

CARES Act Impacts ESOPs and Other Tax-Qualified Plans

The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) suspends required minimum distributions for 2020 and provides greater flexibility for coronavirus-related distributions.

Suspension of Required Minimum Distributions. Participants who are subject to the required minimum distribution (“RMD”) rules will not be required to take an RMD distribution in 2020. The CARES Act waives the RMD requirement for 2020 for all participants who have been taking RMD distributions as well as for those participants whose required beginning date occurs in 2020 and who had not already taken an RMD distribution. Participants who are eligible to take RMD distributions may still elect to do so in 2020, but they will not be penalized if they fail to do so.

Increased Flexibility for Coronavirus-Related Distributions. Companies may elect to permit eligible participants in their tax-qualified plans to take coronavirus-related distributions from their plan account before December 31, 2020, with tax withholding and early withdrawal penalties waived for such distributions. The maximum distribution amount is \$100,000 for each individual participant. A company which sponsors more than one plan must ensure that the \$100,000 limit is not exceeded by an individual taking distributions from different plans.

An “eligible participant” is someone who has been diagnosed with the virus, or whose spouse or dependent has been diagnosed with the virus, or who has suffered adverse financial consequences due to quarantine, furlough, job loss, reduced hours or other factors. The plan administrator may rely on the employee’s certification that the employee is an eligible participant.

Participants who receive coronavirus-related distributions may elect to repay such amount in whole or in part at any time during the three-year period commencing on the date of distribution, or to have such distribution recognized as taxable income ratably over such three-year period.

Ability to Increase Loan Limits. If the tax-qualified plan (such as a 401(k) plan but generally excluding ESOPs) permits participants to take a loan from their plan account, the company may generally elect to increase the loan limit for eligible participants (as defined above) to the lesser of \$100,000 or 100% of the account balance during the 180-day period commencing on the date of enactment of the CARES Act.

Suspension of 2020 Loan Payments. An eligible participant who has an outstanding loan from a tax-qualified plan on or after March 27, 2020 may elect to delay for one year any loan payment that was otherwise due during the period beginning on March 27, 2020 and ending on December 31, 2020. Subsequent repayments on such loan will need to be adjusted to reflect the delay in the due date and the amount of interest accruing during such delay.

Timing of Plan Amendments. The above changes can be implemented on an operational basis without having to first amend the tax-qualified plan. The plan will need to be amended no later than the last day of the first plan year beginning on or after January 1, 2022 to reflect the changes that are implemented on an operational basis, and the plan amendment will need to be retroactively effective to the date the operational changes are made. For calendar year plans, the plan amendment must be done no later than December 31, 2022.

Operational Action Needed Now. For those changes which are optional, such as increased flexibility for coronavirus-related distributions and the increase in loan limits, the company should document which changes are being made on an operational basis for each tax-qualified plan that it sponsors, as well as the effective date of such change. Each tax-qualified plan should be administered on a uniform basis for all of the participants in such plan, reflecting the operational changes being implemented for that plan.

The above is a general summary of provisions in the CARES impacting retirement plans in general and does not provide legal advice regarding any specific plan. For more information about these new provisions, please contact either of the attorneys listed below or your primary contact at Silver, Freedman, Taff & Tiernan LLP.

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