MEMO# 33027

January 7, 2021

Retirement Provisions Included in Year-End Government Funding and Stimulus Legislation

[33027]

January 7, 2021 TO: ICI Members
Bank, Trust and Retirement Advisory Committee
Operations Committee
Pension Committee
Pension Operations Advisory Committee
Small Funds Committee
Transfer Agent Advisory Committee SUBJECTS: Pension RE: Retirement Provisions Included in Year-End Government Funding and Stimulus Legislation

On December 27, 2020, the President signed H.R. 133, the "Consolidated Appropriations Act, 2021" (CAA)[1] (as approved by Congress on December 21), an expansive year-end spending bill with a broad range of COVID-19-related response and relief provisions. In addition to funding the government through September 30, 2021, and expanding or extending various relief programs enacted under the CARES Act,[2] the CAA includes various provisions relating to retirement plans, incorporated as part of the "COVID-Related Tax Relief Act of 2020"[3] and the "Taxpayer Certainty and Disaster Tax Relief Act of 2020."[4] We describe below selected provisions relating to retirement savings plans that may be of interest to the ICI membership.

Coronavirus-Related Distributions from Money Purchase Plans

Section 280 of the COVID-Related Tax Relief Act of 2020 retroactively amends section 2202(a)(6)(B) of the CARES Act to provide that in-service withdrawals from money purchase pension plans may be treated as "coronavirus-related distributions" (CRDs).[5] This effectively modifies previous IRS guidance in IRS Notice 2020-50[6] which provided that, unlike 401(k), 403(b), and governmental 457 plans, which can choose to allow CRDs as a new opportunity for in-service withdrawal, a money purchase pension plan may not make a distribution (even if otherwise qualifying as a CRD) before an otherwise permitted distributable event. Note that the opportunity for taking CRDs expired on December 30, 2020 and was not extended by this legislation.

Reduced Age for Specified In-Service Withdrawals

Generally, age 59-½ is the earliest age that a qualified plan can permit withdrawals, for a plan participant who has not terminated employment.[7] Section 208 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA) makes a limited exception to this rule, lowering the threshold to age 55, in the case of certain participants of multiemployer plans that primarily cover employees in the building and construction industry, provided the plan meets certain requirements.[8] This provision applies both retroactively and prospectively.

Partial Plan Termination Relief

Section 209 of the TCDTRA provides temporary relief from the partial termination rules under Internal Revenue Code section 411(d)(3),[9] which is helpful for employers that had to lay off workers during the pandemic. Under the provision, a plan shall not be treated as having a partial termination 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 80 percent of the number of active participants covered by the plan on March 13, 2020.

Non-COVID Disaster Relief for Plan Distributions and Loans

Section 302 of the TCDTRA provides familiar relief for distributions and loans from retirement plans for taxpayers affected by federally-declared disasters not related to the COVID-19 pandemic.[10] Qualified disaster areas are those for which the President declares a major disaster during the period of January 1, 2020 through the date which is 60 days after enactment of the legislation, if the incident period for the disaster begins on or after December 28, 2019, and on or before the date of enactment.

As with prior disaster relief provisions, the TCDTRA permits qualified individuals residing in a qualified disaster area to take penalty-free withdrawals from defined contribution plans and IRAs (up to $100,000), allows plans to temporarily increase limits on plan loans for qualified individuals, and delays the due date for certain plan loan repayments.

More specifically, the TCDTRA waives the 10 percent additional tax for early distributions associated with any “qualified disaster distribution”[11] from a defined contribution plan or IRA,[12] for amounts not to exceed $100,000. Income with respect to the distribution may be included ratably over the three taxable years beginning with the taxable year in which the distribution was received. In addition, the distribution may be repaid to an eligible plan in multiple payments at any time over the 3-year period commencing on the day after the date the distribution was received.

With respect to plan loans made during the 180-day period beginning on the date of enactment, the TCDTRA temporarily increases the dollar amount available for plan loans to “qualified individuals”[13] from $50,000 to $100,000 and increases the percentage test limit for loans from half the present value of the participant's vested benefit to the entire present value of his or her vested benefit under the plan. In addition, for plan loans to qualified individuals outstanding on or after the first day of the incident period of such qualified disaster, if any repayment on the loan is due during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, such due date shall be delayed for 1 year (or, if later, until the date which is 180 days after the date of enactment).

Section 302 of the TCDTRA also includes relief allowing for recontribution of certain retirement plan withdrawals (e.g., a hardship distribution) made for purposes of buying or constructing a principal residence in a qualified disaster area, but which was not so used as a result of the qualified disaster. To qualify for recontribution, the distribution must have been received during the period beginning on the date which is 180 days before the first day of the incident period of such qualified disaster and ending on the date which is 30 days after the last day of such incident period. The recontribution must be made during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the date of enactment.

Plan amendments needed to reflect a plan's implementation of the special distribution and loan rules under section 302 of the TCDTRA are due by the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans), or a later date prescribed by Treasury.

E-delivery Report Language

Report language to the CAA includes a directive to the Department of Labor (DOL) regarding its regulation on electronic delivery, which was finalized in May 2020.[14] The report language requests that DOL issue a report within one year that assesses the impact of the rule "on individuals residing in rural and remote areas, seniors, and other populations that either lack access to web-based communications or who may only have access through public means."[15]

In November, ICI reached out to staff of the Senate Appropriations Committee, to urge the removal of this language, explaining that (1) DOL's final rule represents the culmination of years of study and debate on how best to modernize DOL disclosure regime to allow for the use of electronic forms of communication, (2) the vast majority of participants, including the populations cited in the report, have access to the internet and use the internet for activities such as online banking,[16] and (3) DOL included a number of safeguards designed to protect participants and to ensure that any participant or beneficiary that wants to continue to receive paper disclosures can continue to do so.

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endnotes

[1] The CAA is *available at* https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf.

[2] For a description of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), *see* ICI Memorandum No. 32328, dated March 27, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32328.

[3] The "COVID-Related Tax Relief Act of 2020" is incorporated as Subtitle B of Title II of Division N (Additional Coronavirus Response and Relief) of the CAA.

[4] The "Taxpayer Certainty and Disaster Tax Relief Act of 2020" is incorporated as Division EE of the CAA.

[5] Section 2202 of the CARES Act waived the 10 percent additional tax for early distributions associated with any “coronavirus-related distribution” (CRD) taken in 2020 from a defined contribution plan or IRA, for amounts not to exceed $100,000. Income with respect to any CRD may be included ratably over the three taxable years beginning with the taxable year in which the distribution was received. In addition, CRDs may be repaid to an eligible plan in multiple payments at any time over the 3-year period commencing on the day after the date the distribution was received.

[6] *See* ICI Memorandum No. 32556, dated June 26, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32556.

[7] There are exceptions to this general rule, including, for example, hardship distributions and distributions of amounts that had been rolled over into the plan.

[8] The plan must have been in existence before January 1, 1970 and the plan must have previously permitted in-service distributions at age 55.

[9] Plan termination or partial termination under Internal Revenue Code section 411(d)(3) normally triggers a 100 percent vesting requirement.

[10] Section 301 specifies that, for purposes of this relief, a qualified disaster area does not include any area with respect to which a major disaster has been declared only by reason of COVID–19.

[11] A “qualified disaster distribution” is a distribution made (i) on or after the first day of the incident period of a qualified disaster and before the date which is 180 days after the date of enactment, and (ii) to an individual whose principal place of abode at any time during the incident period of such qualified disaster is located in the qualified disaster area with respect to such qualified disaster and who has sustained an economic loss by reason of such qualified disaster.

[12] Consistent with the clarification made with respect to CRDs from money purchase pension plans described earlier, the legislation specifies that in the case of a money purchase pension plan, a qualified disaster distribution which is an in-service withdrawal shall be treated as meeting the distribution rules of section 401(a) of the Internal Revenue Code.

[13] A “qualified individual” is any individual (i) whose principal place of abode at any time during the incident period of any qualified disaster is located in the qualified disaster area with respect to such qualified disaster, and (ii) who has sustained an economic loss by reason of such qualified disaster.

[14] The final rule creates a new additional safe harbor, under which retirement plans may use electronic delivery as the default for ERISA-required notices sent to participants. For a summary of the final rule, *see* ICI Memorandum No. 32478, dated May 21, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32478.

[15] *See* page 6 of Joint Explanatory Statement, *available at* https://docs.house.gov/billsthisweek/20201221/BILLS-116RCP68-JES-DIVISION-H.pdf.

[16] We included a link to the 2018 white paper by Peter Swire, *available at* http://peterswire.net/wp-content/uploads/2018-Update-to-Delivering-ERISA-Disclosure-for-DC-Plans-002.pdf.