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IMPORTANT INFORMATION TO REVIEW AND RETURN
CARES ACT – PLAN OPTIONS

The new Coronavirus Aid, Relief, and Economic Security ("CARES") Act that was recently passed can make it easier for your participants to access the funds in their plan accounts. Some of these are optional changes and *cannot be acted upon without the approval of the plan sponsor*; even though the actual plan amendment won't be written until we get official language (which likely won't be until 2022), the plan has to be administered consistently starting now. This summary will outline the key provisions affecting plan operations and show you where you need to make a decision so we know how to help you administer your plan between now and when the amendment gets done.

2020 CORONAVIRUS-RELATED DISTRIBUTIONS (CRDs) - OPTIONAL

- Paid any time in 2020 to a "qualified individual", which is a participant or beneficiary:
  - who is diagnosed with COVID-19 by a CDC-approved test; or
  - whose spouse or dependent is diagnosed with COVID-19 by a CDC-approved test; or
  - who experiences adverse financial consequences as a result of (a) being quarantined, furloughed, laid off, or having their work hours reduced due to COVID-19; or (b) being unable to work due to lack of child care due to COVID-19, or (c) closing or reducing hours of a business owned or operated by the individual due to COVID-19.
  - Other categories or clarifications may be added by the Treasury Department.
  - "SARS-CoV-2" virus can be substituted for "COVID-19" in all those definitions.
- The plan can rely on the participant's certification that they satisfy one of these reasons – the plan sponsor should keep a record of such certification.
- Maximum distribution of $100,000 per person but the plan could set a lower maximum limit.
- The participant must track that they do not exceed the $100,000 regulatory maximum, but the plan sponsor must track across all plans they sponsor (multiple plans or controlled group situations).
- Exempt from 10% early distribution penalty, but can do 10% voluntary withholding.
- Money purchase and defined benefit plans can't distribute to active employees who are under age 59½.
- Exempt from 20% mandatory withholding and standard "special tax notice".
- Distribution can be claimed over a three-year period on their personal tax return.
- CRD (or a portion) can be rolled back into the plan or another tax-deferred vehicle within three years to be considered non-taxable. This may require the participant amending their personal tax return(s) if some of this was taken as income already.

Adding these distributions in addition to whatever in-service and termination distribution provisions you have are an OPTIONAL provision. It will have to be determined if the participant is requesting a 'regular' distribution or a CRD. While CRDs are exempt from the typical distribution noticing, we believe that the participant must still receive some kind of notification of their tax rights in the last two bullets, so we will work with your providers to provide this information. Participants will be fully aware that this is allowed by law, so this may factor into your decision to allow these special distributions, but we encourage you to discuss this with the plan's financial advisor. **If we do not hear from you in writing by April 30, 2020, we will assume that you agree to add this provision at the maximum level.** If a relevant transaction request occurs before then, we will review it at that time.

NEW LOANS - OPTIONAL

- Until 9/23/2020, the maximum loan limit for "qualified individuals" is increased to the lesser of $100,000 or 100% of the participant's vested account balance.

This is an OPTIONAL provision. If your plan doesn't already allow loans, you can allow them only for this period of the higher limits. If you are adding loans for the first time, we caution you that doing so will increase the complexity of plan administration (for both us and you) and also the administrative cost (most of which can be passed on to the plan participants). Note that if a plan has a limit of one outstanding loan, changing this provision does not automatically allow a participant to take a second loan; that is an additional change to the plan and should be considered very carefully. Loans are typically not available to participants who have already separated from service. When both expanded distributions and expanded loans have been offered after other disasters, the distribution expansion has been implemented generally more often, and the loan expansion less frequently. **If we do not hear from you in writing by April 30, 2020, we will assume that you do <u>not</u> want to add this provision.** If a relevant transaction request occurs before then, we will review it at that time.

LOAN REPAYMENTS FOR ALL LOANS

- "Qualified individuals" can have loan repayments due between 3/27/2020 and 12/31/2020 delayed by one year.
- Interest accrues on these delayed repayments that has to be reamortized after the suspension, so remaining payments will be higher.
- This delay can make the loan go past the normal maximum loan period.

While this is a mandatory provision, a plan sponsor cannot assume that a participant wants to have this done to their loan, so it should only be applied if a participant requests it. A plan sponsor can be proactive and contact participants with outstanding loans to find out if they wish to take advantage of this opportunity. Note that loans that are behind by even one or two payments may still go into default if all repayments through 3/27/2020 are not deposited by the end of the statutory cure period (usually 6/30/2020).

REQUIRED MINIMUM DISTRIBUTIONS (RMDs)

- If you were in RMD payment status before 2019, your 2019 RMD was paid in 2019 – have to count it as 2019 income.
- If you attained age 70½ in 2019, your first RMD is due for 2019, payable between 1/1/2019 and 4/1/2020:
  - Distributed in 2019: no current change, probably have to count as 2019 income.
  - Distributed 1/1/2020 – 4/1/2020: a "qualified individual" may reclassify it as a CRD and adjust it on their personal tax return (if CRDs are allowed from the plan), or even roll it back into the plan.
- 2020 RMDs: any participants previously in RMD payment status (normally payable by 12/31/2020) OR participants who attained age 72 in 2020 (changed by SECURE Act) normally payable before 4/1/2021
  - RMD is waived – any payments must be made through plan's other provisions (including CRDs, if allowed).
- This waiver does <u>not</u> apply to RMDs from defined benefit plans, including cash balance plans.

All participants in defined contribution plans get a one-year break from taking a RMD; some get a two-year break. Note that some participants may depend on the RMD as part of their overall income or tax strategy; you may want to communicate the waiver to them so they have time to discuss options with their financial or tax advisors.

DEFINED BENEFIT FUNDING

- Minimum funding for 2020 now due 1/1/2021
  - Additional interest is accrued
- Quarterly contributions are also delayed until 1/1/2021

OTHER ISSUES

Some of these aren't necessarily CARES Act issues…

- **Partial Plan Termination** rules are triggered if the employer initiates severance of at least 20% of the plan participants. There is currently no guidance on what happens if you later rehire those people, or if you rehire other people so that you end up less than 20%. The usual consequence to a partial plan termination is to fully vest those terminated participants, so fully vesting them via a plan amendment is a conservative approach.

- **Hardship** expansion rules include FEMA-declared disaster areas qualifying for individual assistance, but the entire country is not under this definition yet. So the plan hardship rules may or may not be sufficient depending on the situation and location of your participants.

- **Reducing your employer contribution** – if you have a discretionary match or profit sharing allocation, you don't need to do anything. If your plan has a safe harbor and you wish to stop it for 2020, you have to give a 30-day advance notice and fund the safe harbor on compensation through that 30-day period. Note that the plan is then subject to nondiscrimination testing on the employee deferrals, which may result in Highly Compensated Employees getting a taxable refund of some deferrals they've already deposited in 2020 if the test fails. It is also subject to top heavy rules that it might have been exempt from before, which would require an allocation to non-Key Employees of at least the lesser of (a) 3% or (b) the highest benefit rate that any Key Employee received. We **strongly recommend** that you speak with us to discuss how it could affect your plan.

- **403(b) document restatements** now have to be signed by June 30, 2020.

- **Defined benefit plan restatements** now have to be signed by July 31, 2020.

Additional relief, extensions, definitions, etc. may be forthcoming as different government agencies continue to work on this.

election section on next page

OPTIONS PAGE FOR CARES ACT PROVISIONS

Please return this page to us (preferably via email to your administration team, since we're not in the office these days) with the elections you want to make and execute it so that we can identify you and your plan.

If you have any questions on these items or anything else, please contact your administration team at Creative Pension Consultants.

Coronavirus-Related Distribution

_____ The plan will allow CRDs of up to $100,000 to qualified individuals.

_____ The plan will allow CRDs of up to $________ (enter an amount less than $100,000) to qualified individuals.

The above option will be effective March 27, 2020 unless a later date is entered here: ___________

_____ The plan will not allow CRDs.

New Loans

_____ The plan will allow the increased maximum loan limit of the lesser of $100,000 or 100% of the participant's vested balance through 9/23/2020.

_____ If the plan does not currently allow loans, I authorize them to be added through 9/23/2020 only. If this is selected, choose one of the following:

_____ Loan fees (origination and annual fees) will be paid by the participant.
_____ Loan fees (origination and annual fees) will be paid by the plan sponsor.

The above option will be effective March 27, 2020 unless a later date is entered here: ___________

_____ The plan will not allow the expanded temporary loan limits, or the plan does not allow loans.

____
Plan Name

________________________________ ____________________
Authorized Signer Date

____
Printed Name