

The CARES Act – Considerations for Plan Sponsors

In response to the COVID-19 pandemic and anticipation of economic impact, lawmakers in Washington D.C. officially approved a \$2 trillion relief bill called the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Here are some highlights of the legislation that are important for plan sponsors to consider.

Retirement Plan Consulting

Contact your Baird Financial Advisor with questions.

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The CARES Act, as signed into law by President Donald Trump on March 27, 2020, includes temporary rulings that provide tax savings and increased cash flow opportunities for businesses and individuals. Several provisions of the Act directly impact qualified plans, requiring consideration by plan sponsors and committees that govern qualified plans for their businesses.

Providers, including recordkeepers and third party administrators, are digesting the legislation and assessing their documents and systems to ensure that they can accommodate the temporary changes. Baird recommends that you speak to your Financial Advisor and your plan providers to discuss your plan's current provisions and whether to consider the new provisions for your plan. Your plan providers may also have operational limits or challenges that must be considered.

Keep in mind that, while the provisions can be immediately implemented, adding or changing provisions will require a document amendment. The plan does not have to be amended until the end of the 2022 plan year (or a later date as the Secretary of the Treasury may determine) but the amendment must be retroactively effective to accommodate what was allowed operationally during that time. *It's critical to work closely with your plan providers before any provisions are adopted in practice.*

CORONAVIRUS-RELATED DISTRIBUTIONS

If the plan permits, the bill allows "coronavirus-related" distributions of up to \$100,000 throughout 2020 to a "qualified individual" who has been impacted by the virus. Impact includes being diagnosed with the virus; a spouse with a COVID-19 diagnosis; financial impact including employment layoff, reduced hours, or lack of available child care. While many plans have offered "hardship" distributions, this type of distribution contains special provisions to help affected participants from a tax and repayment standpoint.

Employers and service providers can rely on a participant's self-certification to determine eligibility.

The bill permits any "eligible retirement plan," including qualified plans, IRAs, 403(b) plans and governmental 457(b) plans, to offer a coronavirus-related distribution provision, but excludes defined benefit and money purchase plans.

Under a Coronavirus-related scenario, a distribution is subject to ordinary income tax. If the participant would have otherwise incurred a 10% penalty tax for an early distribution, the bill exempts the distribution from the penalty. In addition, affected participants may spread the taxes associated with the payment over a three-year period. The coronavirus-related distributions are also not subject to the 20% mandatory withholding requirement.

A participant may also *repay* all or part of the distribution within three years from the day the distribution was received, to the affected plan or any plan that can accept rollovers.

LOAN LIMITS AND REPAYMENT

If the plan permits, a plan can allow loans of up to 100% of a qualified participant's vested account or benefit, up to \$100,000. This provision covers loans made within 180 days of the passing of the Act. Further, if your plan currently offers a loan provision, any outstanding loan payment due between the date of enactment and December 31, 2020 is delayed up to one year. The standard five-year repayment period is also extended for one year. Interest accrues on the loan during the delay period.

SAFE HARBOR 401(K) CONTRIBUTION MODIFICATIONS

Employer Safe Harbor 401(k) contributions can be suspended during 2020 if:

- The plan provided a notice, at least 30 days prior to the beginning of the plan year, containing specific language that the safe harbor contribution might be suspended during the year; or
- The employer is operating at an economic loss for the plan year.

If the contribution is suspended, participants must be given a 30-day advance supplemental notice and the plan must pass ADP testing for the year. The plan will not be able to take advantage of the top-heavy exemption for the year.

RMDS

Required minimum distributions (RMDs) due in 2020 are not required from 401(k), profit sharing, 403(b) plans, IRAs, or 457(b) plans. If a new RMD would normally occur starting in 2020, and the plan hasn't already distributed the RMD, that RMD is waived, as well.

DEFINED BENEFIT CONTRIBUTIONS

The due date for any required contributions to defined benefit plans (including quarterly contributions) during 2020 is extended to January 1, 2021.

As with all new legislation, further implementation guidance will follow in the coming days and months. In the meantime, plan sponsors should carefully consider the demographics of their employees, weigh the advantages and challenges of offerings, and determine, with the help of provider partners, what is best for the plan. Contact your Baird Financial Advisor for further information.