The CARES Act & Retirement Plans

A Quick Look at What You Need to Know as a Plan Sponsor
April 3, 2020

You likely have more on your plate right now than you ever imagined, and the nuts and bolts of your company's retirement plan are likely not top-of-mind. Regardless, your fiduciary duty to the Plan and its participants continues uninterrupted, and we want to assist you in understanding this changing landscape so that you can meet those duties and, just as importantly, meet the needs and anxieties of your employees. Here is a quick look at what we think you need to know. By no means does this cover all of the fine details of each new or highlighted provision, and we encourage you to work with your TPA and tax professional where needed on the implementation or management of any of these issues.

Employer Contributions

As cash flow dries up for the time being, many employers are wondering if they can reduce or terminate matching contributions temporarily or indefinitely. The answer is "It depends." Any discretionary matching contributions can be terminated at any time, though communication with employees and coordination with your TPA is still essential. Making changes if these employer contributions are hardwired into the plan through the language in your Plan Document are more difficult, and you should work with your TPA to amend the Plan Docs to reflect any planned change. Safe Harbor contributions are also difficult to amend midstream, and changes should be discussed with your TPA prior to implementation. Under no circumstances should you unilaterally withhold employee contributions.

CARES Act - Enhanced Loan Provisions

Under the CARES Act (the most recent stimulus bill), Plan Sponsors are permitted to allow for enhanced loan provisions in defined contribution plans (e.g. 401k). Whereas 401(k) loans were previously limited in most cases to the lesser of 50% of the vested account balance or $50,000, loans can now be limited to the lesser of 100% of the vested balance or $100,000. It is important to note that it is up to you as the Plan Sponsor to elect for this expansion of loan terms, and that it only applies if you already offer loans through the plan. Also, according to one of the preeminent attorneys in this space, Plan Sponsors can elect

for something in-between (e.g. 75% or $75,000). No Plan Amendment is required now, but will be required by the end of the Plan year. Regardless, you should coordinate this change with your TPA, as they are an important conduit in facilitating Plan loans. In addition, it is important to communicate to participants that the normal payback terms will apply.

CARES Act - Coronavirus Relief Distribution ("CRD")

This provision applies to all qualified retirement accounts, meaning IRAs are also included alongside defined contribution plans. With this provision, account holders are permitted to withdraw up to $100,000 from their account penalty-free, and they will then have 3-yrs to either pay the taxes due or pay the funds back into their account. In effect, this is a 3-yr rollover option, as opposed to the 60-day rollover that typically applies. It is imperative to note that this is only available to those who have been impacted by the virus. However, the definition of "impacted" is quite loose (see below), and the employee is only required to self-certify in good faith that they have in fact been impacted. You as the Plan Sponsor are not obligated to verify this. Like with the loan provisions, no immediate Plan amendment is required, but you will have to make an amendment (we believe by January 1, 2022 – but please confirm with your TPA).

Definition of a Qualified Individual Under the CARES Act

1. Has been diagnosed with COVID-19;
2. Has a spouse or dependent who has been diagnosed with COVID-19;
3. Has experienced adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of childcare due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19.

CARES Act - Required Minimum Distributions

The CARES Act waives the requirement for account holders normally subject to an RMD to take that distribution in 2020. This also includes those who turned 70-1/2 last year and have not yet taken their distribution for 2019. This can be an important tax savings opportunity, and a way to keep more funds in tax-preferred accounts for a longer period. We don't believe that you have any employees currently in the RMD period, so this is likely a moot point for you. However, we'll pass this info along just in case it helps you as a Plan sponsor or it helps you as you work with your parents through these challenging times (if they are of an age where they are subject to RMDs).

Partial Termination Rules

Here is one that we will introduce briefly, but defer to the TPA for further guidance, as it is a tricky topic where a "facts and circumstances test" really needs to be applied. In short, this rule states that if >20% of your workforce is terminated in a given year, the account balances of the terminated employees automatically become 100% vested in that year. For those plans where employer contributions are already automatically 100% vested, this is a

moot point. However, if your plan applies a vesting schedule, this can be a very important provision to be mindful of and you should coordinate with your TPA if you do expect this provision will be triggered.

Payroll Protection Program (SBA Loans)

This is a much bigger topic that we are happy to discuss with you if you need any guidance. As it relates to retirement plans, it was noted on a call this morning that the loan program language likely contains an error as it relates to calculating employment expenses. It states "employer distributions," whereas any logical interpretation would see it as meaning to say "employer contributions." If this interpretation is correct, then we have been told that contributions you make to a retirement plan on behalf of an employee should be included in the calculations. Please consult with your banker / loan processor for further guidance.

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