INNOVEST

Employee assistance available from retirement plans through the Coronavirus Aid, Relief and Economic Security Act (CARES) Act

As of March 27, 2020, both the U.S. Senate and the House of Representatives have passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. It is anticipated that it will be signed into law in the near future.

The legislation waives RMDs for calendar year 2020 for defined contribution plans, including 401(k), 403(b), 457(b) and IRA plans. For people who don't need the funds, it avoids the misfortune of being forced to liquidate assets when markets have sold off.

Hardship Withdrawal and Loan Rules

The Act waives the 10% early distribution penalty for "coronavirus-related distributions" (CRDs) of up to $100,000 from tax qualified plans allowing participants access to cash without tax penalties.

Participants taking these distributions may repay the amount withdrawn to an eligible retirement plan within three years and repayments will not be subject to the retirement plan contribution limits. Additionally tax on the income from the withdrawal may be paid over a three-year period;

For purposes of this rule, a CRD means any distribution from a tax-qualified retirement plan made on or after January 1, 2020, and before December 31, 2020, to an individual:

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

For this purpose, the plan administrator may rely on an employee certification.

With respect to plan loans to qualified individuals (those who would be eligible for a coronavirus distribution as defined above), the Act increases, for 180 days from the date of enactment, the dollar limit on plan loans from $50,000 to $100,000 and the percentage limit from 50% to 100% of the participant's vested account balance.

The due date for repayment of an outstanding loan of any qualified individual that occurs from the date of enactment to December 31, 2020 is delayed for one year allowing the delay of adverse tax consequences if the participant is unable to repay an outstanding loan due to layoff or termination.

Additional Considerations

These CRDs are similar to other disaster related distributions and your recordkeeper or third-party administrator will be reacting quickly to put the mechanisms for these distributions into place. You may hear from them soon regarding preparations. Please do not hesitate to contact them as they will be the partner putting the availability of these provisions into place.

Of note, there is no modification of the Internal Revenue Code criteria for traditional hardship withdrawals and the 10% early withdrawal penalty will still be in place for those distributions. As a reminder, federally declared disasters are now included in the list of "deemed hardships" under IRS rules. As of this writing, there are federally declared disasters in certain states, but not nationwide.

Additionally, other distribution types will continue to be available for your participants. If your plan allows in-service distributions or distribution of rollover assets these will continue to be available. You should review your plan document to understand what is available. We urge you to be careful in adding new types of distributions during this time as some might become a protected benefit. This will not be the case for CRDs.

Authority to Postpone Deadlines

The CARES Act also expands the Department of Labor's (DOL) authority to postpone certain deadlines under ERISA. Industry advocates are pressing the DOL and Treasury Department to provide relief from various filing requirements, including an automatic extension of the Form 5500 series for retirement plans, an extension to the deadline for correcting a failed ADP or ACP test and an extension of the period for distributing excess contributions and excess aggregate contributions under a plan, among others.

While we would typically discourage actions which put retirement assets at risk, require participants to liquidate portions of their accounts at the after a market decline, and jeopardize their retirement, we understand that desperate times require desperate measures. Hopefully these provisions will be utilized properly, putting cash in the bank for food, rent, utilities, mortgage and other necessities for those who need it during this crisis.

As you consider the implementation of these provisions please communicate and work closely with your recordkeeper or third-party administrators they will be key in the implementation and will be handling your participant transactions. Don't hesitate to contact us if you have questions.

Other Things To Note

As you move forward with reactions to the crisis, we advise you to contemplate the impact of some of your actions on your retirement plans.

Some employers are devising creative ways to design compensation structures for employees who may be partially furloughed, or part of a new unique arrangement like bonusing, or attempting to create new fringe benefits. You will need to consider the impact of these methods and possibly new payroll codes on your definition of compensation. You will want to consider whether these methods and codes should be eligible for retirement plan deferrals.

In this time of significant furloughs and layoffs there are two items to aware of. First, you should ensure that typical severance of employment distributions are made under the appropriate circumstances and bona fide severance of employment. Those distributions should be made be made only to those where there is no consideration of returning to employment. Additionally, a significant reduction in workforce could cause a partial plan termination. These rules require retirement plans to 100% vest all participants who are affected by a partial plan termination. The occurrence of a partial plan termination might occur as a result of one or a chain of group layoffs. Please contact your legal counsel if you have questions on these two items.