Client Alert

March 2020

CARES Act Provides Significant Relief for Employee Benefit Plan Participants and Sponsors

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act, the $2.2 trillion federal aid package enacted on March 27, impacts employee benefit plans by providing relief to plan participants and plan sponsors of qualified retirement plans. We have prepared the following summary of Sections 2202, 2203, 3607 and 3608 of the CARES Act, which address employee benefit plans and the COVID-19 pandemic:

Qualified Plan Relief

A. Hardship Withdrawals.

A special coronavirus-related distribution from a qualified benefit plan is available to participants that is exempt from the 10% federal early withdrawal penalty and allows participants to recontribute the withdrawn amount within a 3-year period without regard to the usual plan contribution limit and without incurring income tax consequences.

This distribution generally may not exceed $100,000 and must be taken on or after January 1, 2020 and before December 31, 2020. An eligible individual means an individual:

1. Who is diagnosed with COVID-19;
2. Whose spouse or dependent is diagnosed with COVID-19; or
3. Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to a lack of child care as a result of COVID-19, the closing or reduction of hours of a business owned or operated by the individual due to COVID-19, or other factors determined by the Secretary of the Treasury.

The plan administrator may rely on an employee's self-certification that the employee satisfies at least one of these conditions.

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Employee Benefits

B. Plan Loans.

Plan loan limits have been doubled to the lesser of $100,000 or 100% of a participant's vested account balance provided the loan is taken during the 180-day period following March 27, 2020, the enactment date of the CARES Act.

The repayment period for any existing benefit plan loan that is due during the period from the enactment date of the CARES Act through December 31, 2020 is automatically delayed for an additional year.

C. Required Minimum Distribution Temporary Waiver.

Required Minimum Distributions required to be made in calendar year 2020 from qualified retirement plans including defined contribution plans, 403(b), 457(b), and IRA-based plans are waived for 2020.

D. Plan Amendments.

Under the CARES Act, plans sponsors would have until the end of the plan year beginning on or after January 1, 2022 to adopt retroactive amendments to apply these changes. This includes plans that may not have previously permitted hardship distributions or plan loans provided that an amendment to adopt the foregoing is made no later than the first plan year beginning on or after January 1, 2020, or if later as may be prescribed by the Secretary of the Treasury.

E. Defined Benefit Plan (Pension Plan) Funding Relief.

Sponsors of single-employer defined benefit plans have additional time to make their minimum funding contributions that were due in 2020. Required minimum funding contributions must be made no later than 8½ months after the end of the plan year and funding shortfalls must be paid quarterly. The CARES Act extends the deadline for contributions that were due in 2020 until January 1, 2021 (however, interest will be due on the delayed payments).

The CARES Act also allows such plan sponsors to use their 2019 adjusted target attainment percentage ("AFTAP") for purposes of determining whether any benefit reductions under Code Section 436 apply.

F. US Department of Labor ("DOL") Expanded Authority to Postpone Deadlines.

The CARES Act permits the DOL to extend certain filing deadlines under ERISA by up to one year where circumstances exist, such as a

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public health emergency declared by the Secretary of HHS pursuant to the Public Health Services Act. This could include an extension of the Form 5500 filing deadline, an extension of the deadline to correct ADP/ACP failures and an extension of the time for distributing excess contributions and excess aggregate contributions.

The pension and ERISA community is expecting the foregoing actions to be taken, but this has not occurred as of the date of this Alert.

Olshan’s Employee Benefits and Employment Practices Groups are available to assist plan sponsors with any questions regarding their qualified retirement plans, nonqualified deferred compensation plan and all employment-related matters.

Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss further or if you have questions.

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