

Stimulus Bill Provides Relief to Plan Participants

By: John Kirk on March 27, 2020 on graydon.law

Earlier today, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was enacted into law when it was signed by the President. The Act is far reaching for nearly every aspect of American life and business. This post focuses on Sections 2202 and 2203 of the Act which provide relief for participants and plan sponsors of defined contribution retirement plans.

The CARES Act includes several relief provisions for “qualified individuals” who are participants in defined contribution qualified plans, including 401(k) plans, 403(a) plans, 403(b) plans and governmental 457(b) plans.

Qualified Individuals. A “qualified individual” is a plan participant who:

- Is diagnosed with COVID-19 with a test approved by the CDC;
- Has a spouse or dependent diagnosed with COVID-19; or
- Experiences adverse financial consequences from being quarantined, furloughed or laid off; having work hours reduced; being unable to work due to lack of child care; closing or reducing the hours of a business owned or operated by the individual; or from other factors, as determined by the Treasury secretary.

Plan administrators may rely on a participant’s self-certification that they are a “qualified individual.”

Coronavirus-Related Distributions. The Act provides for a special “coronavirus-related distribution” that is exempt from the normal 10% early withdrawal penalty, may be repaid over a three-year period, and will be treated as income if not repaid. A “qualified individual” may take a distribution up to \$100,000. A coronavirus-related distribution must occur on or after Jan. 1, 2020, and before Dec. 31, 2020 and be made to a qualified individual.

The distributions will be included in the qualified individual's taxable income ratably over a three-year period, unless the individual elects otherwise. Distributions will not be treated as eligible rollover distributions, so the normal withholding and direct rollover rules will not apply.

This is an optional Plan provision and Plan sponsors should contact their retirement plan providers to determine how to implement it if they wish to do so. Plan sponsors will also need to revise their Section 402(f) notices to explain that the distributions are not subject to the mandatory 20% withholding rule.

Increased Plan Loan Limits. Under the Act, plans may raise the loan limit for participants. For 180 days after the Act's enactment, "qualified individuals" may borrow up to the lesser of \$100,000 or 100% of their vested account balance instead of the normal \$50,000/50% limit.

Delay for Plan Loan Repayments. Loan repayments for all new or existing plan loans due before Dec. 31, 2020 are delayed by one year for "qualified individuals." Any subsequent repayments must be adjusted to reflect the delay in due date and any interest accrued during the delay. Unlike current law, which allows a 1-year delay for leaves of absence, but doesn't allow an extension of the maximum 5-year loan term, the CARES Act provision disregards the relief period when calculating the maximum repayment period.

Required Minimum Distributions Suspended. The Act provides a waiver of required minimum distributions required to be made in calendar year 2020 from qualified retirement plans, defined contribution plans, and eligible deferred compensation plans under Internal Revenue Code Section 457(b) (excluding those maintained by tax-exempt entities). Unlike the above provisions, the RMD waiver applies to all plan participants, not just "qualified individuals."

Plan Amendment Deadline. Plans sponsors of defined contribution plans will have until the end of the plan year beginning on or after January 1, 2022, to adopt a retroactive amendment to reflect these changes. Plans will not be treated as failing to meet the requirements of Code Section 411(d)(6) or Section 204(g) of the ERISA by reason of this amendment

DOL Gains More Authority To Postpone Deadlines in the Event of a Public Health Emergency. Finally, the CARES Act amended Section 518 of ERISA to permit the Labor Secretary to provide extensions of certain ERISA compliance deadlines in the event of "a public health emergency declared by the Secretary of Health and Human Services." These

extensions likely would be similar to previous extension the DOL has authorized for hurricanes and other natural disasters. Any extension would be issued by the DOL in the coming months.

The Graydon Employee Benefits team will continue to monitor and provide updates on these new laws.