CONSOLIDATED APPROPRIATIONS ACT, 2021 (CAA): RETIREMENT PLAN RELIEF

Hodgson Russ Employee Benefits Newsletter
February 1, 2021

On December 27, 2020, the President signed the Consolidated Appropriations Act of 2021 ("CAA") that included a number of COVID-related relief provisions for employee benefit plans. For retirement plans, the relief provisions include:

- *Partial Plan Termination Relief*. There has been an ongoing concern that work force reductions in connection with the pandemic would trigger partial terminations of qualified retirement plans, which in turn would require full vesting for affected participants. For plan years that include the period from March 13, 2020 through March 31, 2021, the CAA includes provisions that offer temporary relief from the partial termination rules being invoked in cases where a plan's number of active participants on March 31, 2021 is not less than 80 percent of the number of active plan participants on March 13, 2020.
- *New Qualified Disaster-Related Distribution/Loan Relief*. The CAA does not extend the COVID relief enacted for retirement plans by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). But it does enact new disaster relief provisions that are similar to previous disaster relief provisions enacted in connection with natural disasters such as hurricanes and wildfires. The CAA disaster relief is available in connection with recent natural disasters (other than disasters that are solely coronavirus-related) with respect to which (1) the relevant incident periods began after December 27, 2019, and (2) the major disaster declarations were made during the period beginning January 1, 2020 and ending on February 25, 2021. The new forms of relief are optional and are available to qualified individuals whose principal place of abode during the relevant incident period was located in the qualified disaster area. Relief is available in three forms:
    - <u>Qualified Disaster Distributions</u>. Similar to CARES Act coronavirus-related distributions ("CRDs"), eligible retirement plans (including IRAs, qualified retirement plans, 403(b) plans and governmental 457(b) plans) may offer qualified disaster distributions ("QDDs") to qualified individuals. QDDs generally are limited to $100,000, are exempt from the 10% additional tax on early plan distributions, at the taxpayer's option may be included ratably in taxable income over a three-year period, and may be (but are not required to be) repaid within three years of the distribution date.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

- Plan Loan Relief. Similar to the temporarily increased limits on plan loans under the CARES Act, eligible retirement plans may temporarily offer qualified individuals plan loans for which the limit on the loan amount generally is increased to the lesser of 100% of the qualified individual's vested plan account balance or $100,000. The enhanced loan limits are available only for loans obtained during the period beginning on December 27, 2020 and ending on June 25, 2021.

  Under the CAA's new relief rules, eligible retirement plans also may allow qualified individuals with outstanding loans to suspend loan repayments owed during the qualified disaster's incident period and up to 180 days following the end of that incident period for one year (or until June 25, 2021, if later). Repayment amounts after the suspension period ends will need to be adjusted to account for payments missed during the suspension period, and the term of the loan may be extended by a period equal to the length of the suspension period.
- Recontributions of Certain Hardship Distributions. For a hardship distribution that was received for the purpose of buying or building a primary residence in a qualified disaster area, and could not be used for that purpose because of the qualified disaster, a qualified individual may be able to avoid having to pay tax on all or a portion of the distribution that is recontributed to the plan, as long as –
  - The hardship distribution was received no earlier than the 180 days prior to the first of the qualified disaster's incident period, and no later than 30 days after the end of that incident period; and
  - The recontribution is made in one or more payments during the period beginning on the first of the qualified disaster's incident period and ending on June 25, 2021.

- *Money Purchase Plan Distributions Can Qualify as Coronavirus-Related Distributions (CRDs)*. A CAA provision that also provides limited relief amends the CARES Act so that distributions made by money purchase pension plans to qualifies individuals can qualify as CRDs. Because the CAA was enacted so late in 2020, and because the CAA did not extend the period for requesting CRDs beyond the original December 31, 2020 deadline, there would have been a narrow window period during which new CRDs could be requested and processed by a money purchase pension plan.
- *In-Service Distribution Relief for Select Multiemployer Plans*. The Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act") reduced the minimum age for pension plans to offer in-service distributions as part of a phased retirement provision from age 62 to age 59½. For a targeted group of multiemployer pension plans that cover employees in the building and construction industry, the CAA further reduces that minimum age limit from age 59½ to age 55. But the change, if available, is applicable only for individuals who were participants in the plan before April 30, 2013.
- *420(f) Relief for Overfunded Pension Plans*. For those relatively few overfunded defined benefit plans that are currently operating, there has been an available option under Code Section 420(f) to make qualified future transfers to fund retiree medical and life insurance obligations. For pension plans that meet certain requirements (e.g., funding requirements), the CAA includes a provision that allows a one-time election to be made by no later than December 31, 2021 to terminate the transfer period for an existing qualified future transfer election. The election is to be effective for any taxable year beginning after the election is made.

For plan sponsor that elect to adopt one or more of the CAA relief provisions, relevant plan amendments must be adopted on or before the last day of the first plan year beginning on or after January 1, 2022, unless a later is prescribed by the Secretary of the Treasury.

If you have questions or would like more information regarding the CAA retirement plan relief provisions, please contact Peter Bradley (716.848.1446), Amy Walters (716.848.1481) or any member of the Employee Benefits Practice.

Please check our Coronavirus Resource Center and our CARES Act page to access additional employee benefits information related to the coronavirus pandemic.