PULLMAN & COMLEY

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COVID-19 and Your Retirement Account: Time to Explore Distribution Opportunities?

August 7, 2020

by Deborah S. Breck

New rules for retirement accounts under the SECURE (Setting Every Community Up for Retirement Enhancement) Act and the CARES (Coronavirus Aid, Relief, and Economic Security) Act, may have a dramatic impact on the optimal structuring of your retirement account benefits. It is important to review your beneficiary designations, and in some cases, your entire estate plan, in light of these recent changes in the law.

Under the SECURE Act (effective January 1, 2020)

- Individuals over age 70-1/2 may now continue to make contributions to a retirement account, so long as they are employed.
- The age when an individual's "required minimum distribution" (RMD) must begin has increased from age 70-1/2 to age 72.
- With limited exceptions, the opportunity to "stretch" IRA distributions over the lifetime of the designated beneficiary (whether an individual or a trust) has been eliminated. In most cases, the balance in the account must be distributed over a period of not more than 10 years following the account holder's death (the so-called "10-year rule").
- A new category of beneficiary, known as an "eligible designated beneficiary" (EDB), has been created. EDBs include i) a surviving spouse; ii) a minor child of the decedent; iii) a disabled person; iv) a chronically ill person; v) an individual not more than ten years younger than the decedent. EDBs are exempt from the 10-year rule.

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The new retirement distribution rules are discussed in depth in our January 7, 2020 Estate Planning Alert.

Under the CARES Act (effective March 27, 2020)

- Annual **required minimum distributions** (RMD) from IRAs, most defined contribution plans (e.g., 401(k) plan), and certain deferred compensation are suspended for calendar year 2020.
- If you took a distribution (which you thought was your 2020 RMD) from an IRA account after January 1, 2020 but before the Act was passed, you can choose simply to keep the distribution and pay tax on it (even though no 2020 RMD was required). If you would prefer not to pay the tax, however, you may have several options:
  - Repay it to your IRA **by *August 31, 2020;***
  - "Roll-over" the same property distributed from the account to a new retirement account **by *August 31, 2020*;**
  - Establish a ROTH IRA account with the distribution (see our prior alert for additional information), or
  - If the distribution is a "*coronavirus-related distribution*" from an IRA or other eligible retirement plan, additional options apply (see following)
- A "***coronavirus-related distribution***" (CRD) from an IRA or other eligible retirement plan account may be made to an individual diagnosed with COVID-19; whose spouse is dependent, or diagnosed with COVID-19, or who "experiences adverse financial consequences" as a result of:
  - the individual being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19; having a reduction in pay (or self-employment income) due to COVID-19; being unable to work due to lack of childcare due to COVID-19; having a job offer rescinded or start date for a job delayed due to COVID-19; closing or reducing hours of a business owned or operated by the individual due to COVID-19
  - the individual's spouse or a member of the individual's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19; being unable to work due to lack of childcare due to COVID-19, , or having a job offer rescinded or start date for a job delayed due to COVID-19; closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.
- The CRD must be made January 1-December 31, 2020.
- The aggregate amount of CRD(s) from all sources may not exceed $100,000.
- CRDs are not subject to a 10% early distribution (i.e., before reaching age 59-1/2) penalty tax.
- If the CRD is restored to the retirement plan or IRA account within 3 years of the distribution, there will be no income tax on the CRD.

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- CRDs that are not repaid are subject to income tax, but that tax liability may be paid over a 3-year period.

Individuals eligible for coronavirus-related distributions may also be eligible, **until September 22, 2020**, **to borrow up to $100,000 from a workplace retirement plan**, if the plan allows. Loans from an IRA are not permitted. Similar to the requirements for a coronavirus-related distribution, a loan may be made to an individual diagnosed with COVID-19; whose spouse is dependent, or diagnosed with COVID-19, or who "experiences adverse financial consequences" as a result of:

- The individual being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed, due to COVID-19;
- The individual's spouse or a member of the individual's household (that is, someone who shares the individual's principal residence) being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed, due to COVID-19; or
- Closing or reducing hours of a business owned or operated by the individual, the individual's spouse, or a member of the individual's household, due to COVID-19.

We are pleased to provide you with this general summary of significant legislation that may be relevant to you and your estate planning. It is important to appreciate, however, that the associated laws and (developing) regulations are very complex and you may not qualify to take advantage of some of the opportunities described. Please be sure to consult with our Trusts and Estates attorneys and your trusted advisors before determining whether any of these matters pertain to your personal circumstances.