CARES Act: Retirement Account Provisions in the Senate Bill

In the late hours on March 25, the Senate unanimously passed a $2 trillion stimulus bill named the Coronavirus, Aid, Relief and Economic Security (CARES) Act (H.R. 748, as amended). The House is expected to act on this bill by the end of the week. Although a speedy action without additional delay is hoped for, lawmakers may modify its provisions. Here's what we know today.

The package aims to lift the economy by helping industries, small businesses and employees affected by the COVID-19 pandemic. Along with various tax provisions, the almost-900-page-long bill includes several important retirement account related provisions to help plan participants and plan sponsors.

Deadline Extensions: The CARES Act would give the Department of Labor (DOL) expanded authority to delay certain deadlines by expanding circumstances under which they may be postponed, such as declared public health emergencies. This could provide relief for a variety of filing requirements, such as an automatic extension to postpone Form 5500 filings and offer some reprieve for participant notifications required under ERISA. Detailed guidance will be required, but more time and relaxed rules will be welcomed by plan sponsors and the service industry alike. *(See Sec. 3607: Expansion of DOL Authority to postpone certain deadlines.)*

Extension of the Defined Benefit Plan Funding Deadline: The bill could delay the date for required minimum contributions for single employer defined benefit plans, including cash balance plans, until January 1, 2021, providing a 3 ½ months extension of the minimum funding deadline. When deposited into the plan, these contributions will need to be increased with interest. This provision may assist in managing cash flows and allow sponsors to avoid excise taxes when contributions are made by the new due date. *(See Sec. 3608: Single-Employer Plan Funding Rules.)*

Plan Funding Status: An Adjusted Funding Target Attainment Percentage (AFTAP) is a measure of plan's fiscal health. It compares plan liabilities to plan assets available to pay benefits. When an AFTAP falls below a certain level, various restrictions and funding rules kick in. The CARES Act would allow plan sponsors to "freeze" the AFTAP at levels prior to January 1, 2020 and could help plan sponsors avoid certain funding-related restrictions. (See *(See Sec. 3608: Single-Employer Plan Funding Rules.)*

RMDs Waived for 2020: The proposed CARES Act includes a waiver of RMD rules for the calendar year for defined contribution plans such as 401(k), profit sharing, 403(b), 457(b) and individual retirement accounts (IRA). This provision would apply to 2019 RMDs due by April 1, 2020 and to 2020 RMDs and allow individuals to keep funds in their retirement plans. Similar relief was provided in 2009. Guidance will be required to see if RMDs taken earlier in 2020 may be rolled over. *(See Sec. 2203: Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts.)*

10% Pre-Mature Distribution Penalty Waiver for Coronavirus-Related Distributions: The proposed CARES Act does not change the hardship distribution rules. It creates a new withdrawal type, coronavirus related distribution, and waives the early withdrawal penalty for coronavirus-related withdrawals from a retirement plan or IRA, provided:

- The amount does not exceed $100,000, AND

- The individual or the individual's spouse or dependent is diagnosed with the SARS-COV-2 virus or the COVID-19 virus; OR
- The individual experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of childcare due to COVID-19, OR
- The individual experiences adverse financial consequences as a result of closing or reducing hours of a business owned or operated by the individual due to COVID-19; OR
- Ether factors as determined by the Treasury Secretary.

When withdrawn from a workplace retirement plan, coronavirus-related distributions from retirement plans won't be subject to a 20% mandatory withholding and the 402(f) special tax notice requirement does not apply. The $100,000 aggregate would apply to all plans sponsored by the employer and members of employer's-controlled group. No special certification requirement would apply; employee self-certification is enough for plan administrator to process a related withdrawal. *(See: Sec. 2202. Special Rules for Use of Retirement Funds.)*

More Time to Pay Income Tax Due for Distributions: The CARES Act would allow income tax for a coronavirus-related withdrawal to be spread ratably over a three-year period. *(See: Sec. 2202. Special Rules for Use of Retirement Funds.)*

Option to Redeposit COVID-19-Related Withdrawal: The legislation would allow individuals to repay the coronavirus-related distribution amount into a retirement plan over the next three years. The three-year period would begin on the date the distribution was received and repayment may be made as a single sum or a series of payments. Those repayment will be treated as a rollover and will not reduce the annual retirement contribution limits. *(See: Sec. 2202. Special Rules for Use of Retirement Funds.)*

Plan Loan Limit Doubled: For 180 days from the date of enactment, the bill would increase retirement plan loan limits to the lesser of $100,000 or 100% of the participant's vested account balance. Individual qualifications mirror those for corona-virus related hardship distributions. *(See: Sec. 2202. Special Rules for Use of Retirement Funds.)*

Delay for Certain Loan Repayments Due Dates: Individuals with an outstanding retirement plan loan and a repayment due date that falls on a date between the date of the bill's enactment through December 31, 2020 will be able to delay their loan repayments for up to 12 months. Plan loan interest will continue to accrue during the period of delay. Individual qualifications mirror those for coronavirus-related hardship distributions. *(See: Sec. 2202. Special Rules for Use of Retirement Funds.)*

These provisions would make it less onerous for employees to use their retirement plan account balances to bridge income gaps and/or cover unexpected expenses, while giving them ability to repay those amounts back to their retirement plans for use later in retirement.

Ability to Act Now and Amend Later: The legislation would give retirement plan sponsors the ability to implement the new rules immediately even if the plan document currently doesn't contain hardship distributions or loans. This relief is granted as long as the plan is amended on or before the last day of the first plan year beginning on or after January 1, 2022 (i.e., December 31, 2022 for calendar year plans).

The Treasury Secretary may allow extension of this deadline. Plan sponsors would be able to extend immediate access to retirement accounts for cash-strapped participants, while allowing providers the time necessary to prepare plan amendments and for employers to adopt them in writing.

Many Requested Provisions are Not in the Senate Bill: There is no proposed relief for defined contribution plan funding, and the waiver of RMD requirements for defined benefit plans is not provided. Similarly, additional grace periods requested for correction of various annual retirement plan compliance tests, a relaxation of spousal consent notarization requirements for plan disbursements, help with reduction in premiums payable to Pension Benefit Guarantee Corporation, and long-term defined benefit plan funding relief in light of current market conditions and interest rate environments are absent. Industry associations, including American Retirement Association, continue to advocate for these provisions.

The journey to relief has just begun. As mentioned, the stimulus bill still needs to clear the House and be signed by the President, then the Treasury, IRS and DOL will have to step in quickly to provide guidance on implementation of the new rules. Cetera Retirement Plan Specialists will continue to follow the related developments and update you as more information becomes available.

For more information or assistance with developing retirement plan opportunities or strategies in building your retirement plan practice, please email retirementplans@cetera.com or call us 844.881.PLAN (7526).

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