendment must be adopted by the last day of the plan year beginning on or after January 1, 2022.

The changes discussed above do not apply to defined benefit plans.

Defined benefit pension plan funding relief

The Act extends the due date for all required minimum contributions to a single employer defined benefit pension plan, including quarterly contributions, which would otherwise be due during calendar year 2020, until January 1, 2021. Unpaid contributions will accrue interest at the plan's effective rate of interest. Further, for purposes of funding-based benefit restrictions, a plan sponsor can elect to use the "adjusted funding target attainment percentage" (AFTAP) for the last plan year ending before January 1, 2020, for any plan year that includes calendar year 2020.

Contact us

We continue to monitor these rapid developments. Should you have any questions, contact your Husch Blackwell attorney.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and unemployment, retailing, and supply chain management, among others.