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EMPLOYEE BENEFITS ADVISORY

Qualified Retirement Plan Relief in the Consolidated Appropriations Act, 2021

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The Consolidated Appropriations Act, 2021 (the Act), signed by the president into law on December 27, 2020, contains various relief provisions applicable to qualified retirement plans. This Client Advisory summarizes provisions in the Act, which may affect employers who sponsor retirement plans. The Act also contains relief applicable to certain types of multiemployer pension plans, which will not be addressed here.

Temporary Rule Preventing Partial Plan Terminations

Section 411(d)(3) of the Internal Revenue Code of 1986 (the Code) generally requires a qualified retirement plan to fully vest all affected participants upon a complete or partial plan termination.

The Act grants temporary relief from the partial termination requirement, stating that a retirement plan will not be treated as having a partial termination within the meaning of Code Section 411(d)(3) (and thus be required to fully vest participants) during any plan year that includes the period of March 13, 2020, through March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020.

Takeaways: This temporary rule offers relief to employers who have been forced by the COVID-19 pandemic to conduct layoffs, providing such employers an opportunity to potentially avoid incurring a partial plan termination if active participant numbers rebound prior to March 31, 2021.

Money Purchase Plans and CRDs

The CARES Act permitted qualifying individuals to take penalty-free coronavirus-related distributions (CRDs) from certain types of retirement plans during 2020. There was initial ambiguity, which was not clarified by the IRS for several months, regarding whether in-service distributions from money purchase pension plans

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could qualify as CRDs. The IRS issued subsequent guidance (in IRS Notice 2020-50), stating their position that an in-service distribution from a money purchase pension plan could *not* qualify as a CRD.

This Act reverses the stated IRS position, providing that in-service distributions from money purchase pension plans can indeed be classified as penalty-free CRDs in 2020. The provision applies retroactively, as if originally included in the CARES Act.

Takeaways: If a money purchase pension plan had elected to offer CRD relief earlier in 2020, after the CARES Act was passed, the provisions in the Act offer assurance that a qualification error did not occur. However, this relief likely comes as "too little, too late" for many employers who declined to offer CRDs from their money purchase pension plans in 2020 altogether, based on the position of the IRS in Notice 2020-50.

Qualified Disaster Distribution and Loan Relief

The Act provides relief to participants who are impacted by a major disaster declared by the president under the Stafford Act, other than COVID-19. The types of traditional disaster relief offered (special penalty-free in-service distribution right, loan relief, repayment options, and return of home purchase withdrawals) mirror the CRD relief offered under the CARES Act, but the Act specifically excludes any area "to which such a major disaster has been so declared only by reason of COVID–19," indicating that the qualified disaster relief contained in the Act is distinct from, and not intended to replace or continue, the CRD relief offered under the CARES Act past the end of 2020.

The following optional relief provisions apply to non-COVID-related major disaster declarations made by the president (under the Robert T. Strafford Disaster Relief and Emergency Assistance Act)—examples would include the hurricanes, severe storms, flooding, and wildfires that were declared major disasters—on or after January 1, 2020, through 60 days after the enactment of the Act:

- ***Qualified Disaster Distributions***: "Qualified individuals" who are affected by a declared disaster (e.g., whose principal place of abode was located within a qualified disaster area and who sustained an economic loss due to such qualified disaster) are provided a new penalty-free, in-service "qualified disaster distribution" (QDD) right from eligible retirement plans (such as 401(k), 403(b), money purchase pension, and governmental 457(b) plans) of up to $100,000. The limit applies across all qualified plans in the employer's controlled group and is reduced by any previously made QDDs. Qualified individuals have until 180 days after enactment of the Act to take a QDD. Similar to CRDs, a QDD is taxed ratably over a three-year period and may be recontributed within three years to an IRA or eligible retirement plan, with such repayments treated as direct transfers.
- ***Repayment of Principal Residence Distributions***: Certain participants who had initially taken a hardship distribution in order to purchase or construct a principal residence in a qualified disaster area, but who did not use such distribution in such a manner on account of the disaster, have the ability to repay those funds to the plan until 180 days from the enactment of the Act.
- ***Plan Loan Relief***: Qualified individuals may be subject to an increased plan loan limit of $100,000 or 100% of their vested account balance (increased from the standard $50,000 or 50% of the vested account balance) on plan loans taken in the 180 days following the date of enactment of the Act. Repayments on such loans that are originally scheduled during the period beginning on the first day

of the disaster incident period and ending 180 days from the last day of such incident period may be suspended for a period of up to one year (or up to 180 days after enactment of the Act, if longer), with subsequent repayments adjusted accordingly and interest accruing during the suspension.

Takeaways: The qualified disaster relief provisions offered in the Act appear to be optional. A plan sponsor who elects to offer some or all of these relief provisions has until the last day of the first plan year beginning on or after January 1, 2022, (January 1, 2024, for governmental plans) to adopt an implementing amendment.

Plan sponsors should reach out to plan recordkeepers to determine whether the recordkeepers will have any limitations or modifications for these new requirements. If a plan sponsor takes advantage of these new rules, the plan sponsor should make sure participants are notified of these opportunities and keep records of when these provisions were put into place for each retirement plan. When amendments are ultimately required to address these new rules, those amendments will have to reflect which provisions the plan sponsor implemented and when.

Termination of Qualified Future Transfers

Code Section 420 permits "qualified future transfers"—transfers of an employer's excess pension plan assets to fund up to 10 years of retiree health and life costs—via a retiree health benefits account and/or a retiree life insurance account within the pension plan, so long as various requirements have been met.

The Act permits an employer that had previously elected to make a qualified future transfer to make a one-time election, by December 31, 2021, to terminate the qualified future transfer, beginning after the date of the termination election, and restore the unused funds to the pension plan, subject to certain conditions. If the amounts are not transferred back to the health benefits account or life insurance account (as applicable) within five years following the original transfer period, the termination election under the Act will be treated as a taxable employer reversion.

Takeaways: The relief offered under the Act gives a tool to pension plans that have been impacted by market losses related to the COVID-19 pandemic to restore such losses and return to the funded status required under Code Section 420.

Questions

For any questions about how these new rules will apply to retirement plans, please contact a member the Sherman & Howard Employee Benefits Group.

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