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CARES ACT

Impact on Tax-Qualified Retirement Plans

This Legal Alert highlights provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) which directly impact tax-qualified retirement plans. The CARES Act was enacted on March 27, 2020, and provides the following:

Special COVID-19 Distributions: Any eligible retirement plan may permit special “COVID-19 Distributions” so long as these distributions are made on or after January 1, 2020, and no later than December 31, 2020. A special COVID-19 Distribution must be made for:

- A participant (or his/her spouse or dependent) who has been diagnosed with COVID-19 disease by a CDC-approved diagnostic test;
- As a result of COVID-19, a participant who experiences adverse financial consequences as a result of: (i) being quarantined, furloughed or laid-off; (ii) having his/her work hours reduced; (iii) being unable to work due to lack of child care; or (iv) the closing or hours reduction of a business owned or operated by the participant; or
- Other factors as determined by the Secretary of the Treasury.

A plan administrator may rely on a participant’s certification that he/she qualifies for a COVID-19 Distribution under at least one of the rules listed above.

The CARES Act defines an eligible retirement plan to include any qualified retirement plan maintained by an employer, a 403(b) plan, an individual retirement arrangement (IRA), and a 457(b) deferred compensation plan.

It appears that the COVID-19 Distributions are intended to be separate from the hardship distributions under the Code, which are already included in many employer-sponsored retirement plans. But the hardship distribution rules were not amended in any way which means the rest of the hardship distributions rules including the definition of “deemed immediate and heavy financial need” under the Code section 401(k) regulations, remain applicable to any special COVID-19 distributions.

Employers wanting to offer the COVID-19 distributions may operationally institute these changes but they must retroactively amend their plans no later than the last day of the first plan year beginning on or after January 1, 2022, or such later date as prescribed by the Secretary of the Treasury.



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A participant who receives a COVID-19 Distribution will not be subject to the 10% tax penalty unless the participant receives distributions in excess of \$100,000.

Plan Loans: A participant who qualifies for a COVID-19 distribution may also take a loan from a “qualified employer plan” (a 401(k) plan, a 403(a) plan, and a 403(b) plan) for up to the lesser of \$100,000 or the present value of the participant’s vested benefits under such plan.

Any installments of loan repayments for any participant loan that is outstanding under a plan (including COVID-19 loans) that would otherwise be due from March 27, 2020, through December 31, 2020, are delayed for one year. Furthermore, the remaining installment payments will be re-amortized to reflect the delay in the due date and any interest accruing during such delay.

Required Minimum Distributions under Defined Contribution Plans: Employers can choose to waive the required minimum distribution (“RMD”) rules for calendar year 2020 for their defined contribution plans such as 401(k) plans and 403(b) plans. Employers who wish to waive these rules can do so operationally this year and then amend their plan by the last day of the first plan year beginning on or after January 1, 2022. For most plans, that would be December 31, 2022.

The RMD waiver can also apply to individual retirement accounts.

Defined Benefit Plans: Employers’ minimum required contributions (as defined under Code section 430(a)) to single-employer pension plans that would normally be due during 2020 are delayed to January 1, 2021, at which time the full amount (with interest) will be due.

The delay does not apply to contributions required for other reasons such as a plan termination. Furthermore, for purposes of determining the funded ratio for a plan and any related funding restrictions under Code section 436 for 2020, employers may elect to use the plan’s 2019 adjusted funding target attainment percentage.

Finally, RMDs under defined benefit plans **are not waived** so employers should make sure that those RMDs are still timely processed.

If you have any questions about any employment law issues you may be facing, please contact **Nwa’ndo Ume-Nwagbo** by phone at 404-418-8492, ext. 103 or by e-mail at: neu@stulawgroup.com.

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