ALERTS

Tax-Qualified Retirement Plans Under the CARES Act (COVID-19)

March 30, 2020

Among the many aspects of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") passed by Congress last week and signed into law, are those that cover tax-qualified retirement plans, including 401(k) plans and defined benefit pension plans. Specifically, the stimulus legislation provides greater flexibility to participants in defined contribution plans who are impacted by the pandemic to access more of their account balances. It also allows plan sponsors of all tax-qualified retirement plans, including single, multiple and multiemployer defined benefit pension plans, to amend their plans to permit participants who experience certain financial hardships as a result of the COVID-19 pandemic to receive early distributions without an early distribution penalty.

Special Rules for Qualified Individuals

Qualified Individuals

Under the CARES Act, "Qualified Individuals" are eligible to take special distributions and increased loans from defined contribution plans. In general, a person is a "Qualified Individual" if:

- The individual or the individual's spouse or dependent is diagnosed with COVID-19 by a CDC-approved test; or
- The individual experiences adverse financial consequences due to COVID-19 as a result of:

- Being quarantined, furloughed or laid off;
- A reduction of work hours or the closing of the business owned or operated by the individual;
- Inability to work due to lack of child care; or
- Other factors determined by the U.S. Treasury.

A plan administrator may rely on an employee's certification that the conditions for the employee to receive a special distribution have been met.

Distribution Amounts and Tax Treatment

Until Dec. 31, 2020, plan sponsors of tax-qualified retirement plans, including IRAs, defined benefit and defined contribution plans, may amend their plans to permit Qualified Individuals to take distributions of up to $100,000. For federal tax purposes, the amount of a Qualified Individual's distribution may be spread (to the extent taxable) equally over three years, and if made to anyone under the age of 59-1/2, a distribution will not be subject to a 10% early distribution tax. Importantly, participants should be aware that the tax treatment of these distributions may differ under state tax laws. While a distribution to a Qualified Individual is not a loan, it may be repaid, at any time during the three-year period following the withdrawal, to any eligible plan that the individual becomes a participant to or an IRA.

Increased Loan Limits

Plan sponsors of defined contribution plans can amend their plans to enable participants who are Qualified Individuals to take enhanced loans of up to the lesser of 100% of the participant's vested account balance or $100,000 (ordinarily, 50% of the participant's vested account balance or $50,000). These enhanced loans are available only for the next 180 days. Plans may also be amended to allow participants who have existing outstanding loans for the rest of the calendar year to delay repayment of such loans for one year.

Plan Amendments

The availability of distributions to Qualified Individuals and increased loan limits can be implemented immediately. Timely plan amendments that reflect any implemented measures can be adopted later.

Temporary Waiver of Minimum Required Distributions

The CARES Act provides relief to individuals who would otherwise be required to withdraw required minimum distributions (often referred to as "RMDs") in 2020 from defined contribution plans, including 401(k) plans, 403(b) plans and certain 457(b) plan (as well as IRAs). RMDs that would otherwise have been required to be made from those plans to an individual whose required beginning date occurs in 2020 may be delayed until 2021. The delay does not apply to any RMD that should have been made before Jan. 1, 2020 and RMDs under defined benefit pension plans.

Single Employer Defined Benefit Pension Plans

Minimum Required Contributions by Employers

The CARES Act allows employers to delay until Jan. 1, 2021 minimum contributions to single employer defined benefit pension plans (including multiple employer plans) that an employer would otherwise be required to make (including quarterly contributions) during the 2020 calendar year (regardless of the applicable plan year). Each delayed contribution will be subject to interest from the original due date through the date the amounts are contributed to the pension plan.

Benefit Restrictions

The CARES Act provides relief from certain benefit restrictions that would otherwise have been triggered by a pension plan's lower funding status (its "adjusted funding target attainment percentage" or "AFTAP"). If a pension plan does meet statutorily established funding thresholds, certain restrictions may be imposed on the plan, such as restricting lump sum distributions. To avoid such restrictions from being imposed on pension plans whose funding levels decline due to the COVID-19 pandemic, the CARES Act permits a plan sponsor to elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020, as the AFTAP for plan years which include the 2020 calendar year.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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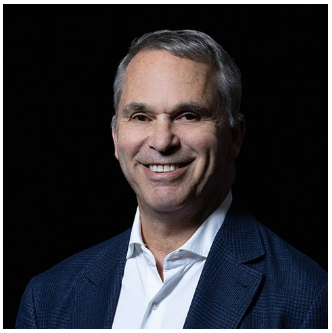

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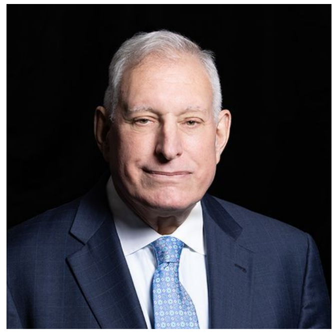

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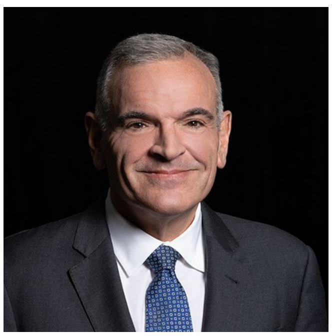

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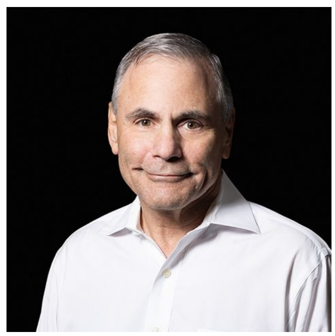

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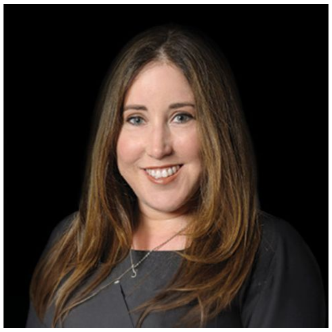

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