

March 30, 2020

President Trump Approves the CARES Act!

The Coronavirus, Aid, Relief and Economic Security (CARES) Act (H.R. 748), was approved and signed into law by President Trump on March 27, 2020. The \$2.2 trillion measure is intended to provide economic relief for individuals and businesses hit hardest by the coronavirus pandemic, with a number of provisions targeting employee benefit programs.

We have been carefully watching this legislation since its inception to learn how it may impact our clients' Defined Contribution (DC) and Defined Benefit (DB) plans. It is likely further coronavirus legislation is pending, and we pledge to keep you informed.

A summary of the key provisions that may impact your plans is provided below:

DEFINED BENEFIT (DB) PLANS

Single-employer DB Plan Funding Rules (Section 3608): New to the bill is a provision to provide single-employer defined benefit plan funding relief by giving companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until Jan. 1, 2021. At that time, contributions due earlier would be due with interest.

The provision also provides that a plan's funded status for benefit restrictions as of Dec. 31, 2019 may apply throughout 2020, such that a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020.

Expansion of DOL Authority to Postpone Certain Deadlines (Section 3607): The legislation provides the Department of Labor with expanded authority to postpone certain deadlines under ERISA. In general, the legislation increases the circumstances to go beyond a terrorist or military action to also include a public health emergency declared by the Secretary of Health and Human Services under the Public Health Service Act.

DEFINED CONTRIBUTION (DC) PLANS

Hardship Distributions (Section 2202): The CARES Act waives the 10% early withdrawal penalty tax under Internal Revenue Code Section 72(t) on early withdrawals up to \$100,000 from a retirement plan or IRA for an individual:

- who is diagnosed with COVID-19
- whose spouse or dependent is diagnosed
- who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having reduced work hours, inability to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19
- who experiences other factors as determined by the Treasury Secretary

The legislation also permits those individuals to pay tax on the income from the distribution ratably over a three-year period and allows individuals to repay that amount tax-free back into the plan over the next three years. Those repayments would not be subject to the retirement plan contribution limits.

Plan Loans (Section 2202): H.R. 748 also doubles the current retirement plan loan limits to the lesser of \$100,000 or 100% of the participant's vested account balance in the plan. Individuals with an outstanding loan from their plan with a repayment due from the date of enactment of the CARES Act through Dec. 31, 2020, can delay their loan repayment(s) for up to one year.

Plan Amendments (Section 2202): The legislation further permits retirement plans to adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans, provided the plan is amended on or before the last day of the first plan year beginning on or after Jan. 1, 2020, or later if prescribed by the Treasury Secretary.

Temporary Waiver of Required Minimum Distribution Rules (Section 2203): H.R. 748 waives RMDs for calendar year 2020 for DC plans, including 401(k), 403(b), 457(b) and IRA plans, allowing individuals to keep funds in their retirement plans. Under current law, individuals generally at age 72 must take an RMD from their DC plans and IRAs. The legislation also includes special rules regarding the waiver period to, in essence, hold harmless those individuals (and plans) who took advantage of the RMD waiver for 2020.

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Although not part of this legislation, we thought it pertinent to provide information on the following as it provides some relief for those needing to amend a 403(b) plan:

Extension of Initial Remedial Amendment Period for 403(b) Plans. The IRS is extending the last day of the initial remedial amendment period for Section 403(b) plans from March 31, 2020 to June 30, 2020. Plan sponsors now have until June 30, 2020 to update their pre-approved and individually designed 403(b) plan documents.

[Revenue Procedure 2019-39 \(PDF\)](#) provides a system of recurring remedial amendment periods for correcting form defects for both individually designed and pre-approved 403(b) plans. The IRS intends to issue guidance to modify Rev. Proc. 2019-39 to replace applicable references to March 31, 2020, with June 30, 2020. For example, the rules for the recurring remedial amendment periods for 403(b) individually designed plans now will apply to form defects first occurring after June 30, 2020, and the second cycle for 403(b) pre approved plans will begin on July 1, 2020.

Our professionals are ready to provide guidance on how these legislative changes may impact your plans. You may find this announcement and other COVID-19-related information [HERE](#) Please reach out to your H&H consultant with any questions.