Parker Brown Macaulay & Sheerin

Employee Benefits Alert

April 2020

The Coronavirus Aid, Relief, and Economic Security Act Retirement Plan Provisions

In response to the spread of the 2019 Novel Coronavirus (COVID-19), President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law on March 27, 2020. The CARES Act is the third phase in Congress' response to COVID-19 following the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 and the Families First Coronavirus Response Act (FFCRA). In addition to providing emergency relief aimed at small businesses and hospitals, the roughly $2 trillion CARES Act also relaxes several retirement plan rules to enable plan participants to gain access to their account balances without penalty and loosens other requirements. This Employee Benefits Alert focuses on the retirement plan provisions under the CARES Act, which may be instrumental in enabling financially distressed participants to maintain their lifestyles during the COVID-19 crisis.

Penalty Free Distributions

The CARES Act waives the 10% early withdrawal penalty under Section 72(t) of the Internal Revenue Code of 1986, as amended (the "Code") on pre-59 ½ distributions from tax-qualified retirement plans and individual retirement accounts, as long as the distribution does not exceed $100,000 and the qualified participant falls within one of the following categories:

- Individuals diagnosed with COVID-19 by a CDC-approved test
- Individuals whose spouse or dependent is diagnosed with COVID-19 by a CDC-approved test
- An individual who "experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to" COVID-19
- An individual who is unable to work due to COVID-19 child care issues
- An individual who has closed or reduced hours in a business owned or operated by the individual, due to COVID-19
- An individual who has experienced other factors as determined by the Secretary of the Treasury

A plan sponsor may rely on an individual's self-certification that they are eligible to receive a coronavirus-related distribution The participant's distribution may be re-contributed to the distributing retirement plan, or to another plan, within three years after the date the distribution is received, without regard to any plan limit on contributions. If the individual does not re-contribute the distribution within that time period, taxation on the distribution may be spread over a 3-year period. Federal income tax withholding is not required on a coronavirus-related distribution. Direct rollovers need not be offered.

Plan Loan Rules Relaxed

Section 72(p) of the Code has been amended by the CARES Act to increase the amount that participants are able to borrow from their individual account under defined contribution plans. Historically, the Code has limited loans to the lesser of $50,000 and 50% of the participant's vested account balance. The CARES Act has increased the 50% cap to 100% for purposes determining loan availability. Further, the $50,000 dollar limit for loans is increased to $100,000 for "qualified individuals" made during the 180-day period beginning March 27, 2020 and ending December 31, 2020.

The due date for any repayment by a "qualified individual" for loans taken from March 27, 2020, through December 31, 2020, is delayed for up to one year. Later repayments for loans will also be adjusted appropriately to reflect the prior delayed due date and any interest accruing during such delay. The delay period is ignored in determining the 5-year maximum period for such loans.

A "qualified individual" who could be eligible for these expanded loan limits and loan delays is one who could meet the same coronavirus-related tests as discussed above for coronavirus-related distributions.

Required Minimum Distributions Waived

For 2020, required minimum distributions have been suspended. Accordingly, minimum distributions otherwise required in 2020 from defined contribution plans need not be made. These are the amounts that the IRS requires be distributed from retirement arrangements beginning April 1 of the calendar year following the later of the calendar year in which the individual attains age 72 or retires.

The waiver applies to:

1. defined contribution 401(a) qualified plans,
2. defined contribution 403(a) and 403(b) plans,
3. governmental defined contribution 457(b) plans, and
4. IRAs

A plan sponsor may have discretion to determine whether this provision will be implemented. We await receipt of additional guidance.

Delayed Defined Benefit Plan Funding

The CARES Act permits single-employer defined benefit (DB) plans to delay the due date for any contribution otherwise due during 2020. On January 1, 2021, contributions for 2020 are due with interest. A DB plan's status for benefit restrictions, as of Dec. 31, 2019, will apply throughout 2020. Accordingly, a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020 as the adjusted funding target attainment percentage for plan years which include calendar year 2020.

Plan Amendments

The CARES Act provides for the immediate adoption of these provisions, even if the plan does not currently allow for in-service distributions or loans. However, plans must be amended on or before the last day of the first plan year beginning on or after Jan. 1, 2022 (January 1, 2024 for governmental plans), or later, if prescribed by the Treasury Secretary.

This CARES Act was fast-tracked in order to provide COVID-19 assistance as quickly as possible. There may be technical corrections to address any mistakes in the rush to enactment.

Please feel free to contact us regarding any questions that you may have regarding these new rules.

Remember, we are more than lawyers and are always here to help!

Parker, Brown, Macaulay & Sheerin, P.C. concentrates exclusively in employee benefits law. With more than seven decades of combined employee benefits experience, our lawyers find innovative, practical solutions to legal and business problems involving ERISA, employee benefits, executive compensation, and compliance with regulatory laws such as COBRA and HIPAA.

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