CARES Act - Retirement Plan Provisions for Employers and Plan Administrators

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), known as the CARES Act, was enacted on March 27, 2020. The bill provides financial aid for individuals and companies. The sweeping $2 trillion stimulus bill also contains several important provisions for employers and plan administrators regarding their retirement plans.

Please note, under Section 2202 the legislation permits retirement plans to adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans, provided the plan is amended on or before the last day of the first plan year beginning on or after Jan. 1, 2022, or later if prescribed by the Treasury Secretary.

In addition, adoption of in-service “coronavirus-related distributions” and allowing for plan loans as permitted under the CARES Act appears to be optional.

Below are the key provisions affecting retirement plans.

Temporary Waiver of Required Minimum Distribution Rules (Section 2203): H.R. 748 waives RMDs for calendar year 2020 for DC plans, including 401(k), 403(b), 457(b) and IRA plans, allowing individuals to keep funds in their retirement plans. Under current law, individuals generally at age 72 must take an RMD from their DC plans and IRAs. The legislation also includes special rules regarding the waiver period to, in essence, hold harmless those individuals (and plans) who took advantage of the RMD waiver for 2020.

Because RMDs are calculated based off account balances as of the end of the prior year, the ability to defer them could help millions of retirees from having to take them at a time when their portfolios are down substantially from near-record highs of Dec. 31, 2019.

CARES Act Distributions (Section 2202): The CARES Act waives the 10% early withdrawal penalty tax under Internal Revenue Code Section 72(t) on "coronavirus-related distributions" up to $100,000 from a retirement plan or IRA, and the mandatory 20% withholding can be ignored, for a "qualified individual":

- who is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention;
- whose spouse or dependent is diagnosed with COVID-19;
- who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; or
- other factors as determined by the Treasury Secretary.

Please note, an employer may rely on an employee's self-certification that these conditions are satisfied and they are a "qualified individual."

CARES Act Distributions are more favorable than hardship withdrawals—including those for Federal Emergency Management Agency (FEMA)-declared disasters—because:

- Tax on the income from the withdrawal may be paid over a three-year period;
- Participants may repay the amount withdrawn to an eligible retirement plan within three years;
- Repayments will not be subject to the retirement plan contribution limits; and
- All contribution sources (other than money purchase pension plan sources) will be available.

Plan Loans (Section 2202): H.R. 748 doubles the current retirement plan loan limits to the lesser of $100,000 or 100% of the participant's vested account balance in the plan. This increase applies to loans taken for a period of 180 days after date of enactment. Individuals with an outstanding loan from their plan with a repayment due from the date of enactment of the CARES Act through Dec. 31, 2020, can delay their loan repayment(s) for up to one year.

An important note, a qualified loan is any new or pre-existing loan to a "qualified individual" who would be eligible to receive a CARES Act distribution as defined in the section above.

Single-employer DB Plan Funding Rules (Section 3608): New to the bill is a provision to provide single-employer defined benefit plan funding relief by giving companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until Jan. 1, 2021. At that time, contributions due earlier would be due with interest. The provision also provides that a plan's status for benefit restrictions as of Dec. 31, 2019 will apply throughout 2020, such that 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.

Expansion of DOL Authority to Postpone Certain Deadlines (Section 3607): The legislation provides the Department of Labor with expanded authority to postpone certain deadlines under ERISA. In general, the legislation increases the circumstances to go beyond a terroristic or military action to also include a public health emergency declared by the Secretary of Health and Human Services under the Public Health Service Act.

While the DOL must take further action before this expansion has any impact, this could ultimately impact salary deferral contribution deadlines, participant notices, etc.

It is likely Congress may consider additional measures in the days to come. As always, we at Everhart Advisors will keep you apprised of all new developments.

614-717-9705 | info@everhartadvisors.com | everhartadvisors.com

Sources: Godbout, Ted. "Senate Approves Coronavirus Stimulus with Retirement Relief." National Association of Plan Advisors, 26 Mar. 2020, https://www.napa-net.org/news-info/daily-news/senate-approves-coronavirus-stimulus-retirement-relief.

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