Key Employee Benefits Provisions in the CAA
Part 3: Retirement Plan Provisions

As mentioned in Key Employee Benefits Provisions in CAA, Part 1: Health and Welfare Plan Provisions, the Consolidated Appropriations Act of 2021 (the "Act") contains a number of employee benefit and executive compensation provisions, including extensive requirements for group health plans and health insurers addressing surprise medical billing.

Part 2 of this series discussed provisions that affected fringe benefits. This article summarizes the key changes implemented by the Act that may directly or indirectly affect retirement plans.

Age for Distributions During Working Retirement *(Div. EE, Title II, Subtitle B, § 208.)*

The Act permits certain employees in the building and construction industries who are age 55 or older and who are receiving retirement benefits from multiemployer plans, to work and receive such benefits.

Temporary Rule Preventing Partial Plan Terminations *(Div. EE, Title II, Subtitle B, § 209.)*

The Act provides for temporary relief from the partial plan termination rules under Code Section 411(d)(3) during 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 eighty percent (80%) of the number of active participants covered by the plan on March 13, 2020.

Special Disaster Relief Rules for Use of Retirement Plan Funds *(Div. EE, Title III, Subtitle C, § 302.)*

The Act includes a temporary extension for retirement plan distributions and loans for individuals who reside in an area declared a disaster by the President after December 31, 2019. A qualified disaster area is defined as:

- An area where the President declared a disaster during the period beginning January 1, 2020, and ending 60 days after the Act's enactment.
- Not including any area where a major disaster has been declared only by reason of COVID-19.

This legislation is similar to other disaster relief bills that previously have affected distributions and loans from retirement plans.

Plan amendments for the distribution and loan changes are due by the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024, for governmental plans).

Distributions

Under the Act, for individuals who reside in a disaster area, distributions are:

- Not subject to the Code's ten percent (10%) tax on certain early distributions.
- Limited to $100,000 in the aggregate.

A qualified disaster distribution must be made on or after the first day of the incident period of a qualified disaster and within 180 days after the Act's enactment date.

Participants may repay the amount distributed during a three-year period. For amounts a participant must include in gross income due to a distribution, the participant may include those amounts on a ratable basis over a three-year period. The participant, however, may decline this option.

Loans

Loans from qualified employer plans are not treated as distributions if certain conditions are met, including the requirement that loans to a participant not exceed $50,000.

The Act increases the loan limit for loans from qualified plans from $50,000 to $100,000 for individuals who reside in a disaster area. For new and outstanding retirement plan loans, the repayment period is also extended for one year.

Money Purchase Pension Plans and Coronavirus-Related Distributions and Loans *(Div. N, Title II, Subtitle B, § 280.)*

The Act clarifies that money purchase pension plans qualify for coronavirus-related distributions and loans under the CARES Act.

Qualified Future Transfers *(Div. N, Title II, Subtitle B, Section 285.)*

The Act permits employers to make an election in 2020 and 2021 to stop the transfer period of a "qualified future transfer" under Code Section 42 if certain conditions are met.

A qualified future transfer is a transfer under Code Section 420 that permits an employer with an overfunded pension plan to transfer excess assets to an account under Code Section 401(h) within the pension plan to fund retirement retiree medical or retiree life insurance benefits.

Under the Act, the employer can elect to terminate the existing transfer period as of any taxable year that begins after the date of election. Any assets that are not used as of the effective date of the terminated transfer period must be transferred back to the pension plan within a reasonable period of time. Those amounts will be treated as an employer reversion unless an equivalent amount is transferred back to the retiree medical or life account within five years after the original transfer.

Conclusion

Many of the Act's requirements governing health plans are participant-friendly, but at the same time may create significant administrative hassles for employer plans.

Some of the Act's provisions may overlap with requirements addressed in the Departments' final rules on cost transparency. In addition, many of the Act's provisions will require new disclosures from plans or insurers to participants—for example, notices under the Act's continuity of coverage provisions after an in-network health provider ends its contractual relationship with the plan. It is important to note that many of the benefits-related provisions will require the Departments to issue additional implementing guidance in the months to come—including, with regard to the ACA's health provider nondiscrimination provision, guidance on a statutorily mandated timetable.

With regard to retirement plans, the Act includes several participant-friendly provisions designed to assist individuals through the COVID-19 pandemic. However, many of the proposed provisions (such as requiring automatic enrollment in new retirement plans and expanding incentives for small businesses to offer retirement plans) are not included in the final Act.

Employers should review the employee benefits provisions in the Act to determine what plan amendments are required and/or desired under the Act. It is important that 2021 plan amendments be drafted and finalized as soon as possible.

Contact

Reach out to Fraser Stryker's employee benefits & ERISA attorneys for further assistance.

Emily R. Langdon
elangdon@fraserstryker.com
(402) 978-5386