**Coronavirus, Aid, Relief and Economic Security Act (CARES Act)**

**Retirement Plan Provisions**

* **Penalty-Free Coronavirus-Related Distributions in 2020.** The Act will allow participants in eligible retirement plans to take distributions in 2020 of up to $100,000 from their plan benefits (including distributions of 401(k) deferrals) without incurring the 10% early distribution tax that would otherwise generally apply to payments made prior to age 59-1/2. “Eligible retirement plans” include retirement plans such as 401(k) or profit-sharing plans, and IRAs. The distribution must qualify as a “coronavirus-related distribution,” which can only be made to a “qualified individual.” A “qualified individual” includes (i) a participant who has experienced adverse financial consequences resulting from a reduction in work hours; been laid off, quarantined, or furloughed; or is unable to work due to lack of childcare on account of the disease; and (ii) a participant, spouse or dependent who has been diagnosed with the virus. It does not appear that individuals who can continue to work their regular scheduled hours but suffer a salary reduction as a result of business contraction are included. Employers can rely on a certification from an employee that the distribution was a coronavirus-related distribution. It appears that plans will be permitted, but not required, to offer these distributions. The distribution will need to be made no later than December 31, 2020. This distribution is not an eligible rollover distribution and is not subject to the mandatory 20% withholding.
* **Repayment of Coronavirus-Related Distributions.**The Act will allow a qualified individual who takes a coronavirus-related distribution to repay it to an eligible retirement plan within three years of taking the distribution. Such repayment will be treated as a rollover contribution to such eligible retirement plan.
* **Income Inclusion Over Three Years for Coronavirus-Related Distributions.**A coronavirus-related distribution under the Act will be included in the qualified individual’s taxable income ratably over a three-year period, unless the individual elects to have it taxed in the year of distribution. The distributions will not be treated as eligible rollover distributions, so mandatory 20% withholding will not apply.
* **Plan Loan Dollar Limits Increased Temporarily.**The Act temporarily increases to $100,000 the maximum amount that a qualified individual may borrow from his or her plan account balance, starting on the date the Act is enacted and ending 180 days later. The Act also allows qualified individuals to borrow up to the lesser of $10,000 or 100% of their account balance, rather than 50% of their account balance under current rules. It appears that plans may, but are not required to, incorporate these limit increases. The qualified individual here is the same as those discussed under Penalty- Free Coronavirus-Related Distributions.
* **Extension for Loan Due Dates.**The Act provides a one-year extension of time to repay a plan loan if the due date occurs between the date the Act is enacted and December 31, 2020. It appears that remaining payments, plus applicable interest, can be reamortized over the extended period, and that these extension rules are mandatory. It is not clear whether employees are allowed to opt-out of having their loan due dates extended.
* **Required Minimum Distributions.**  The Act allows plans to suspend making required minimum distributions in 2020. This suspension also applies to participants who turned age 70-1/2 in 2019 and have not yet received their 2019 distribution. Amounts distributed in 2020 that would have been required minimum distributions but for the Act would not be treated as eligible rollover distributions, and would not require employers to provide the special tax notice under 402(f) of the Internal Revenue Code applicable to eligible rollover distributions. It appears that plans are permitted, but not required, to suspend required minimum distributions in 2020.
* **Plan Amendments.** Plans need to be amended to reflect these new rules by the last day of the plan year beginning on or after January 1, 2022 (i.e., for calendar-year plan years, by December 31, 2022).
* **One-Year Delay in Pension Minimum Required Contributions and AFTAP Reliance**. A single employer defined benefit plan minimum required contribution due in 2020 is delayed one year, subject to an interest adjustment. Plans can also rely on their adjusted funding target attainment percentages (which applies to determine certain pension plan distribution restrictions) from the last plan year ending before January 1, 2020 for plan years which include 2020. Many defined benefit plans obtain AFTAP certifications by April 1, 2020 so this relief is timely. It is unclear whether an AFTAP that has already been certified can be rescinded if the prior year’s AFTAP is more favorable.