SAGE VIEW

LEGISLATIVE ALERT

Coronavirus Relief Package Signed Into Law

On March 27th, the President signed into law the Coronavirus, Aid, Relief, and Economic Security (CARES) Act, which includes a number of provisions aimed at providing retirement plan-related relief to Americans.

The bill is the third round of federal government support in the wake of the coronavirus public health crisis and economic fallout, succeeding the $8.3 billion in public health support passed two weeks ago and the Families First Coronavirus Response Act.

Below are provisions in the CARES Act affecting retirement plans. In addition, see the separate summary of key additional provisions of the Act that may affect your firm or employees.

COVID-Related Distributions

What Amount Can Be Distributed?

- A participant may withdraw, without a 10% early withdrawal penalty, up to $100,000 between January 1, 2020 and December 31, 2020.
- Eligible withdrawals are available for individual participants, their spouses or dependents who are diagnosed with COVID-19 or the individual has suffered adverse financial consequences due to COVID-19 (e.g. quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual, etc.).

How Do Plan Sponsors Document Eligibility?

- Plan sponsors may rely on a participant's certification for eligibility (i.e. no need to require supporting documentation)

Repayment of Distributions.

- Any distribution described above can be repaid for 3 years from the date of distribution into a qualified plan or IRA that can accept rollovers. While not clear in the legislation, it is assumed the repayments will not be subject to retirement plan contribution limits.

Taxation for Amounts Not Repaid

- Unless a participant opts-out by completing Form W-4P, standard withholding of 10% will be applied at the time of distribution. Any amounts repaid would likely receive a tax deduction on the amount paid as a result of the early withdrawal.

Participant Loans

What Are The Changes To Loan Limits?

- Similar to the distribution limits above, if allowed by the plan, loan limits can be increased to the lesser of $100,000 or 100% of the participant's vested balanced.

Deadline for Loan Limit Changes

- The increased loan limits only apply to loans made on or before September 23, 2020 (180 days following the enactment of CARES).

Impact on Outstanding Loans

- For qualified individuals (same eligibility as distributions above), participant loan repayments due between March 27, 2020 (the date of enactment) through December 31, 2020 shall be deferred for up to one year.
- During the deferred period, interest continues to accrue and the loan term extended by 12 months.

Required Minimum Distributions (RMDs)

Relief for RMDS

- No RMD is required to be paid in 2020.
- This would include any RMD attributed to a participant for 2019 that was not paid before January 1, 2020.
- If RMD paid for 2020, it can be rolled over (including back into a qualified plan) without it being considered a taxable transaction.

Plan Amendments

- These provisions are available immediately, without amendment.
- Plan must be formally amended by the last day of the plan year beginning on or after January 1, 2022 (or later if the Treasury Secretary)

Defined Benefit and Money Purchase Pension Provisions

Contribution Relief

- Any contribution due for calendar year 2020 (including quarterly contributions) is now due on January 1, 2021.
- Interest is due on the delayed contributions, from the original due date, using the effect interest rate for the plan
- The provision also provides that a plan's status for benefit restrictions as of Dec. 31, 2019 will apply throughout 2020, such that a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020.

Department of Labor Authority

Postponement of Plan/Participant Notices

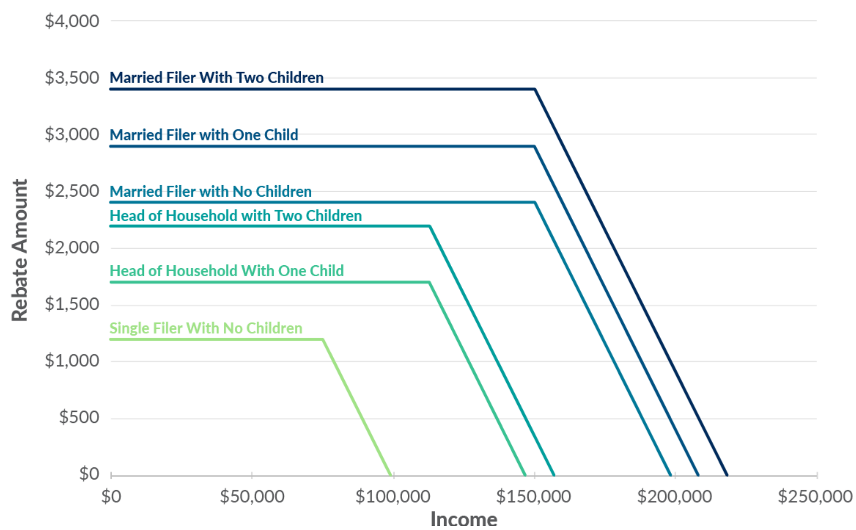
- The legislation expands the circumstances allowing the Department of Labor to postpone certain deadlines under ERISA beyond terroristic or military action to include public health emergencies, as declared by the Secretary of Health and Human Services.

CARES Act Summary – Additional Updates

Expanded unemployment insurance (UI) for workers, including a $600 per week increase in benefits for up to four months and federal funding of Unemployment insurance benefits provided to those not usually eligible for UI, such as the self-employed, independent contractors, and those with limited work history. The federal government is incentivizing states to repeal any “waiting week” provisions that prevent unemployed workers from getting benefits as soon as they are laid off by fully funding the first week of UI for states that suspend such waiting periods. Additionally, the federal government will fund an additional 13 weeks of unemployment benefits through December 31, 2020 after workers have run out of state unemployment benefits.

$350 billion allocated for the Paycheck Protection Program, which is meant to help small businesses (fewer than 500 employees) impacted by the pandemic and economic downturn to make payroll and cover other expenses from February 15 to June 30. Notably, small businesses may take out loans up to $10 million—limited to a formula tied to payroll costs—and can cover employees making up to $100,000 per year. Loans may be forgiven if a firm uses the loan for payroll, interest payments on mortgages, rent, and utilities and would be reduced proportionally by any reduction in employees retained compared to the prior year and a 25 percent or greater reduction in employee compensation.

Recovery Rebate for individual taxpayers. The bill would provide a $1,200 refundable tax credit for individuals ($2,400 for joint taxpayers). Additionally, taxpayers with children will receive a flat $500 for each child. The rebates would not be counted as taxable income for recipients, as the rebate is a credit against tax liability and is refundable for taxpayers with no tax liability to offset. The rebate begins to phase out at $75,000 for singles, $112,500 for heads of household, and $150,000 for joint taxpayers at 5 percent per dollar of qualified income, or $50 per $1,000 earned. It phases out entirely at $99,000 for single taxpayers with no children and $198,000 for joint taxpayers with no children. 2019 or 2018 tax returns will be used to calculate the rebate advanced to taxpayers, but taxpayers eligible for a larger rebate based on 2020 income will receive it in the 2020 tax season.



Source: taxfoundation.org

$454 billion in emergency lending to businesses, states, and cities through the U.S. Treasury’s Exchange Stabilization Fund. Additionally, this includes $25 billion in lending for airlines, $4 billion in lending for air cargo firms, and $17 billion in lending for firms deemed critical to U.S. national security. Firms taking loans must not engage in stock buybacks for the duration of the loan plus one year and must retain at least 90 percent of its employment level as of March 24, 2020. Loans also come with terms limiting employee compensation and severance pay for firms taking loans. Emergency lending will be overseen by a Congressional Oversight Commission and a Special Inspector General.

Health provisions to address the coronavirus crisis, including provisions addressing supply shortages, coverage of diagnostic testing for the virus, support for health-care providers, improving telehealth service access and flexibility, encouragement for the creation of drugs to treat the virus, strengthening related Medicare and Medicaid provisions, and providing support for educational institutions.

$150 billion in a Coronavirus Relief Fund for state and city government expenditures incurred due to dealing with the coronavirus public health emergency. The fund would be allocated by population proportions, with a minimum of $1.25 billion for each state.

CARES Act Summary – Additional Updates

Business Tax Provisions include:

- **50 percent refundable payroll tax credit** on wages paid up to $10,000 during the COVID-19 crisis. It would be available to employers whose businesses were disrupted due to virus-related shutdowns and firms experiencing a decrease in gross receipts of 50 percent or more when compared to the same quarter last year. The credit is available for employees retained but not currently working due to the crisis for firms with more than 100 employees, and for all employee wages for firms with 100 or fewer employees.

- **Employer-side Social Security payroll tax payments may be delayed until January 1, 2021**, with 50 percent owed on December 31, 2021 and the other half owed on December 31, 2022. The Social Security Trust Fund will be backfilled by general revenue in the interim period.

- **Firms may take net operating losses (NOLs) earned in 2018, 2019, or 2020 and carry back those losses five years.** The NOL limit of 80 percent of taxable income is also suspended, so firms may use NOLs they have to fully offset their taxable income. The bill also modifies loss limitations for non-corporate taxpayers, including rules governing excess farm losses, and makes a technical correction to the treatment of NOLs for the 2017 and 2018 tax years.

- Firms with tax credit carryforwards and previous **alternative minimum tax (AMT)** liability can claim larger refundable tax credits than they otherwise could.

- **The net interest deduction limitation**, which currently limits businesses' ability to deduct interest paid on their tax returns to 30 percent of earnings before interest, tax, depreciation, and amortization (EBITDA), has been expanded to 50 percent of EBITDA for 2019 and 2020. This will help businesses increase liquidity if they have debt or must take on more debt during the crisis.

- **Aviation excise taxes** are suspended until January 1, 2021. We estimate this will reduce federal revenue by about $8 billion in 2020.

Source: NAPA, taxfoundation.org