

The background of the slide is a scenic photograph of two people kayaking on a calm, blue lake. The kayakers are in the foreground and middle ground, wearing life jackets and paddling. The water is still, reflecting the surrounding landscape. In the background, there are steep, rocky mountains with some greenery, under a clear blue sky. A bright light flare is visible in the upper right quadrant of the image.

THE CARES ACT: WHAT YOU NEED TO KNOW ABOUT THE RETIREMENT PLAN PROVISIONS

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ENACTMENT OF THE CARES ACT

- The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act is one of a series of Coronavirus legislative relief packages.
 - The Coronavirus Preparedness and Response Supplemental Appropriations Act was signed into law on March 6.
 - The Families First Coronavirus Response Act was signed into law on March 18, and becomes effective on April 2.
- The CARES Act was passed unanimously by the Senate (96-0) on March 25, passed by the House by voice vote on March 27, and was signed into law later in the day on the 27th.
- Most of the retirement plan related provisions in the CARES Act are effective either immediately upon enactment or retroactively to January 1, 2020.
- Plan amendments are generally required by the end of the plan’s 2022 plan year (governmental plans have until the end of their 2024 plan year).

THE CARES ACT

AGENDA

- CARES Act Retirement Plan Provisions
- Other Coronavirus-related Issues
- Transamerica Readiness
- Questions

CARES ACT RETIREMENT PLAN PROVISIONS

THE CARES ACT

CARES ACT RETIREMENT PLAN PROVISIONS

Coronavirus-Related Distributions

- The CARES Act establishes a new type of distribution: An “eligible” participant may take one or more withdrawals, up to \$100,000 in the aggregate, as a coronavirus-related distribution.
 - The distribution limit of \$100,000 applies in aggregate across all plans of the employer and at the controlled group level.
- A participant is eligible if a) the participant, or his or her spouse or dependent, is diagnosed with SARS-CoV-2 or COVID-19*, or b) the participant experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or reduced hours due to the virus, or being unable to work due to lack of childcare, or other factors as determined by the Treasury.
 - The plan sponsor may rely on the participant’s self-certification that he or she is eligible
- May be repaid as an indirect rollover to the plan or an IRA within three years of distribution, as measured from the date of distribution.
- Distributions are exempt from the 10% early withdrawal penalty and not subject to 20% mandatory withholding; the 402(f) notice is not required.
- Taxation may be spread out ratably over three taxable years, including the year of distribution.
- The distribution is available through 2020, and is retroactive back to January 1, 2020.

CARES ACT RETIREMENT PLAN PROVISIONS

Increased Loan Limits for Coronavirus-Impacted Participants

- For “qualified” individuals, the maximum permissible loan limits under IRC section 72(p)(2)(A) are increased to the lesser of \$100,000 or 100% of the participant’s vested account balance.
 - A qualified individual is defined as a participant who meets the criteria of an “eligible” participant for a coronavirus-related distribution.
- Applies to loans made to qualified individuals for the 180-day period beginning on the date of enactment (3/27/2020 – 9/22/2020).

Suspension of Loan Repayments

- For qualified individuals with an outstanding loan on or after the date of enactment, any loan repayments due between 3/27/2020 and 12/31/2020 “shall” be suspended for a one year period.
- At the end of the suspension period, a) loan repayments will be adjusted to reflect the interest accrued and b) the loan's term will be extended to reflect the suspension period (this will not violate the 5 year maximum term for general purpose loans or the plan limit on primary residence loans).

CARES ACT RETIREMENT PLAN PROVISIONS

Waiver of all 2020 Required Minimum Distributions (RMDs)

- Qualified 401(a)/(k), 403(b), and governmental 457(b) plans will not be required to make any RMD payments for 2020.
 - Participants who turned age 70½ prior to 2019 will not be required to receive an ongoing RMD for 2020.
 - Participants who turned age 70½ in 2019 and who did not receive their first RMD for 2019 on or before January 1, 2020 will not have to receive their first (2019) RMD or their 2020 RMD.
 - Beneficiaries receiving life expectancy payments will not be required to receive their 2020 beneficiary RMD.
 - Beneficiaries who have an account balance in the plan subject to the five-year distribution rule may extend their required distribution by one year (i.e., full distribution of the account must be made by the 6th anniversary of the participant's death).
- If a 2020 RMD is provided to anyone listed above, it may be rolled over to an IRA or employer plan.
- RMDs for 2021 for participants and beneficiaries are still required.

CARES ACT RETIREMENT PLAN PROVISIONS

Defined Benefit Plan Relief

- Delay in 2020 funding obligations
 - All single-employer defined benefit plan funding obligations due during 2020 are not required to be made until January 1, 2021.
 - Accrued interest will be due on the delayed payments.
- Application of Benefit Restrictions
 - A plan sponsor may elect to apply the plan's funded status for the 2019 plan year in determining the application of benefit restrictions for plan years which include calendar year 2020.

OTHER CORONAVIRUS RELATED ISSUES

THE CARES ACT

OTHER CORONAVIRUS RELATED ISSUES

Reduction or Suspension of Employer Contributions

- At this point, none of the legislative coronavirus relief packages have included guidance on reducing or suspending employer contributions as a result of the coronavirus and no regulatory guidance has been provided; consequently, the standard rules for suspending, reducing, or eliminating employer contributions would apply.
- Reducing or suspending non-discretionary, non-safe harbor contributions:
 - The plan must be amended prospectively to reduce or suspend the contribution.
 - The plan sponsor must fund the contributions through the effective date of the amendment.
 - We recommend that:
 - The plan also be amended to remove any true-up contribution requirement.
 - The proposed amendment be reviewed by the client and its counsel to confirm that there is no cut back of any accrued right to a contribution.
 - Although a prior notice to participants is not required, a strategic client-drafted participant communication may be helpful in explaining the reduction or suspension.

OTHER CORONAVIRUS RELATED ISSUES

Reduction or Suspension of Employer Contributions

- Reducing or suspending safe harbor contributions:
 - One of the following requirements must be met:
 - The annual safe harbor notice included the necessary mid-year reduction or suspension language (this language is included in the Transamerica safe harbor notice), or
 - The plan sponsor is operating at an economic loss for the plan year.
 - Participants must be provided a supplemental explanatory notice.
 - The reduction or suspension of safe harbor contributions may be effective no earlier than the later of a) the date the amendment is adopted or b) 30 days after participants are provided the supplemental notice.
 - Eligible employees must be given a reasonable opportunity to change their deferral election (this is generally satisfied by the 30 day notice requirement).
 - The plan is amended to provide that the plan must pass both the ADP and ACP nondiscrimination tests for the entire plan year using the current year testing method.
 - The client must fund all safe harbor contributions through the effective date of the amendment.

OTHER CORONAVIRUS RELATED ISSUES

Reduction or Suspension of Employer Contributions

- Reducing or suspending discretionary employer contributions
 - Any reduction or suspension of the contributions is at the discretion of the client, so no amendment should be necessary with respect to the contribution.
 - The plan may need to be amended with respect to any true-up contribution language.
 - The plan sponsor should consult with its counsel to:
 - Determine whether any contributions may have become due (and would need to be funded) prior to the effective date of the decision to reduce or suspend contributions.
 - Review participant communications related to contributions to confirm there will be no cut-back of any accrued/promised right to a contribution.
 - Review any true-up contribution language in the plan document to determine whether an amendment to the true-up language is necessary.
 - Although a prior notice to participants is not required, a strategic client-drafted participant communication may be helpful in explaining the reduction or suspension.

OTHER CORONAVIRUS RELATED ISSUES

Reduction or Suspension of Employer Contributions

- Reducing or suspending a true-up provision
 - A true-up provision may be reduced or suspended; this would require an amendment to remove or revise the true-up language.
 - The plan sponsor and its counsel should review all participant communications related to its contributions to confirm that removing the true-up will not cause a cut-back of any accrued right to a contribution and if a true-up through the effective date of the amendment may need to be funded.
 - Although a prior notice to participants is not required, a strategic client-drafted participant communication may be helpful in explaining the reduction or suspension.

OTHER CORONAVIRUS RELATED ISSUES

Reduction or Suspension of Employer Contributions

- Reducing or eliminating benefits under a money purchase or defined benefit plan
 - An amendment to reduce or discontinue benefits to a money purchase or defined benefit plan must always be prospective.
 - Participants must receive a 204(h) (reduction in benefits) notice at least 45 days prior to the effective date of the reduction/elimination.
 - Plan sponsors must fund all accrued benefits through the date of the amendment.

OTHER CORONAVIRUS RELATED ISSUES

Treatment of Paid Sick Leave under the Families First Coronavirus Response Act (FFCRA)

- The FFCRA expanded the Family Medical Leave Act (FMLA) by, among other things, adding a new emergency paid sick leave for victims of the coronavirus and for those caring for victims or for children displaced from school or childcare through December 31, 2020.
- In general, whether coronavirus-related sick leave under the FFCRA is or is not benefits-eligible will depend on how the plan document defines benefit-eligible pay with respect to sick leave.
 - If sick leave is, generally, benefit-eligible pay, so would this be, or vice versa.
 - If a plan sponsor wanted to treat it differently, that would likely require a plan amendment to differentiate the treatment of coronavirus-related sick leave from general sick leave.

OTHER CORONAVIRUS RELATED ISSUES

Partial Plan Terminations

- As a general rule, if, due to employer action (e.g., layoffs, location closures, etc.), a company has a reduction in workforce (RIF) of 20% or more (either at one time or in increments) in a 12-month period, there is a presumptive partial plan termination, which would require full vesting of the affected participants.
- So, if an employer lays off 20% or more of its workforce as a result of the coronavirus situation and can't hire them back, that would constitute a partial plan termination (requiring full vesting of the affected participants) under the general rule.
- To date, there has been no regulatory guidance stating otherwise, so it would appear that general partial plan termination rules would continue to apply to coronavirus-related RIFs, at least until or unless we receive legislative or regulatory relief indicating that it does not.
- This is an item that the industry has requested guidance on; however, we may not get this guidance in the immediate future, so the conservative position will be to assume that coronavirus-related RIFs would be subject to the same partial plan termination rules as regular RIFs.

OTHER CORONAVIRUS RELATED ISSUES

Signature and Notarization Challenges

- For employers who currently authorize forms, including distribution requests, via wet signature, the shift to a work-from home environment has made this impossible for some employers.
 - Transamerica is working to develop a secure alternate means by which plan sponsors who cannot provide Transamerica with a wet signature can still authorize forms.
- No relief has yet been granted from the spousal consent requirements, where required; however, the coronavirus and required social distancing may make it impossible to have a signature witnessed in front of a plan representative or notary.
 - Because witnessed spousal consent remains a requirement in the situations where it is applicable, Transamerica is exploring the viability of e-notarization to ensure that, where spouses cannot sign in the physical presence of a plan administrator or notary, participants are not unnecessarily precluded from taking a withdrawal to which their spouse consents.

OTHER CORONAVIRUS RELATED ISSUES

Extensions to deadlines

- In mid-March, the IRS issued Notice 2020-18 which, among other things, provides that any person with a 2019 Federal income tax payment or return due on April 15, 2020 will have until July 15, 2020 to file and to pay.
 - “Person” includes partnerships, associations, companies, and corporations.
- The IRS subsequently issued a Filing and Payment Deadlines Q&A, in which it clarified that employers with a Federal income tax return due date of April 15, 2020 have until July 15, 2020 to make employer contributions to their qualified retirement plans for the 2019 plan year
- The Q&A also clarifies that excess deferrals must still be refunded by April 15, 2020 because that date has not been extended.
- On March 27th, the IRS extended the remedial amendment period for restatement of 403(b) plans to June 30, 2020, and for defined benefit plans to July 31, 2020.
- We do not yet have guidance on potential extensions for other deadlines, such as Form 5500 filings or DOL-required notices, but the CARES Act does expand the reasons for which the Department of Labor may extend deadlines under ERISA to include public health emergencies declared by the Department of Health and Human Services.

TRANSAMERICA READINESS

THE CARES ACT

NEXT STEPS

Readiness Plan

- Outreach to plan sponsors, and their advisors or TPAs if applicable, regarding the decision points around the optional provisions in the CARES Act (the coronavirus-related distributions and loans).
- Implementation of a manual process to handle the first wave of coronavirus-related distributions and loans from early adopters.
- Implementation of an automated process to manage the increased volume of coronavirus-related distributions and loans as more plans adopt.
- Development of secure means of accepting authorization from plan sponsors who cannot provide Transamerica with a wet signature.
- Analysis of viable options for notarization where a spouse cannot be physically in the presence of a notary or plan administrator.
- Updates to forms and development of amendments.
- Continued engagement with industry groups to push for further guidance on areas of known issues.

QUESTIONS?

THE SECURE ACT

THANK YOU!

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