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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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