BKS RETIREMENT SERVICES

COVID-19 CARES ACT LEGISLATION

CARES Act Summary

Provided below is a summary of the defined contribution retirement plan provisions that were included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Distribution/Loan Relief Available To "Qualified Individuals"

1. A qualified individual includes a participant (or spouse or dependent) who has been diagnosed with coronavirus disease (SARS-CoV-2 or COVID-19), or
2. Participants that have experienced adverse financial consequences from the virus that is the result of:
    a. Quarantine, furlough, or lay off;
    b. A reduction in work hours;
    c. An inability to work due to lack of child care; or
    d. The closing of a business or a reduction in hours of a business the participant owned or operated.

Distribution Relief

Distribution relief available to qualified individuals includes the following:

1. In-service hardship distributions of up to $100,000 during the period beginning January 1, 2020 to December 31, 2020;
2. Waiver of the 10% early withdrawal penalty;
3. No requirement for federal income tax withholding (typically 20%);
4. The distribution is exempt from IRC Section 402(f) notification requirements (rollover rights explanation);
5. The participant may repay the distribution within three years in order to gain, at a later date, tax-free rollover treatment;
6. Participants will be required to certify that they are qualified individuals (see definition above);
7. Qualified individuals will be able to recognize income for federal tax purposes (with respect to the amount withdrawn) over a three-year period beginning with the year in which the distribution would otherwise be taxable. Issues with respect to state taxation are to be determined.

Comments - participant communications will be critically important. The opportunity to secure a withdrawal to address an immediate financial issue, while attractive, may also mean that the participant is taking money out of his or her account when the market is down substantially, thereby ensuring that market losses are taken. Reducing account balances may also limit the *opportunity to recover market losses at a later date. From a communications perspective, plan sponsors should encourage employees to consider other financial resources, if at all possible. Your provider will likely provide procedures associated with the repayment of amounts withdrawn once regulations are issued.*

Loan Relief

Provisions are applicable for a period of 180 days beginning on the date of enactment of the CARES Act.

1. Permits loans equal to the ***lesser of*** 100% of the vested account balance of the participant (prior limit was 50%) or $100,000 (prior limit was $50,000).
2. Allows for a delay of up to one year for making loan repayments (for new and existing loans) with due dates that are between the date of enactment through December 31, 2020. In the event that loan repayments are delayed, subsequent repayments will be subject to adjustment to reflect the delay in principal payments and accrued interest.

Comments - to a certain extent, and again setting aside the financial circumstances of specific participants, the increase in participant loan amounts also requires an effective communications approach. The greater the loan amount is as a percentage of assets, the more limited the opportunity will be for the participant to experience market recoveries.

From an administrative perspective, plan sponsors will need to coordinate with their providers to properly identify those employees who have been furloughed or laid off that are eligible for the deferral of repayments. If repayments are suspended at the request of the participant, the suspension period will be added to the original term of the loan.

Required Minimum Distributions

Required minimum distributions for 2020 are waived for defined contribution plans, 403(b) plans, and governmental 457 plans. The waiver includes initial payments from 2019 that are due to be paid by April 1, 2020.

Comments - due to required minimum distributions being calculated based on account balances as of the end of the prior year, the deferral opportunity may help prevent participants from having to receive large payments at a time when account balances were near market highs (December 31, 2019). The payment deferral may also help to ensure that participants are not realizing investment losses at the time of withdrawal and are provided with the opportunity to experience market recoveries on amounts not withdrawn.

Plan Amendments/Compliance Filings

The deadline for completing required plan amendments specific to the adoption of the provisions described above is expected to be no earlier than the last day of the first plan year beginning on or after January 1, 2022 (or January 1, 2024 for governmental plans).

It is also important to note that the Department of Labor has been granted additional authority to postpone certain deadlines that are applicable to plans governed by ERISA. These deadlines are likely to delay filings such as Form 5500 and annual funding notices, for example.