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EMPLOYEE BENEFITS ALERT

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Stop and review COVID-19 distribution and loan forms carefully

The Coronavirus Aid, Relief and Economic Security (CARES) Act, authorizes employers to make changes to their qualified retirement plans to increase loan limits, delay loan repayments, and make distributions to plan participants experiencing certain COVID-19 related circumstances. Due to a lack of guidance from the IRS, there's confusion among third-party administrators (TPAs) about how to administer these changes, resulting in potential issues with forms used by TPAs to approve these CARES Act loan and distribution changes.

We have reviewed several third-party administrator forms and client communications, and wanted to provide some clarity with regard to the following CARES Act changes:

- Plans that allow loans may be **required** to permit participants with qualifying COVID-19 related circumstances to delay loan repayments with due dates occurring between March 27, 2020, and Dec. 31, 2020, for one year.
- Increasing loan limits from $50,000 to $100,000 for participants with qualifying COVID-19 related circumstances is **optional**.
- Allowing distributions of up to $100,000 to participants with qualifying COVID-19 related circumstances is **optional**.

Different TPAs have taken different interpretations of these provisions. With respect to the delayed loan repayments, the CARES Act states that the loan repayments "shall" be delayed, which seems to imply that plans are required to delay such repayments. However, previous IRS interpretations of similar statutory language found that such repayments were optional provisions that a plan could choose whether to adopt. Until further IRS guidance is issued, the conservative approach may be to assume that delaying loan repayments is required.

In some cases, TPAs are automatically adopting these changes to qualified plans unless the plan sponsors quickly make a decision to opt out of these terms. Other TPAs are imposing short deadlines on plan sponsors to affirmatively elect to adopt these changes. Because of the lack of regulatory guidance, plan sponsors should pause and question their TPAs and their counsel before making quick decisions to implement changes that could create plan qualification errors in the future. For example, depending on the changes made by a TPA's form, the form may need to be retroactively dated to March 27, 2020, to be effective, or it may require more than one effective date.

Stop to review the forms that your TPAs are having you sign to approve any CARES Act related changes to your plans. And take the time to consider whether adopting these changes is a good idea or not.

For more information or if you need any help in addressing these issues, please feel free to contact Greg Daugherty, Deb Boiarsky, Victoria Hanohano-Hong and Rich Helmreich or any member of Porter Wright's Employee Benefits group so we can help you navigate these tough issues.