CARES Act Analysis

April 03, 2020

The President signed the **Coronavirus Aid, Relief, and Economic Security (CARES) Act** into law on March 27,2020. The CARES Act is wide-ranging legislation aimed at partially alleviating the financial crisis brought on by the novel coronavirus (SARS-CoV-2) that causes COVID-19. NAGDCA joined 24 other retirement industry groups in **a letter** to Congress to advocating for the inclusion of critical retirement provisions in the final bill. Many of these provisions were written into the final law. Below is a summary of the provisions affecting governmental defined contribution retirement plans, and their impact on public plan sponsors.

SECTION 2202 – SPECIAL RULES FOR RETIREMENT FUNDS

PROVISION: IRS Code 72(t), the 10% early withdrawal penalty, will not apply to any coronavirus-related distributions.

LIMITS: Up to $100,000 per individual applied across all plans and IRAs. Plan sponsors are obligated to enforce the limit for all plans in the same controlled group.

WHO DOES IT APPLY TO? Distributions from IRAs, 401(k), 401(a), 403(b), and 457(b) plans.

REPAYMENT: Coronavirus-related distributions can be repaid within three years of the date of distribution to any plan or IRA allowing rollover contributions; repayments are treated as rollover contributions.

HOW IS A DISTRIBUTION TAXED?

Regular income tax due on coronavirus-related distributions is spread ratably over three years unless the person elects otherwise. The 20% income tax withholding requirement does not apply, and 402(f) notice is not required.

It is expected that plans will issue a Form 1099-R for the full distribution amount as normal, and participants will need to claim the three-year ratable taxation on their personal tax returns, although more guidance is needed from the IRS on this point.[1]

More guidance is also needed in regard to how participants who make repayments are to claim a refund of previously paid taxes on the distributions subsequently repaid.[1]

WHAT IS A "CORONAVIRUS-RELATED DISTRIBUTION"?

Any distribution made on or after January 1, 2020 and before December 31, 2020 to an individual:

- who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC),
- whose spouse or dependent is so diagnosed, or
- who, due to such virus or disease, experiences adverse financial consequences as a result of: (1) being quarantined, (2) being furloughed or laid off, (3) having work hours reduced, (4) being unable to work due to lack of child care, or (5) being unable to work due to the closing or reducing of the hours of a business owned or operated by the individual.

Please note that as a plan sponsor, you can rely on an employee's certification that at least one of the above conditions are satisfied. Plan sponsors may consider consulting with their recordkeepers to develop a certification as a part of their administrative process.[1]

Plan sponsors adopting this provision may set a limit lower than $100,000 if desired but must enforce the same limit for all plans in the same controlled group.

SECTION 2202 - CONT'D

PROVISION: Increased loan limit and extension of repayment period

LIMITS: The maximum loan amount is increased from $50,000 or 50% of the vested account balance to $100,000 or 100% of the vested balance.

WHO DOES IT APPLY TO? 401(k), 401(a), 403(b), and 457(b) plans.

REPAYMENT: Payments are delayed by one year for any person meeting the requirements for a coronavirus-related distribution who (1) has an outstanding loan balance on or after March 27, 2020, and (2) has loan payments due from March 27, 2020 through December 31, 2020. All subsequent payments will be adjusted to consider the delay and the interest accrued during the delay. The five-year loan limit may be disregarded for this purpose.

Plan sponsors that do not currently permit loans could consider amending their plans to allow them. Plan sponsors that already permit loans may wish to review their loan policies to determine if they can allow more flexibility.[2]

There is a lack of consensus among retirement law experts as to whether a plan sponsor may choose to extend the repayment deadline or if it is mandatory.

We will provide updates when additional guidance is issued by the IRS.

PLAN AMENDMENT INFORMATION:

Offering in-service coronavirus-related distributions or loans are optional provisions that must be adopted by the plan sponsor. If your plan would like to make such distributions and/or loans available, then the plan must be amended on or before the last day of the first plan year beginning on or after January 1, 2024 (January 1, 2022 for non-governmental plans).

The Treasury Department is given the authority to extend the amendment deadlines.

SECTION 2203 – TEMPORARY WAIVER OF RMD RULES FOR CERTAIN RETIREMENT PLANS AND ACCOUNTS

PROVISION: Required Minimum Distributions (RMDs) are temporarily waived.

LIMITS: Any RMD required to be made in calendar year 2020 is waived, including RMDs due as a death benefit in accordance with the five-year rule and that time limit is extended by one year.

WHO DOES IT APPLY TO? 401(k), 403(b), 457(b) plans, and IRAs.

ROLLOVERS: Distributions made in 2020 that would otherwise have been RMDs can be rolled over pursuant to the 60-day rule. The rollover contribution can be made to any plan or IRA allowing rollovers. The 20% withholding and trustee to trustee transfer requirements that otherwise apply to eligible rollover distributions do not apply to these waived RMDs.

1. Ciepluch, A., Fleming, C., Riley, L., & Welle, N. (2020, March 27). Cares Act – Impact on Employee Benefit Plans. Retrieved from Foley Lardner LLP; https://www.foley.com/en/insights/publications/2020/03/cares-act-impact-on-employee-benefit-plans
2. Blachman, G., Ferguson-Allen, A., Funke, S., Gauss, R., Proffitt, M., Schaefer, S., Scheidt, K., Sciscoe, T., & Sears, C. (2020, March 27). Accessing Retirement Plan Funds Under CARES Act and Existing Law. Retrieved from IceMiller Legal Counsel; https://www.icemiller.com/ice-on-fire-insights/publications/accessing-retirement-plan-funds-under-cares-act-an/

RELIEF, NOT A NEW WAY OF DOING BUSINESS

While we at NAGDCA supported the inclusion of these provisions in the CARES Act, we want to emphasize that our support not be understood as an endorsement of a new status quo. NAGDCA has always advocated for a long-term view of retirement plans, as is reflected in our Best Practices. However, the unusual circumstances presented by the global health emergency and financial crisis demanded unusual action. At NAGDCA, we will do everything we can to connect you to the resources you need to be successful. If you need support or have questions, please see our COVID-19 resources page or contact us directly at nagdca@amrms.com.

For questions about the CARES Act, or any of NAGDCA's legislative priorities, please contact Paul Beddoe, our Legislative Affairs Director, at paul@pvbga.com.

We would also like to thank our Legislative Committee members for their support, with a special thanks to committee member Marilyn R. Collister, Senior Director of Regulatory Affairs for Government Markets at Empower Retirement, for her assistance with this analysis.

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