Legislative and Regulatory News and Updates – Q4 2020

The Consolidated Appropriations Act, 2021 (the "CAA '21")
On December 27, 2020, the Consolidated Appropriations Act, 2021 was signed into law by President Trump. While the Act did not extend the coronavirus distribution and loan relief from the CARES Act, it did have a few provisions related to qualified retirement plans. Below is a summary of the relevant provisions of the Act.

2020 Disaster Relief
The CAA '21 includes the Taxpayer Certainty and Disaster Tax Relief Act of 2020, providing certain tax relief to individuals affected by Federal Emergency Management Agency (FEMA) declared disasters occurring between January 1, 2020, through February 25, 2021, excluding COVID-19 related disaster areas.

Affected individuals may:

1) Request plan distributions of up to $100,000, which are exempt from the 10% premature distribution excise tax, 20% mandatory federal income tax withholding, and Section 402(f) Special Tax Notice requirements; may be paid back to a qualified plan or IRA within three years as a tax-free rollover, and may be included in income ratability over three years.

2) Recontribute certain hardship withdrawals previously taken from the plan for an aborted purchase of a home in the disaster area without tax penalty, and

3) Request plan loans under increased availability limits and delay the repayment period for certain plan loan repayments.

*This relief is subject to a remedial amendment period, which gives plan sponsors additional time to amend their plans for these changes. Sponsors of non-governmental plans have until the last day of the plan year beginning in 2022 to amend their plans, i.e., December 31, 2022, for a calendar year plan. Sponsors of governmental plans have until the last day of the plan year that begins in 2024 to amend their plans.

Temporary Partial Plan Termination Relief
Generally, a significant reduction in plan participation (20% or more) due to corporate actions, such as layoffs, is presumed to result in a "partial plan termination," which would require immediate 100% vesting of all affected participants regardless of the plan's vesting schedule. The CAA '21 extends the relief the Internal Revenue Service ("IRS") provided from this presumption for employers rehiring terminated employees by December 31, 2020. A plan will not be treated as having had a partial plan termination for any plan year that includes the period of March 13, 2020, to March 31, 2021, if the active participant population on March 31, 2021, is equal to 80% or more of the active participant population on March 13, 2020.

Missing Participant Guidance Released by the Department of Labor (DOL)
The DOL's Employee Benefits Security Administration (EBSA) has issued guidance to help retirement plan fiduciaries meet their obligations under Title I of the Employee Retirement Income Security Act (ERISA) to locate and distribute retirement benefits to missing or non-responsive participants.

Best Practices for Pension Plan Fiduciaries to Reduce Missing Plan Participants in Retirement Plans
The EBSA suggests putting processes in place to update participant census data and beneficiary information regularly. This guidance lists several "best practices" that fiduciaries can follow, including:

- Checking related plan and employer records for participant, beneficiary, and next of kin/emergency contact information. If there are privacy concerns, the person engaged in the search can request that the employer or other plan fiduciary forward a letter from the plan to the missing participant or beneficiary;
- Checking with designated plan beneficiaries (e.g., spouse, children) and the employee's emergency contacts (in the employer's records) for updated contact information. If there are privacy concerns, ask the designated beneficiary or emergency contact to forward a letter to the missing participant or beneficiary;
- Using free online search engines, public record databases (such as those for licenses, mortgages, and real estate taxes), obituaries, and social media to locate individuals;
- Using a commercial locator service, a credit-reporting agency, or a proprietary internet search tool to locate individuals;
- Attempting contact via United States Postal Service (USPS) certified mail, or private delivery service with similar tracking features if less expensive than USPS certified mail, to the last known mailing address;
- Attempting contact via other available means such as email addresses, telephone and text numbers, and social media;
- If participants are non-responsive over a period of time, using death searches (e.g., Social Security Death Index) as a check and, to the extent such search confirms a participant's death, redirecting communications to beneficiaries;
- Reaching out to the colleagues of missing participants by contacting employees who worked in the same office (e.g., a small employer with one or two locations) or by publishing a list of "missing" participants on the company's intranet, in email notices to existing employees or in communications with other retirees who are already receiving benefits. Similarly, for unionized employees, some have reached out to the union's local offices and through union member communications to find missing retirees;
- Registering missing participants on public and private pension registries with privacy and cybersecurity protections (e.g., National Registry of Unclaimed Retirement Benefits), and publicizing the registry through emails, newsletters, and other communications to existing employees, union members, and retirees; and
- Searching regularly using some or all of the above steps.

This guidance also offers best practices for plan sponsors to document their efforts. Here is a link that will take you directly to the DOL Missing Persons – Best Practices for Pension Plans guidance: https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-best-practices-for-pension-plans.

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