

CARES Act Retirement Plan Provisions

April 20, 2020

The CARES Act contains several provisions impacting employer-sponsored individual account retirement plans (such as 401(k) plans, 403(b) plans, qualified profit sharing plans and governmental 457(b) plans), which are summarized below. Most of the provisions are optional and are intended to help alleviate the financial burden on plan participants impacted by COVID-19. You should contact the plan's recordkeeper about the implementation of these CARES Act provisions if you have not already heard from the recordkeeper.

Coronavirus-Related Distributions

Through December 30, 2020, a plan can permit certain participants impacted by COVID-19 ("qualifying individuals") to receive one or more "coronavirus-related distributions" from the participant's vested plan account balance that in total do not exceed \$100,000. These distributions are permitted even if the participant has not terminated employment (but not if the plan is a money purchase pension plan or a target benefit plan), and they are exempt from the normal 10% early withdrawal penalty that applies if the participant has not attained age 59 ½. The mandatory 20% federal tax withholding rules do not apply to coronavirus-related distributions, and the participant is entitled to spread the income tax liability over a period of three years beginning with the year of the distribution. A participant can repay all or any portion of the coronavirus-related distribution to the employer's plan, a different employer's plan or an individual retirement account (IRA) during a three-year repayment period (beginning on the day after the date the distribution was received), and avoid income taxes on the repaid amount.

"Qualified individuals" are plan participants who (i) have been diagnosed with the SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention (the CDC), (ii) have a spouse or dependent who has been diagnosed with the SARS-CoV-2 or with COVID-19 by a test approved by the CDC or (iii) have experienced adverse financial consequences as a result of being quarantined, furloughed or laid off; having work hours reduced; being unable to work due to lack of child care; closing or reducing the hours of business owned or operated by the participant; or from such other factors as determined by the secretary of the Treasury. An employer can rely on an employee's self-certification that he or she meets any of these "qualifying individual" requirements.



Higher Limits on Plan Loans

Plans that permit loans to participants from their plan accounts can temporarily increase the loan amount limit. Normally, the total amount of loans that a participant can receive from the participant's plan account is the lesser of \$50,000 or 50% of the participant's vested plan account balance. For "qualified individuals" (as defined above), the limit is increased to the lesser of \$100,000 or 100% of the participant's vested plan account balance in the case of loans taken by the participant during the period March 27, 2020 through September 23, 2020.

Suspension of Plan Loan Repayments

The CARES Act also provides temporary loan repayment relief for any "qualified individual" (as defined above) with an outstanding plan loan. For all regularly scheduled loan repayments that are due during the period beginning on March 27, 2020 and ending on December 31, 2020, the due date is extended by one year (with interest accrued during the delay). While the Act appears to require employers to offer the loan repayment relief, the IRS decided in a similar situation — namely, the loan repayment relief provided for Hurricane Katrina — that the repayment relief was optional. If you prefer not to provide the loan repayment relief, but either your employees request you do so or one or more employees default on a plan loan during this period, you should contact a member of the Lathrop GPM employee benefits group for further information.

Waiver of Required Minimum Distributions

Required minimum distributions (RMDs) in 2020 for terminated employees who turned age 70½ before 2020 (or for 5% or greater owners who turned age 70½ before 2020) are calculated based on the participant's plan account balance as of December 31, 2019. Due to the substantial stock market decline since December 31, 2019, an RMD paid during 2020 will be inflated (and the participant's resulting tax liability on the RMD will be inflated). To avoid subjecting participants to these excessive RMD payments and tax liabilities, the CARES Act provides for the waiver of all RMD payments from individual account retirement plans. If a plan still pays an RMD to a participant, the participant can avoid paying tax on the RMD by rolling the RMD to an individual retirement account (IRA) or to another employer's plan that accepts rollovers.

Plan Amendment Deadline

An employer can begin offering any of the above CARES Act retirement plan provisions as soon the plan recordkeeper has implemented the changes to its recordkeeping system to make these provisions available to the plan participants. The employer does not need to amend the plan document beforehand. Rather, a plan amendment adding any of the CARES Act provisions is timely so long as it is adopted by the employer no later than the last day of the plan year that begins on or after January 1, 2022 (which in the case of a



calendar year plan, means no later than December 31, 2022). In the case of a plan sponsored by a governmental employer, the deadline is the last day of the plan year that begins on or after January 1, 2024 (which is December 31, 2024 for a calendar year plan).

If you have any questions about any of these CARES Act retirement plan provisions or the implementation options offered by the plan recordkeeper, please contact Greg Kuhn, John Nichols, Virginia Schubert, Business Transaction Practice Group Chair Mark Williamson or your regular Lathrop GPM contact.