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Benefits Alert

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Coronavirus distributions consideration for DB Plans under the CARES Act

A plan sponsor may wish to consider offering Coronavirus-related distributions (CRD) during 2020 from a single employer defined benefit (DB) plan, as well as, or in addition to, a CRD from its defined contribution (DC) plan. Lump-sum payments from a DB plan may be treated as CRDs, similar to withdrawals from DC plan accounts. (We report this to you after discussions with pension legal experts, and acknowledge that there is no formal IRS guidance yet.)

The *Coronavirus Aid, Relief, and Economic Security* Act (CARES) permits a "qualified individual" to certify to the employer that they qualify to elect a CRD. An employer who relies on such certification can pay the CRD to the individual without the standard 20% federal tax withholding. The individual also qualifies for an exemption from the 10% early distribution penalty that typically applies to distributions to those under age 59½, and may be able to recognize the distribution in taxable income over a three-year period.

If a plan sponsor chooses to offer CRDs from both the DB and DC plans, careful joint plan administration coordination needs to be taken as the total CRDs to an individual cannot exceed $100,000. The plan sponsor needs to monitor this limit across all qualified plans within its Controlled Group. (Many plan sponsors may have already decided to permit their DC plans to pay CRDs.)

Qualified individuals are defined by CARES based on COVID-related circumstances. In a DB plan this could apply to current employees who have an "in-service" distribution option, former employees (terminated vesteds) that have deferred receipt of their pension benefits, or employees who are retiring in the current year. Lump-sum payments to these participants may be eligible to be a CRD.

While DB plans that allow for in-service distributions are likely to have in-service distribution ages of age 62 or later, legislation enacted under the *Setting Every Community Up for Retirement Enhancement* (SECURE) Act in December 2019 permits a plan to be amended to allow these payments as early as age 59½. If a DB plan sponsor is considering a lump-sum window, it appears that it is permissible to include in-service employees who are at least age 59½ in the window. Offering the window during 2020 may be advantageous due to the CRD rules.

Additional caution is needed for any early incentive window program, as the design has to benefit a cohort of plan participants that passes certain IRS tests to determine whether these participants comprise a "non-discriminatory" group.

DB plan sponsors should also keep in mind that benefit restriction rules with respect to lump-sum distributions still apply, although the CARES Act allows a plan sponsor to elect to use an Adjusted Funding Target Attainment Percentage (AFTAP) from a prior plan year in determining whether there are restrictions on lump-sum payments.

If your DC plan is already permitting payment of the CARES limit of $100,000 for a CRD, allowing CRDs from your DB plan may not be of interest. Individuals may want to consider taking CRDs from their IRAs as an alternative.

If you are interested in further exploration of this topic, we would be happy to discuss strategy with you, your ERISA counsel and your other advisors at your convenience.

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