CARES Act Applicability to ORP

Section 2202 of the CARES Act establishes special tax treatment for distributions and loans to certain individuals affected by COVID-19. The IRS issued guidance last week as an FAQ that helped clarify if and how these provisions apply to Texas ORP.

Bottom Line: Section 2202 of the CARES Act applies to ORP-type plans but it does not override state law and rules prohibiting in-service distributions and loans prior to an ORP participant reaching age 70-1/2.

Background: The CARES Act established a new temporary type of distribution for eligible defined contribution plans referred to as a Coronavirus-Related Distribution (CRD) and enhanced loan provisions referred to as a Coronavirus-Related Loan (CRL). Any distribution from the plan during 2020 to a participant who meets the eligibility requirements in the CARES Act may be designated as a CRD up to a maximum of $100,000 per individual. Loans designated as CRLs must be taken before September 23, 2020.

Certain IRS restrictions and taxes are eased for CRDs and CRLs, including: Unless otherwise prohibited, plan sponsors may provide in-service CRDs prior to the recipient meeting the IRS minimum age of 59-1/2 and the IRS 10% early withdrawal penalty is waived. CRD recipients can prorate regular income taxes on CRDs over a three-year period and can repay CRDs during that three-year period to any eligible plan that permits rollovers (with amended tax returns to adjust for the previously paid taxes). CRLs have an increased limit from $50,000 up to $100,000 up to 100% of the account balance (increased from 50%) and plans may temporarily suspend certain loan repayments.

Applicability to ORP:

- CRDs are available for any type of contributions, not just elective deferrals.
- CRDs are available for ORP-type plans, which include employer contributions and mandatory employee contributions (no elective deferrals).
- This was a question for ORP because IRS retirement-related relief provided after Hurricane Harvey only applied to elective deferrals (traditional hardship withdrawals).
- CRDs are not mandatory.
  - The CARES Act does not require retirement plans such as ORP to provide any type of distribution that would not otherwise be available under the plan’s existing provisions.
CRDs are only available to ORP participants who meet the distribution requirements in the ORP statute and the Coordinating Board's ORP rules (Ch. 25):
  - In-service distributions are limited to participants who are at least age 70-1/2; and
  - Post-termination distributions are limited to participants who have terminated employment with all ORP employers (Texas public institutions of higher education and the Coordinating Board).

ORP employers are not authorized to amend their local ORP plans to provide CRDs other than for existing authorized distributions.

ORP employers are permitted to amend their ORP plans to designate existing authorized distributions as CRDs.

- Participants can choose to designate existing authorized ORP distributions as CRDs on their individual income tax returns.
  - Participants must meet the CARES Act eligibility requirements to be a “Qualified Individual” and must take the distribution during the 2020 calendar year (before December 31, 2020).
  - Qualified individuals can claim CRD status even if their current or former ORP employers do not amend local ORP plans to designate existing authorized distributions as CRDs.

- CRLs are not mandatory.
  - The CARES Act does not require retirement plans such as ORP to provide loans if not currently providing them.
  - The ORP statute and Ch. 25 prohibit loans before a participant meets the distribution requirements (i.e., at least age 70-1/2 if still employed or termination of employment with all ORP employers).

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