Nebraska State Legislature

SENATOR MARK KOLTERMAN

District 24
State Capitol
PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2756
mkolterman@leg.ne.gov

COMMITTEES

Chairperson - Nebraska Retirement Systems
Banking, Commerce and Insurance
Revenue
Executive Board

MEMO
FROM: Senator Mark Kolterman, Chairman, Nebraska Retirement Systems Committee
TO: Senators
DATE: July 23, 2020
RE: Information about limitations on availability of loans from member retirement accounts under the federal CARES Act

Background

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020. Section 2202 of the CARES Act authorizes eligible retirement plan participants to receive up to $100,000 loan or distribution from their defined contribution (DC) or deferred compensation (DCP) plans for COVID-19-related purposes without an additional tax penalty for premature distribution. On July 10, 2020, the IRS issued additional guidance which clarified and expanded what constitutes a hardship withdrawal and who qualifies as an eligible individual under these CARES Act provisions.

Limitations on Applicability in Nebraska

The distributions/loans are optional and are only available if a state has enacted legislation to authorize loans from eligible retirement member accounts. Nebraska has not enacted such legislation, so loans are not available to plan members in Nebraska.

The CARES Act expanded distribution/loan provisions are restricted to only certain time periods. Plan loans can only be made through December 30, 2020; loans cannot be made on and after December 31, 2020.

The loan provisions of the CARES Act only apply to defined contribution (DC) retirement plans and deferred compensation plans -- they do not apply to defined benefit and cash balance plans. In Nebraska, DC plan membership is limited to only state and county employees hired before 2003 who did not elect to join the cash balance plans. According to the 2020 NPERS Annual Report, there are approximately 2,000 active state employee DC members and approximately 800 active county employee DC members. There are approximately 3,000 employees in the deferred compensation plan.

Discussion

IRS Guidance issued on July 10, 2020 re-confirmed that the CARES Act provisions are optional. This means the plan sponsors [State of Nebraska] may choose whether to implement CARES Act changes. Since the plans administered by NPERS are created through state law, statutory changes would have to be enacted before NPERS could implement any of these provisions.

In order to meet the December 30, 2020 distribution deadline, a bill would have to be introduced and passed during the remainder of this legislative session. Even if such a bill were passed, NPERS would have to hire and train new staff to develop and implement a new loan program and repayment and collection procedures in order to ensure the program operates in compliance with IRS standards for qualified tax-deferred status of all the plans.

Traditional Hardship Withdrawal Available to Deferred Compensation Plan Members

If a state or county plan member has been contributing to the deferred compensation plan, then the plan member may take a traditional hardship withdrawal for a severe unforeseeable emergency. The financial hardship must result from a sudden and unexpected illness or accident or the loss of property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the member's control.

Financial hardship documentation is required. The plan member must prove that he or she cannot meet the need for this hardship from other resources. The application for a hardship withdrawal must be approved by the Public Employees Retirement Board and will be limited to the amount necessary to satisfy the need. NPERS is required to withhold taxes on emergency hardship withdrawals.

NPERS has a handbook on the Nebraska Deferred Compensation Plan that provides further information about hardship withdrawals. Here is a link to the on-line handbook which is available at https://npers.ne.gov/SelfService/public/howto/handbooks/handbookDCP.pdf Information on hardship withdrawals appears on pages 16-18 of the handbook.

As previously discussed, because Nebraska has not enacted legislation authorizing loans or distributions from state-administered plans, the expanded eligibility provisions under the CARES Act do not apply to hardship withdrawals from deferred compensation plans.

Conclusion

If you have questions about any of the information I have provided, please don't hesitate to follow-up with me or Kate Allen, Retirement Committee Legal Counsel. If you receive an inquiry from a constituent, please feel free to contact either Kate or me. Our assistance is always available to you and your staff on this issue and any other retirement-related issue. Kate can be reached on her direct phone line which is 402-471-2626 or by e-mail at kallen@leg.ne.gov