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CARES Act: 2020 DB Pension Funding Relief and Waiver of Required Minimum Distribution Rules for DC Plans

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

The $2.2 trillion stimulus bill (the "CARES Act") signed into law March 27, 2020, contains important provisions that affect tax-qualified retirement plans. We have previously posted a summary of the emergency in-service withdrawal and plan loan revisions authorized by the Act, which defined contribution plan sponsors may adopt.

This post reviews two other important aspects of the CARES Act: Permitted delays to due dates for minimum required contributions otherwise applicable to single employer defined benefit pension plans, and a temporary waiver of the required minimum distribution rules under Internal Revenue Code ("Code") section 401(a)(9) for defined contribution plans, both for the duration of 2020.

Pension Funding Relief

Section 3608 of the CARES Act provides a delay for any minimum required contribution (as determined under Code section 430(a) and ERISA section 303(a)) that would otherwise be due under Code section 430(j) during calendar year 2020. The new due date for any such contribution is now January 1, 2021.

If any payment is made after its original due date, the amount of the minimum required contribution must be adjusted for interest at the effective rate of interest for the plan for the plan year which includes the payment date, for the period between the original due date and the date actually paid. Interest on payments can be avoided by paying the minimum required contribution on or before its original due date. The delay is only available to single employer defined benefit pension plans whose minimum required contributions are determined under Code section 430(a) and ERISA section 303(a).

The provision is designed to provide relief to single employer plan sponsors, who may be facing decreases in revenue at the same time as plan investment experiences during unprecedented market volatility have severely reduced plan asset valuations.

Also, for purposes of applying the benefit restrictions under Code section 436 applicable to underfunded pension plans, a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020. This may allow some plans to avoid triggering certain benefit restrictions in 2020 that would otherwise apply under Code section 436.

Required Minimum Distributions Waiver

Under existing law, retirees who reached age 70½ before January 1, 2020, are generally required to take certain required minimum distributions ("RMDs") each year from defined contribution plans. (The law was changed effective January 1, 2020, for participants who had not yet reached age 70½, who will not be required to take RMDs until April 1 of the year following the year in which they reach age 72.) In addition, death benefits must be paid out to beneficiaries within certain maximum timeframes.

Section 2203 of the CARES Act provides that RMDs that would otherwise be due in 2020 do not have to be made, including RMDs to death benefit beneficiaries. The rule is applicable to defined contribution plans only, including Code section 401(a) qualified plans (including 401(k) plans and other traditional defined contribution plans), Code section 403(a) and 403(b) defined contribution plans, eligible (government-sponsored) Code section 457(b) plans, and individual retirement accounts ("IRAs").

A plan is not required to offer participants the RMD waiver, but is allowed to do so. Because plan documents are required to provide for the RMD rules, a plan amendment would be required to offer the RMD waiver to participants. However, a plan can immediately offer the RMD waiver if the written amendment is adopted by the last day of the first plan year beginning in 2022 (December 31, 2022, for calendar year plans).

The waiver is similar to relief given under the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) enacted following the 2008 financial crisis. The relief is limited to defined contribution plans based on the fact that to pay RMDs to participants, plans must liquidate investments at a lower values, and the RMDs would be calculated based on account values as of December 31, 2019, when many investments were approaching historic highs.

Any RMD payments that are made in 2020, since they are not required, are treated as eligible rollover distributions. For beneficiaries of deceased participants who are required to take distributions within 5 years of a participant's death, calendar year 2020 will be disregarded for purposes of determining the five-year period.

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Department of Labor has Authority to Postpone Certain ERISA Deadlines

Section 3607 of the CARES Act authorizes the Secretary of Labor to delay certain deadlines under ERISA due to public health emergencies. This authority now applies to the coronavirus pandemic, which was declared an emergency on January 31, 2020. However, additional action from the Secretary of Labor is needed before any ERISA deadlines will be extended or delayed.

If you have questions about the CARES Act and how it affects your benefit plans, reach out to a member of the Kilpatrick Townsend Employee Benefits team. Additional resources and information about coronavirus-related legal developments is available here: Coronavirus (COVID-19) Task Force.