Date: June 11, 2020
To: PERA Board of Trustees
From: Amy Strenge, Policy Coordinator
Subject: Adoption of the CARES Act Provisions

CARES Act Background

As mentioned during the May PERA Board of Trustees’ Meeting, the recently adopted federal CARES Act (Act) includes provisions that could affect PERA’s defined benefit plans as well as its defined contribution plan. Two sections of the Act pertain to retirement funds.

COVID-19 Related Distributions
Section 2202 of the Act would waive the IRS ten percent penalty on early withdrawals for coronavirus-related distributions (CRDs) from defined benefit and defined contribution plans and the twenty percent withholding requirement. The Act also provides that the taxpayer would be permitted to pay income tax on CRDs over three years and members would be permitted to repay the funds to the plan within three years. The Act allows for a member to not pay interest on the CRD portion of the distribution.

A CRD is a distribution made to a person “(1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.” The Act provides that retirement plans may rely on a member’s certification that they are taking the distribution for COVID-19 related reasons. The waiver of the ten percent penalty would apply only to CRDs of up to $100,000 made on or after January 1, 2020. For PERA’s defined benefit plans, which do not currently permit in-service distributions, these provisions would likely be applied only to lump sum refunds paid to deferred members.

The above stated provisions of the Act do not automatically apply and they are not mandatory plan changes. PERA may seek to adopt either all or only portions of the provisions. PERA would need legislation to adopt these Act provisions.

Waiver of Required Minimum Distributions
Section 2203 of the Act waives required minimum distributions (RMDs) for calendar year 2020. This provision, which applies to PERA’s defined contribution plan, provides relief to individuals who would otherwise be required by federal law to withdraw funds from the plan. This provision is automatically applied without legislation and does not require members to certify that they have experienced COVID-19 related consequences. PERA staff have implemented this provision of the Act.
Legislation

At the request of a legislator, the Legislative Commission on Pensions and Retirement (LCPR) in coordination with PERA, TRA, MSRS, and St. Paul Teachers’ Retirement Fund have drafted legislation implementing provisions of the Act. The legislation's future is uncertain. The legislation addresses COVID-19 related refunds and COVID-19 related distributions for annuitants who return to work in public employment.

COVID-19 Related Distributions
The language limits CRDs to deferred members and refunds already permitted by statute. If the member meets the refund eligibility requirements, and upon completion of a certification with the Plan, the member is able to take their refund as a CRD. As a CRD, the usual twenty percent tax withholding and the ten percent tax penalty are waived. The legislation establishes a three year repayment period for the distribution. Members must pay the full amount of the refund in one lump sum payment. If the member repays the entire amount of the refund within three years, the member's benefit is restored.

Reemployed Annuitant
The drafted legislation expands the eligibility access for retired annuitants who return to work in public employment. If an annuitant receives wages that are over the earnings limitations, the member's benefit is offset and the withheld money is placed in an escrow account. Members receive the balance of the escrow account after one calendar year has passed. The proposed language allows for a member to access the escrow balance prior to the next calendar year via a CRD. While the Act allows for favorable tax treatment to already-allowed distributions, the Act does not change eligibility for distributions. As a result, the legislation temporarily changes Minn. Stat. § 356.47, to allow a member to access the escrow account balance early. The member must meet eligibility requirements and complete a certification for the Plan in order to access the escrow balance as a COVID-19 related distribution. Members are not able to repay the balance of the escrow account. The temporary change to the escrow statute is effective until December 30, 2020.

Conclusion

The CARES Act is permissive in nature and may provide both immediate access to funds and tax relief to members in a hardship situation due to COVID-19. PERA's membership is diverse and many sectors of employees may be impacted by the COVID-19 pandemic. On the other hand, a member that takes a refund will forfeit what usually is a more valuable deferred retirement benefit. Because the Plan may ultimately pay out less in benefits upon adoption of certain provisions, there is little concern about an adverse financial impact to the plan. While the legislation would permit reemployed annuitants to access the escrow account earlier, this provision would have little practical effect because the statutory amendment would be effective only a few months before the start of 2021, when escrow payments begin to be made. If the proposed provisions are adopted, there will be administrative and software programming costs that PERA estimates to exceed 600 hours. No additional staff would be needed, but other priorities may need to be delayed to implement the changes on a timely basis.

The PERA Board of Trustees should weigh the potential value of CARES act changes versus the potential later cost to members and the administrative costs. Direction from the Board will help staff recommend changes to the legislation and voice support or opposition if the legislation moves forward.
Staff Recommendation

Staff recommends that the PERA Board of Trustees provide direction to staff to either support or oppose specific components of the CARES act that may be presented in legislation that moves forward.