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Senate approves a $2 trillion stimulus package—retirement plan provisions

On March 25, the Senate passed a bill providing a $2 trillion stimulus package in response to the coronavirus pandemic and the economic crisis it has generated. After Senate action, the bill moved to the House for approval.

In this article we briefly review the provisions of the bill addressing retirement plan issues and conclude with a brief discussion of issues that are not dealt with in the bill, but may be a part of follow-on legislation.

Special rules for use of retirement funds

Waiver of 10% tax on early distributions. The bill waives the 10% "early distribution" penalty for "coronavirus-related distributions" of up to $100,000 from tax-qualified plans.

Participants taking these distributions may repay them, or contribute them as a "trust-to-trust" transfer to another plan, within three years of the distribution.

The distribution may be included in income (for income tax purposes) ratably over three years.

For purposes of this rule, a "coronavirus-related distribution" means any distribution from a tax-qualified retirement plan made on or after January 1, 2020, and before December 31, 2020, to an individual:

> Who is diagnosed with a disease designated as coronavirus by a test approved by the Centers for Disease Control and Prevention;
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> Whose spouse or dependent is so diagnosed; or
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> Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to the coronavirus, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.

For this purpose, the plan administrator may rely on an employee certification.

Note: there is no modification of the Internal Revenue Code criteria for "hardship withdrawals". Federally declared disasters are now included in the list of "deemed hardships" under IRS rules. As of this writing, there are federally declared disasters in certain states, but not nationwide.

Liberalization of plan loan rules. With respect to plan loans to qualified individuals (defined as those who would be eligible for a coronavirus distribution [see above]), the bill increases, for 180 days from the date of enactment, the dollar limit on plan loans from $50,000 to $100,000 and the percentage limit from 50% to 100% of the present value of the participant's account.

The due date for repayment of an outstanding loan of any qualified individual that occurs from the date of enactment to December 31, 2020 is delayed for one year.

RMD rules waived for DC plans. The required minimum distribution (RMD) rules are generally waived for 2020 for defined contribution plans.

ERISA minimum funding for 2020

Delay in application of minimum funding rules. Any ERISA-required minimum contributions to a defined benefit plan due during 2020, including quarterly contributions, are delayed to January 1, 2021, at which time the amount due will be increased for interest.

2019 funded ratio may be used for determining benefit restrictions. In determining whether a plan is less than 80% funded and subject to, e.g., benefit restrictions, a sponsor may elect to treat the plan's adjusted funding target attainment percentage (AFTAP) for the 2019 plan year as the AFTAP for the 2020 plan year.

What's not in the bill

There are three critical retirement policy issues not addressed in the bill:

Long-term minimum funding relief/interest rate stabilization. As we have discussed, current market conditions are likely to increase minimum funding requirements in the relatively near term. There are proposals before Congress to further liberalize ERISA minimum funding requirements. As we understand it, Congress is prepared to consider these proposals later in the year. For the moment, the only relief is (as noted above) a delay to 2021 of any 2020 minimum funding.

Reduction in PBGC premiums. There are also proposals being considered that would reduce single-employer plan Pension Benefit Guaranty Corporation premiums. As we understand it, consideration of these proposals is being held up until some solution to the multiemployer plan financial crisis is agreed on. It's not clear, however, that even after such an agreement, Congress would move to reduce PBGC premiums.

Solution to the multiemployer plan financial crisis. There have been proposals, and at least one bill has been introduced, to address the multiemployer plan financial crisis. There appears to be agreement on all sides that a solution must be found, but there appears (still) to be no agreement on what that solution is. This situation remains fluid.

Also not in the bill: relief for defined benefit plan RMDs, defined benefit plan annual funding notices and spousal consent notarization requirements.

The bill must still clear the House. And we will need follow on agency guidance on a number of these new rules. We will continue to follow these issues.

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