REGULATORY Update

Q1 2021

Retirement Plans Affected by the Consolidated Appropriations Act

On December 27, 2020, the Consolidated Appropriations Act, 2021 (CAA), was signed into law. The legislation—the second major congressional response to the pandemic after passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020—aims to provide immediate and ongoing economic relief to individuals and businesses affected by the pandemic. Included in the bill were several provisions that relate to employer-sponsored retirement plans. Here, we summarize the most notable provisions affecting retirement plans.

Temporary Partial Plan Termination Relief

Under normal circumstances, if a business severs the employment of 20 percent or more of total plan participants, its retirement plan is considered to have triggered a partial plan termination. Generally, when this occurs, full vesting of benefits for any participants affected by a partial plan termination is required.

The CAA provides a new temporary rule on partial plan terminations that allows sponsors of defined contribution retirement plans to avoid the partial plan termination rules if the active participant count as of March 31, 2021, is at least 80 percent of the active participant count when the national emergency was declared on March 13, 2020. In effect, this provision gives companies until March 31, 2021, to rehire laid-off or furloughed workers. The employer will not be required to fully vest those who were terminated. For business owners and retirement plan sponsors whose companies may have been affected by a reduction in the workforce due to the COVID-19 pandemic, this temporary rule could be of significant interest.

Distributions from Money Purchase Pension Plans Qualify as Coronavirus-Related Distributions

The CARES Act temporarily allowed individuals to conditionally make penalty-free coronavirus-related distributions (CRDs) from certain retirement plans for qualifying coronavirus-related expenses. The CAA clarifies that money purchase pension plans are included in retirement plans that qualify for these temporary rules. The provision applies retroactively as if originally included in the CARES Act.

Minimum Age for Distributions for Building and Construction Workers

The CAA amends the Internal Revenue Code to allow employees in the building and construction industry who are at least 55 and are not separated from employment to make distributions from certain tax-exempt multiemployer pension plans if they were participants in such plans on or before April 30, 2013.

Future Transfer Elections

Qualified future transfers allow excess pension assets to be transferred to health benefit accounts to pay for health or life insurance costs if certain requirements are met—including a minimum funding requirement. The CAA provides conditional relief for certain defined benefit plan excesses transferred to health benefit accounts.

Other Provisions

Embedded within the CAA is the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDT), which addresses new rules for noncoronavirus-related relief, such as early withdrawals, increases in loan limits, and special rules for qualified disaster-area home purchases. Here is a summary of TCDT provisions that could affect retirement plans:

Special disaster-related rules for the use of retirement funds. Congress liberalized distribution rules and provided for penalty relief for individuals and businesses in areas receiving disaster declarations unrelated to COVID-19. For the purpose of the TCDT, “qualified disasters” include those occurring from December 28, 2019, through 60 days after the date of enactment.

Qualified disaster distributions (QDDs). The TCDT adds relief in the form of QDDs. Like CRDs, QDDs permit as much as $100,000 to be conditionally withdrawn from eligible retirement plans (e.g., 401(k), 403(b), money purchase pension, and government 457(b) plans) without penalty or withholding. In addition to the removal of the penalty for QDDs, the TCDT also conditionally permits individuals who received a distribution to build a home in a qualified disaster area but were unable to do so to repay the distribution to an eligible retirement plan or IRA.

Disaster-related plan loans. The TCDT also extends the expanded limits for qualified retirement plan loans allowed under the CARES Act for that same 180-day period. It similarly extends the one-year delay in loan repayment for participants with repayment due dates between the first day of the disaster incident period and ending 180 days after the last day of the period. Employers interested in implementing these provisions have until the last day of the first calendar plan year beginning on or after January 1, 2022 (e.g., December 31, 2022, for calendar-year plans) to adopt plan amendments to reflect the changes in the TCDT.

Recommendation for Retirement Plan Sponsors

Many of the provisions described above are very technical. Because each employer-sponsored plan has unique facts and circumstances, we recommend working with current plan service providers and tax professionals to determine the appropriateness and applicability to your company's retirement plan.

SECURE Act 2.0 on the Horizon?

On October 27, 2020, House Ways and Means Committee Chairman Richard E. Neal (D-MA) and ranking member Kevin Brady (R-TX) announced the Securing a Strong Retirement Act of 2020, a bipartisan legislation that seeks to widen the ripples of change brought about by the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which revised many longstanding retirement regulations when it passed in 2019.

Dubbed SECURE Act 2.0, it seeks to double down on many of the initiatives tackled by the SECURE Act, including incentives to expand retirement plan coverage, increased access to retirement savings vehicles, simplification of retirement rules and regulations, and retirement income preservation.

According to the news release introducing the legislation, the Securing a Strong Retirement Act focuses on:

- Promoting savings earlier for retirement by automatically enrolling employees in their company's 401(k) plan
- Creating a new financial incentive for small businesses to offer retirement plans
- Increasing and modernizing the existing federal tax credit (Saver's Credit) for contributions to a retirement plan or IRA
- Expanding retirement savings options for nonprofit employees by allowing groups of nonprofits to join together to offer retirement plans to their employees
- Offering individuals ages 60 and older more flexibility to set aside savings as they approach retirement
- Allowing individuals to save for retirement longer by increasing the RMD age from 72 to 75
- Allowing individuals to pay down a student loan instead of contributing to a 401(k) plan and still receive an employer match in their retirement plan
- Making it easier for military spouses who change jobs frequently to save for retirement
- Allowing individuals more flexibility to make gifts to charity through their IRAs
- Allowing taxpayers to avoid harsh penalties for inadvertent errors managing an IRA that can lead to a loss of retirement savings
- Protecting retirees who unknowingly receive retirement plan overpayments
- Making it easier for employees to find lost retirement accounts by creating a national, online database of lost accounts

Next Steps

Although the original SECURE Act was packaged into year-end spending legislation and pushed through toward the end of 2019, the same did not happen with SECURE Act 2.0. Therefore, the timing and likelihood of its passage remain up in the air. Retirement plan sponsors, fiduciaries, and benefits administrators should stay apprised of these regulatory happenings as they relate to the Securing a Strong Retirement Act (a complete summary is available online) and other legislation that could influence retirement plan rules and regulations.

Pooled Employer Plans Are a Go in 2021

In December 2019, the SECURE Act introduced a new take on the decades-old multiple employer plan (MEP) concept. A pooled employer plan (PEP) is a way for *unrelated* (a critical factor that separates PEPs from MEPs) businesses to collectively pool their retirement plans into a single plan to create efficiencies and economies of scale for small businesses.

The SECURE Act provided that PEPs could be offered beginning on January 1, 2021. Now that PEPs are a reality, and given their infancy within the scope of qualified plan products, retirement plan sponsors and business owners may want to familiarize themselves with the basic concepts of a PEP, what it offers to employers, and which aspects of PEPs are still unknown:

- A PEP allows a small business to pool its retirement plan with the plans of other businesses—whether they are in a common industry or not—into a single retirement plan, with the supposition that pooling assets will allow businesses to partake in lower plan and participant pricing opportunities.
- Employers participating in the PEP will delegate most administrative and fiduciary duties to the pooled plan provider (PPP) under a formal PEP arrangement.
- The PPP is responsible for plan administration duties, including maintaining plan documents, facilitating plan amendments, performing nondiscrimination testing, completing annual Form 5500 and other tax filings, and furnishing required notices.
- The PPP is responsible for investment-related duties in the plan, including maintaining the investment policy statement and the selection, monitoring, and replacement (if necessary) of plan investment options.
- The employer still bears the fiduciary responsibility of monitoring the PPP and any other fiduciaries associated with the PEP.
- The "one-bad-apple" rule—which many fiduciaries felt made MEPs prohibitive because it disqualified all members of an MEP if only a single employer committed a disqualifying violation—does not exist in a PEP.

As with any new legislation, the finer details of PEPs are being ironed out and will require further guidance from the IRS and the DOL in the year ahead. Only recently, the DOL finalized a rule that laid out the requirements for PPPs to formally register. Given its proximity to the January 1, 2021, effective date, PEPs will be relatively scarce out of the gate.

Retirement plan sponsors and fiduciaries are reminded that the selection of a service provider—including a PPP—is a fiduciary act, and all factors must be weighed carefully. If you'd like to know more about the pros and cons of PEPs, consult your retirement plan advisor.

We Can Help

We are ready to provide you with the ideas, guidance, and foresight to position your firm for success. If you would like to review how retirement plans are affected by the CAA, the prospects for SECURE Act 2.0, or any happenings that may affect your firm's benefit plan offerings, we're here to assist you.

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