

THE CARES ACT AND OTHER RETIREMENT PLAN RELIEF

We are all experiencing an unprecedented event in our history, one that is causing fear and uncertainty for many individuals and businesses. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES) was signed into law by both Congress and the President. Several provisions were included in the bill aimed at expanding access to retirement plan accounts for individuals and business owners should they need immediate use of the funds. In addition to changes in the CARES Act, there are several other considerations you may consider during these times.

▶ CARES ACT – RETIREMENT PLAN RELATED PROVISIONS

Coronavirus Related Distributions and Plan Loans (Optional as Elected by Plan Sponsor)

- **Distributions** – Effective immediately, plans may permit qualified individuals to withdraw up to \$100,000 of their vested account balance until December 31, 2020.
 - ▶ Participants will have the ability to contribute the amount of the distribution back into an eligible account to avoid paying taxes on the funds.
 - ▶ These distributions are exempt from the mandatory 20% withholding as well as the 10% early withdrawal penalty.
- **Loans** – The CARES Act increases the loan limit from \$50,000 to \$100,000 for new loans taken by qualified individuals before September 23, 2020.
 - ▶ Participants with existing loans can suspend making loan repayments for payments due between March 27, 2020 and December 31, 2020 for up to 12 months. The payment suspension period will be added to the original loan term when repayments resume and does not affect the five-year repayment rule. Interest is accrued during the deferral period.
- **Who is a Qualified Individual?** – Coronavirus-related distributions/loans are available to eligible participants who:
 - ▶ Are diagnosed with a Coronavirus (COVID-19 or SARS-CoV-2) illness.
 - ▶ Have a spouse or dependent diagnosed with a Coronavirus illness.
 - ▶ Experience adverse financial consequences as a result of being quarantined, laid off, furloughed, having work hours reduced, being unable to work due to lack of child care, or business closure.

Waiver of 2020 Required Minimum Distributions (RMD)

RMDs are waived for 2020 for all types of defined contribution plans (including 401(k), 403(b), governmental 457(b), and IRAs). This also applies to RMDs due in 2020 but attributable to 2019. **RMDs are not waived for defined benefit or cash balance plans.**

Defined Benefit Plan Contributions

Under the Act, all single-employer funding obligations due during 2020 may be extended until January 1, 2021. Interest must be included on payments made after the original due date.

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▶ OTHER RETIREMENT PLAN CONSIDERATIONS

Suspending Safe Harbor 401(k) Contributions

- In general, when you have a safe harbor plan, you are locked into the safe harbor contribution at the beginning of the year. However, the safe harbor contribution can be discontinued mid-year provided that:
 - ▶ All eligible employees are provided with a supplemental notice.
 - ▶ Will be effective 30 days after employees are provided with the notice.
 - ▶ Eligible employees are given a reasonable opportunity to change their deferral elections.
 - ▶ The business is experiencing a substantial business hardship.
- There are consequences of terminating the safe harbor election. By terminating the safe harbor election, the plan is subject to additional nondiscrimination testing and other requirements. Items to be aware of are:
 - ▶ ADP/ACP Testing – This test compares contribution rates of highly paid individuals compared to the rest of the staff. Failing this test may require additional contributions or a refund of contributions.
 - ▶ Top Heavy Minimums – If the plan is top heavy, then eliminating the safe harbor will cause a contribution to be made to all eligible employees at year-end, assuming the owners have made contributions to the plan. Please note that this could be more costly than the safe harbor amount.

Terminated/Laid Off Participants

- Temporary layoffs/furloughs do not normally get treated as a distributable event. If there is an expectation the employee is to be re-employed in the near future, a distribution due to termination would not be applicable.
- If the employer actually terminates employees as permanent layoffs, it could possibly cause a partial plan termination if 20% of eligible employees are involved. This triggers 100% vesting for affected participants. Any distributions to permanently terminated employees should be carefully reviewed to ensure the vesting for each participant is correctly determined.

These are general guidelines. Each plan has its own provisions that should be considered along with the CARES legislation and the COVID-19 pandemic. Plan sponsors should always consult their TPA before making any changes to their plan.

We expect clients, both business owners and individual participants, to have many questions about how this new legislation and the pandemic affects their retirement plan accounts and distribution options, so we are here to help. Please feel free to contact us at distributions@CRITPA.com.