CARES Act Impacts Employer Retirement Plans

By Julia DeWitt and Gena Gibson
April 2, 2020

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act contains a number of provisions that affect employer-provided retirement and health plans. This article discusses the changes that affect retirement plans. (Health plan impacts are discussed in a separate article.)

Special "Coronavirus-Related Distributions" Permitted for Qualified Individuals During 2020
Eligible retirement plans, such as qualified plans, 403(b) plans, and governmental 457(b) plans, may allow a Qualified Individual (defined below) to withdraw up to $100,000 from his or her accounts during the 2020 calendar year (although it appears that the distribution cannot be made on December 31, 2020, which might be a drafting error). Coronavirus-related distributions may be made even if the normal distribution rules applicable to 401(k), 403(b), and 457(b) plans would not otherwise permit an in-service distribution. The amount withdrawn is not subject to the 10% early withdrawal penalty under Section 72(t) of the Internal Revenue Code (the "Code") and is also not subject to 20% mandatory federal income tax withholding. The taxable amount of the distribution will be spread ratably over a 3-taxable-year period (unless the Qualified Individual elects otherwise). The Qualified Individual may choose to repay the distribution in one or more contributions to an eligible retirement plan over a 3-year period if certain conditions are met.

A Qualified Individual is anyone:

- Who is diagnosed with SARS CoV-2 or COVID-19 by a CDC-approved test,
- Whose spouse or dependent (as defined by the Code) is diagnosed with SARS CoV-2 or COVID-19 by such a test, or
- Who, due to the virus or disease, experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off, or having work hours reduced; being unable to work because of a lack of child care; or closing or reducing hours of a business owned or operated by the individual.

Note that the CARES Act does not provide for coronavirus-related distributions if the employee's domestic partner is diagnosed with the virus (unless the domestic partner is considered the employee's dependent under the Code).

The plan administrator may rely on the employee's certification that he or she satisfies one or more of the conditions listed above.

Keep in mind that the Qualified Individual may not withdraw as a coronavirus-related distribution more than $100,000 in total from all plans maintained by the employer and any member of the employer's controlled group. If a plan chooses to permit coronavirus-related distributions, the plan administrator should make sure that the plan's third-party administrator has mechanisms in place to track that limit across all applicable plans.

Permitted Increase to Retirement Plan Loan Limits
A qualified employer plan may increase certain loan limits for a Qualified Individual for a limited period. Generally, plans must limit loans to $50,000 or 50% of the employee's vested account balance, whichever is less.

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Under the CARES Act, a qualified employer plan may permit a Qualified Individual to borrow up to $100,000 or 100% of the Qualified Individual's vested account balance, whichever is less, during the 180-day period beginning on March 27, 2020. Note that the CARES Act apparently does not change the prohibited transaction rule that only 50% of the vested account balance can be used as security for the loan. Thus, it appears that additional collateral will still be required to make a loan in excess of 50% of the account balance.

Delay of Retirement Plan Loan Repayment for Qualified Individuals
If a Qualified Individual has an outstanding retirement plan loan on or after March 27, 2020, and the due date for any repayment occurs from March 27, 2020, to December 31, 2020, the repayment due date is delayed for 1 year. Subsequent loan repayments are to be adjusted to reflect the delayed due date and any interest accruing during the delay. The delay period is disregarded for purposes of determining the 5-year maximum repayment period.

Temporary Waiver of Required Minimum Distribution Rules for 2020
The CARES Act also provides for a temporary waiver of required minimum distributions (RMDs) that would normally be required in 2020 for participants of certain defined contribution plans, including qualified plans, 403(b) plans, and governmental 457(b) plans. Unlike the CARES Act provisions described above, this temporary waiver is not contingent on whether an individual is a Qualified Individual.

Plan Amendments
Plan sponsors will likely need to amend their plans to address the delay of retirement plan loan repayments and waiver of 2020 RMDs. Plan sponsors will also need to amend their plans if they choose to implement the optional provisions. Plan sponsors generally have until the last day of the first plan year beginning on or after January 1, 2022, to retroactively amend their plans (governmental plans have an additional 2 years beyond that date).

As soon as possible, plan sponsors should decide whether to adopt any optional CARES Act provisions and make sure that the plan's third party administrator is operationally compliant with both the optional provisions that the plan sponsor adopts and any required CARES Act provisions. Administrative procedures and forms should reflect changes that are made. As a fiduciary matter, it may be prudent to notify plan participants and beneficiaries of plan changes before the date that a summary of material modifications would normally be required.

Single Employer Defined Benefit Plan Funding Rules
The CARES Act delays the due date for minimum required contributions that would otherwise be due in 2020 until January 1, 2021. The amount due will include interest at the plan's effective rate of interest. In addition, for purposes of the funding-based benefit restrictions under Code Section 436, the plan sponsor may elect to use the plan's AFTAP for the plan year ending before 2020 as the AFTAP for plan years that include 2020.

Reminder About Hardship Withdrawals
Some retirement plan sponsors may have already decided to adopt provisions permitting hardship withdrawals in the event of a federally declared disaster. For employers in COVID-19 federal disaster areas (such as Oregon, Washington, and California), this may be one option to help employees access funds from their retirement accounts. But employees would likely prefer the tax advantages of the coronavirus-related distribution option described above.

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Delay of Certain Deadlines
The IRS has delayed certain deadlines because of the coronavirus, and the CARES Act expands the Department of Labor's authority to postpone certain ERISA deadlines. For example, the IRS has extended the last day of the initial remedial amendment period for 403(b) plans from March 31, 2020, to June 30, 2020.

Note, however, that although the IRS has delayed the April 15 deadline in several non-retirement-plan-related circumstances, the deadline for returning excess elective deferrals to retirement plan participants was not affected and remains April 15.

Please contact a member of the Employee Benefits Team if you have questions about how COVID-19 and related legislation may impact your benefit plans.

For more information about ongoing developments related to COVID-19, visit Miller Nash Graham & Dunn's resource library.

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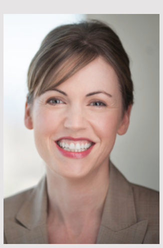

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