

Appropriations Act Includes Several Provisions Applicable to Qualified Retirement Plans

The Consolidated Appropriations Act of 2021 (CAA) includes several provisions affecting qualified retirement plans. A relaxation of the partial plan termination rules should provide relief to plans which see unusual turnover in the number of active participants during the COVID-19 pandemic. Other provisions, including an amendment of the CARES Act which allows coronavirus related distributions to be made from money purchase pension plans, may provide retroactive relief to plan sponsors. Finally, a series of disaster relief provisions is intended to assist participants affected by certain non-COVID disasters in the past year. Although plan sponsors may wish to adopt some of the disaster relief provisions, plan sponsors are not required to take any action based on the CAA.

Relief from Partial Plan Termination Rules

When a partial plan termination occurs, qualified retirement plans must provide that affected participants become 100 percent vested in their plan benefits. Although determining whether a partial plan termination has occurred can be a complex matter, the Internal Revenue Service (IRS) generally presumes a partial plan termination has occurred if there is a 20 percent turnover rate in the number of active plan participants during the applicable period (usually the plan year).

The CAA provides temporary relief from the partial plan termination rules to sponsors of plans which meet certain requirements. Specifically, the CAA provides a plan will not be treated as having incurred a partial termination for any plan year which includes the period beginning on March 13, 2020 and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80 percent of the active participants covered by the plan on March 13, 2020.

Commentary: The CAA simplifies the usual partial plan termination analysis mentioned above (*i.e.*, the 20 percent turnover test) for the affected time period.

Money Purchase Plan Coronavirus Related Distributions

Section 2202 of the CARES Act allowed sponsors of certain retirement plans to permit eligible individuals to take coronavirus related distributions (CRDs) of up to \$100,000. The list of plans which could offer CRDs did not originally include

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money purchase pension plans. The CAA amends the CARES Act to allow sponsors of money purchase pension plans to permit eligible individuals to take CRDs as if money purchase plans had been originally included in the CARES Act. However, plan sponsors should note that under the deadline imposed by the CARES Act, the deadline for a CRD to be made was December 31, 2020.

Relief for Overfunded Pensions with a Current 420(f) Election

Internal Revenue Code Section 420(f) allows sponsors of overfunded defined benefit pension plans to make a qualified future transfer of overfunded amounts to a retiree health account and/or a retiree life insurance account. The CAA allows plan sponsors with current Section 420(f) elections in place to make a new election prior to December 31, 2021, to end the transfer for any qualified future transfer effective as of any taxable year which begins after the date the plan sponsors elects to use the relief. Plans electing to take advantage of this relief will continue to be subject to the minimum cost requirements as if the transfer period had not been shortened, as well as additional funding requirements described in the CAA.

Limited Relief Regarding In-Service Distributions for Certain Building Trade Multiemployer Plans

The CAA also offers in-service distribution relief for certain multiemployer plans by amending Internal Revenue Code Section 401(a)(36), which currently allows in-service distributions to working participants at age 59.5. The CAA amends Section 401(a)(36) to include an additional provision which states that eligible participants in certain multiemployer plans can begin to receive in-service distributions at age 55. A participant is eligible if they became a participant in the plan on or before April 30, 2013. In order for a plan to be eligible it must (1) be a multiemployer plan primarily covering participants in the building and construction industry; (2) have a trust that was in existence prior to January 1, 1970; and (3) before December 31, 2011, at a time when the plan provided that distributions may be made to an employee who has not attained age 55 and who is not separated from employment at the time of such distribution, the plan received at least one written determination from the IRS that the plan was qualified.

Disaster Provisions

The CAA includes three types of relief for individuals affected by recent “qualified disasters:” (1) the option to take a “qualified disaster distribution” of up to \$100,000; (2) the ability to repay hardship distributions taken with the intent of

building or purchasing a home in a qualified disaster area; and (3) temporary modifications to the plan loans rules which allow affected individuals to delay repayment of existing plan loans and to receive new loans of up to \$100,000 or 100 percent of the vested portion of their account.

A “qualified disaster” is an event declared a disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act between January 1, 2020 and February 25, 2021. The relief is intended to aid individuals living in “qualified disaster areas,” which are areas where a qualified disaster has been declared. However, qualified disaster areas do not include areas which are disaster areas solely due to the COVID-19 pandemic.

Plan sponsors interested in adopting any of these relief provisions have until the last day of the plan year that begins on or after January 1, 2022, to amend their plans. For calendar year plans, this deadline is December 31, 2022.

Qualified Disaster Distributions

The CAA allows retirement plans to provide qualified disaster distributions (QDDs) to certain participants affected by qualified disasters. Participants eligible to receive a QDD are those (1) whose principal place of abode at any time during the incident period for a qualified disaster is located in the qualified disaster area; and (2) who have sustained an economic loss due to the qualified disaster. QDDs may be as large as \$100,000, must be taken by June 25, 2021, and will not be subject to the additional 10 percent tax for early distribution. QDDs will be taxed ratably over three years and may be recontributed within three years of distribution to a plan to which an eligible rollover contribution could be made. If recontributions are made to plans other than an IRA, then the participant will be treated as having received the QDD in an eligible rollover distribution and as having transferred the amount in a direct trustee-to-trustee transfer within 60 days of the distribution.

Recontributions of Hardship Withdrawals for Purchase or Construction of Home

The CAA also offers relief to certain participants who received a hardship distribution to build or purchase a home in a qualified disaster area, but did not use the money for that purpose due to the disaster. In order to be eligible for the relief, the participant must have received the hardship distribution during the period that begins 180 days before the last day of the incident period for the qualified disaster and ends 30 days after the last day of the incident period. Eligible participants may make one or more recontributions up to the amount of

the hardship distribution they received. The deadline to make such recontributions is June 25, 2021. Recontributions will be treated as having been received in an eligible rollover distribution and as having been transferred to the receiving plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Plan Loan Provisions

The CAA offers relief to certain “qualifying individuals” by modifying rules applicable to plan loan provisions in two ways. A “qualified individual” is someone whose principal place of abode during any part of the incident period for a qualified disaster is located in the qualified disaster area who suffers economic loss as a result of the disaster.

First, the CAA provides that until June 25, 2021, plans may allow qualified individuals to receive loans of up to the lesser of \$100,000 or the total vested portion of the qualified individual’s account, which is double the standard limits.

Second, the CAA provides that if a qualified individual has an outstanding plan loan on the first day of the incident period of a qualified disaster and the due date for repayment of the loan occurs during the period that begins on the first day of the incident period for the qualified disaster and ends 180 days after the last day of the incident period then the due date will be delayed for one year or, if later, until June 25, 2021.

Commentary: The CAA disaster relief provisions are similar to past disaster relief guidance issued by the IRS and the COVID-19-specific relief included in the CARES Act. We anticipate future guidance from IRS regarding implementation of the CAA sections, but expect the guidance to match prior disaster related publication.

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