DANA CONSULTING GROUP

memorandum

Innovative Design and Administration of Retirement Plans

THE CORONAVIRUS AND QUALIFIED RETIREMENT PLANS

Issue Date: March 30, 2020

We have posted to our website a firm memorandum entitled The Coronavirus and Qualified Retirement Plans, that can be accessed under the Education Center tab. We will be updating that memorandum periodically for changes and developments.

President Trump signed into law on March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) that, among other things, makes a number of changes affecting retirement plans. This memorandum summarizes those changes, together with our comments.

Hardship Withdrawals

Hardship withdrawals may be taken of up to $100,000 without any early 10% withdrawal penalty or 20% income tax withholding. These withdrawals remain taxable but the payment of income taxes can be deferred ratably for up to three years. Qualifying events are (a) the participant, spouse or dependent has been diagnosed with Covid-19 or (b) any of these individuals are experiencing financial hardship resulting from being quarantined, furloughed, laid off, reduction in work hours or being unable to work due to lack of child care, or (c) their employer has closed its doors. Items (b) and (c) above do not require the employee, spouse or dependent to have been diagnosed with Covid-19. The IRS is authorized to expand the list of qualifying events.

Hardship withdrawals under any of the above circumstances may be paid back to the plan (or to an IRA) within three years after taking the distribution. Amended tax returns will likely need to be filed.

Participants may self-certify they have incurred a qualifying event. If the plan sponsor maintains multiple plans in the controlled group, the higher dollar limit applies to the plans as a group.

This provision is retroactive to January 1, 2020, so a participant who took a hardship withdrawal earlier in 2020 before passage of the CARES Act will not be liable for the 10% early withdrawal penalty, assuming a qualifying event occurred.

RMDs

2020 Required Minimum Distributions are waived from defined contribution plans (such as 401(k) or profit sharing plans) and IRAs. Additionally, 2019 RMDs deferred to April 1, 2020 are also waived (if not taken already). This is an individual, rather than plan, decision. If a plan pays an RMD, the participant may roll it over to his personal IRA.

Not surprisingly, this delay creates a number of issues.

A participant who receives (or already received) an RMD in 2020 (for 2020 or 2019) may expect to receive a Form 1099R for the year. If the RMD is rolled over (and, therefore, not taxable in 2020), the participant needs to notify the payor of the original RMD of that fact. If an RMD has been taken already, the participant (or IRA owner) only has 60 days to roll it over back to the plan or IRA. For example, an RMD for either 2019 or 2020 taken on January 5th can no longer be rolled over. RMDs do NOT qualify for the 3-year rollover provision granted to hardship withdrawals from defined contribution plans – see above.

RMDs from cash balance/defined benefit plans may NOT be waived and must be taken. Remember, the SECURE Act delayed 2020 RMDs to age 72 for participants and IRA owners who had not attained age 70½ by the end of 2019.

Plan Loans

Currently plan loans may be taken for up to 50% of an employee's vested account balance or $50,000, whichever is less. These limits are increased to 100% of the vested balance or $100,000, whichever is less, BUT only until September 23, 2020 (i.e., 180 days after enactment) AND if the participant has incurred a qualifying event.

New or existing loans must offer participants the opportunity to suspend loan payments for up to 12 months. This election ends on December 31, 2020. The suspension period will then be added to the original loan term, with accrued interest. The regular 5-year limit on loans does not apply to these temporary suspensions.

NOTE: Suspension of loan payments applies to any payment due by December 31, 2020. This will likely cause some tricky record keeping matters, particularly for multiple elections.

NOTE: Temporary suspension of loan payments is only available to borrowing participants who do not incur a termination of employment. This will require some careful analysis to determine the participant's employment status. Is an employee who is furloughed (and no longer being paid) but not "formally" terminated eligible for a suspension, even if the employee qualifies for unemployment compensation?

Cash Balance/Defined Benefit Plans

Single employer plans, regardless of plan year, may delay minimum funding contributions until up to January 1, 2021. For example, plan sponsors of calendar year CB/DB plans generally have until September 15, 2020 to make their 2019 required contributions. This has now been extended; however, delayed contributions will need to be calculated with additional interest.

CB/DB plans may also freeze their funding status (called the AFTAP) as of the end of the plan year preceding 2020 for certain purposes. NOTE: This is NOT the same as freezing contribution credits (or other benefit accruals). As we discussed in our original Coronavirus memorandum (see our website under the Education Center tab), we strongly recommend employers consider this freeze for 2020 before participants earn 1,000 hours of service in the year.

Our Comments

1. None of these changes is mandatory (other than temporary loan suspensions), so an employer does not have to liberalize its existing hardship withdrawal or loan provisions if it does not wish to. For example, if a plan does not offer loans now, the plan can retain that provision.

   Many 401(k) plans use fund platforms sponsored by insurance companies and mutual fund companies. They are likely going to need some time to update their systems, so taking a $100,000 loan right now may be not possible.

2. Plan amendments will be required for all these changes, including 2020 RMD waivers. Under existing rules, the plan sponsor has until the last day of the plan year a change is implemented to adopt the amendment. Amendments for the CARES Act may be delayed to the last day of the plan year beginning in 2022 (e.g., December 31, 2022 for calendar year plans).

3. We caution plan sponsors against giving their employees increased access to their money in the plan. We understand the need may be great, but these plans are retirement plans and not emergency funds. Taking money now reduces what is available for retirement.

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We urge our clients to call us before making any decisions. There may be options outside of the company's 401(k) plan for helping employees through these trying times.

America is a great country and we will get through all this. Common sense and a little planning will go a long way. If you have any questions, please call your DCG administrator or Lee T. Jennings directly at (630) 802-7644.

Please visit our website at www.danaconsulting.com.