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CARES Act: Impact on your Retirement Plans

The CARES Act is the stimulus package the government recently enacted to support the country and economy during and after the coronavirus pandemic. The 880-page Act has many programs and features that affect a wide range of the economy. The points below are some of the highlights and potentially overlooked aspects of how the Act deals with retirement plans. One item to note at the beginning, is that adding these programs or features will require a plan amendment. The deadline for creating this amendment is not until 2022 as the government does not want paperwork slowing down these changes.

For more information on all aspects of the CARES Act or any bills we are watching, please consult Innovative Benefit Planning. This is an evolving situation that we will continue to closing monitoring and keep you updated as events happen.

Coronavirus Related Distribution (CRD)

Participants are allowed to withdraw a total of $100,000 per person from their retirement plans under this new type of distribution. The participant must be affected by the virus in some fashion. Each participant will be required to self-certify that:

1. The Participant is diagnosed with the virus SARS-Co-V-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,
2. The Participant's spouse or dependent (as defined in section 152 of the Internal Revenue Code) is diagnosed with such virus or disease by such a test, or
3. The Participant experienced adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, 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.

This type of distribution is not subject to the plan's current hardship distribution rules as it is a new category.

A participant who during 2020 has already taken a traditional hardship distribution and would qualify for a CRD, may be able to have their distribution reclassified to a CRD to avoid the potential 10% tax penalty. The plan's recordkeeper would need to work with them on a determination and distribution.

CRD's have tax consequences that are different than other types of retirement plan distributions. Participants should consult their tax preparer for specifics about their situation, but the general rules are:

1. Any CRD is taxed as ordinary income to the participant.
2. They are not subject to the early distribution penalty of an additional 10% tax if the participant is under 59 ½.
3. Recordkeepers are not required to withhold any taxes, but they may be limited to a minimum based on their specific capabilities.
4. Participants taking this type of distribution are allowed to pay the taxes due over three tax years.
5. Money distributed as a CRD may be re-deposited into the plan and the taxes negated. Specifics on how to accomplish this will be issued by the DOL and IRS in the future.

Coronavirus Related Distribution Tips:

- Contact your plan's recordkeeper to understand the specifics (e.g. online requests, forms, checks, electronic funds transfers, tax withholding) regarding how they will issue these distributions.
- If applicable, ask your recordkeeper how hardship distributions issued in 2020 can be recharacterized as CRDs.
- Participants that can't certify to be affected by the coronavirus may qualify for the normal hardship distribution if they live or work in an area that has been declared a disaster area by FEMA. Your plan would need to allow this type of distribution. Disaster relief was added as an allowable hardship reason in 2018.

Loans

The CARES Act raises the loan limit from the lesser of 50% of your vested balance or $50,000 to the lesser of 100% of your vested balance or $100,000. This increased limit is available through September 23, 2020.

Plan participants with existing loans that have payments due between March 27, 2020 and December 31, 2020, can delay these payments by one year without defaulting on the loan. Once the participant begins making payments again, the loan will need to be re-amortized to capture the delayed payments and interest.

Normally, general loans from retirement plans have a maximum repayment period of five years from the date of issue. The time period of the delayed payments can extend the five-year repayment window with no penalty other than the accrued interest.

For new general purpose loans established within 180 days of the CARES Act becoming law, the maximum repayment period is six years.

If your plan does not normally allow loans, you should speak with your third-party administrator and recordkeeper to discuss whether or not to allow loans and how to implement a change to allow for loans.

Loan Tips:

- If your plan does not normally allow loans, you need to speak with your third-party administrator and recordkeeper if you want to add this feature. Given today's environment, a loan might be a better solution for the participant than a distribution. Participants pay the loans back to themselves, allowing the money to continue to grow for retirement. Distributions are normally removed from the account and are spent long before retirement.
- Plan administration can be a challenge during normal conditions. With the likelihood that your normal business operation has been altered at least slightly and the changes related to recent legislation, you might consider adding the services of a 3(16) administrative fiduciary. The benefit of peace of mind and streamlined administrative processing may we well worth the cost. Your recordkeeper may offer this service.

Required Minimum Distributions

The CARES Act waives all required minimum distributions for tax year 2020.

If a participant has already taken their 2020 required minimum distribution, they have the ability to roll the money into their retirement plan or an IRA.

If a participant turned 70 ½ in 2019, they had until April 1, 2020 to take their first required minimum distribution. If they did not take this distribution during 2019 and have taken it since January 1, 2020, they can roll the money into the retirement plan or an IRA.

Required Minimum Distribution Tips:

- Confirm with your recordkeeper what their process will be for issuing required minimum distributions. Some providers have set their system up to automatically send checks if the amount is not distributed by a certain date each year.
- Some participants may want their distributions. If your recordkeeper is not sending the money automatically because the rules changed for 2020, you might find it easier to reach out to those normally receiving the required minimum distribution to explain the situation, rather than receive the call asking where their distribution money is.

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Company Match

If your company makes a discretionary match, you should have the most flexibility without making any plan document change. Clearly, you should notify participants, but there are no advance notice requirements. You can alter or stop the match as you deem appropriate.

If your company has a fixed match, the plan document will need to be amended and participants will need at least 45 days advance notice of the change. For plans with less than 100 participants, the advance notice requirement is 15 days.

There are several common situations the CARES Act does not address. The American Retirement Association has been in discussions with the DOL and members of Congress to address the following:

1. Allow plan sponsors to suspend any required 2020 contributions, even Safe Harbor contributions.
2. Allow plan sponsors with under 500 employees the ability to waive any contributions required for 2019 that have not been made yet.
3. Allow plans that take advantage of these proposed changes to not be subject to non-discrimination or top-heavy testing for 2020.

Company Match Tip:

- The CARES Act is not expected to be the last package enacted by the federal government. Clarifications need to be made and additional steps and guidance are forthcoming. Plan Sponsors need to be prepared for future regulations to cover what steps need to be taken in the short-term.

Pension Plans

If you are scheduled to make a required contribution to any pension plan during 2020, that deposit plus interest from when it was originally due can be delayed until no later than January 1, 2021.

Pension Plan Tips:

- If you have concerns about funding your 2020 contributions, contact your actuary to see if you may be able to amend your plan now. Most plan's funding formula cannot be amended after any participant accrues 1,000 hours during a plan year. All amendments have advance notice requirements also tied to that 1,000 hour limit. If you are at all concerned, you should investigate quickly. An alternative may be to freeze the plan and stop the accrual of liabilities.
- While the due date for 2020 scheduled contributions has been pushed until 1/1/2021, it may make more sense for you to make those contributions prior to the end of the year.
- Review your current funding levels with your actuary. The current market conditions may allow you to change your investment allocation and participate in the eventual recovery. Past performance is no guarantee of future results. Investments come with risk and may decrease in value. Understand your investments and the risk associated with them.

Any questions or concerns regarding this or any other workforce issues during the COVID-19 pandemic, please contact the Innovative team or visit our COVID-19 Employer Resource Center for daily updates.