

## Possible 403(b) Plan Changes for School District Employees Under the CARES Act

March 27, 2020

On Wednesday night, the Senate unanimously adopted the Coronavirus, Aid, Relief and Economic Security (CARES) Act. On March 27, 2020, the House of Representatives passed the CARES Act, which is now awaiting the President's signature. The CARES Act is an unprecedented bill that will impact almost every area of the U.S. economy, including three specific provisions that could impact 403(b) retirement plans.

**Note:** *Employers are not required to include any of these changes into their retirement plan. Employers who do want to include any change can do so retroactively to January 1, 2020, provided that they amend their retirement plan to reflect such change(s) no later than the last day of the first Plan Year that begins on or after January 1, 2024.*

**Financial Hardship.** The CARES Act effectively creates a new hardship distribution option that will allow eligible individuals to withdraw up to \$100,000 for "corona-virus related distributions." For this purpose, a corona-virus related distribution is a distribution that is made to a participant who meets one of the following requirements:

- The participant is diagnosed with COVID-19;
- The participant's spouse or dependent is diagnosed with COVID-19;
- The participant experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable 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; or
- Other factors as determined by the Treasury Secretary.

The employer can rely upon an employee's self-certification to prove the existence of one or more of these factors.

A corona-virus related distribution will also qualify for some special tax treatment:

- These distributions will be exempt from the normal 10% penalty that applies to individuals who have not yet attained age 59-1/2 or one of a few other early withdrawal exceptions; and
- Although still subject to regular income taxes, an individual can recognize the income and pay the related taxes over three years and the employee can avoid those taxes as well by repaying some or all of the distribution over those same three years.

**Plan Loans.** The CARES Act also makes several changes to the normal loan rules that could apply to 403(b) plans that allow plan loans.

- The maximum amount of a plan loan is increased to the lesser of \$100,000 or 100% of the participant's vested account in the plan (the ordinary limit is the lesser of \$50,000 or 50% of the participants vested account in the plan). This change is effective for the first 180 days after the CARES Act is enacted.
- Participants who have existing plan loans can now suspend their loan payments for up to 12 months, while on a leave or furlough and extend the term of the loan by the length of time that the payments were suspended. Participants should understand that they will owe extra interest as a result of the suspension and the payments that will be required when they resume will be higher to reflect this extra interest. This additional suspension right applies to loans with payments due before December 31, 2020.

**Required Minimum Distributions.** The CARES Act waives the required minimum distribution ("RMD") requirement for 2020. This waiver also applies to Individual Retirement Accounts ("IRAs").

## CONCLUSION

The CARES Act includes several optional 403(b) plan changes that could help individuals who have been financially harmed by the current situation. Some of the changes would affect the administration and design of long-standing 403(b) plans and some employers may not want to make any of these changes. Employers who are interested in adopting any of the CARES Act provisions should seek appropriate legal and record keeping advice to evaluate the changes and prepare possible amendments to existing plan documents and other documentation needed to implement any of those changes.

If you have any questions or concerns regarding the CARES Act, please contact Matthew Flanary at [mflanary@buelowvetter.com](mailto:mflanary@buelowvetter.com) or (262) 364-0253 or Brett Schnepfer at [bschnepfer@buelowvetter.com](mailto:bschnepfer@buelowvetter.com) or (262) 364-0262 or your Buelow Vetter attorney.

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*This Legal Update is intended to provide information only on general compliance issues and should not be construed as legal advice. Please consult an attorney if you have any questions concerning the information discussed in this Legal Update.*

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