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Consolidated Appropriations Act, 2021 (CAA) Benefits Summary

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The COVID-Related Tax Relief Act of 2020, the Taxpayer Certainty and Disaster Tax Relief Act of 2020, and the No Surprises Act, all part of the Consolidated Appropriations Act, 2021 (CAA, 2021), which was signed into law on December 27, 2020, contain numerous provisions related to retirement and health plans. A brief summary of those provisions follows.

RETIREMENT PLANS

1. Partial Plan Termination Relief

When a partial plan termination occurs, affected participants become fully vested in their plan account balances. The determination of whether a partial plan termination has occurred depends on the particular facts and circumstances, though there is a rebuttable presumption that a partial plan termination has occurred if at least 20% of the total plan participants are involuntarily terminated (meaning their termination was employer-initiated) in a particular year.

Under the CAA, a plan will not be treated as having experienced a partial plan termination during any plan year which includes the period beginning on March 13, 2020 (the date the COVID national emergency was declared) and ending on 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. In other words, if an employer laid off employees during 2020 and subsequently brought back enough employees so that the number of participants on March 31, 2021 is at least 80% of the number of participants on March 13, 2020 (even it dipped to below 80% as of December 31, 2020), then no partial plan termination will have been deemed to have occurred. If relying on this relief, plan sponsors should maintain appropriate documentation evidencing that a partial plan termination did not occur during the applicable period.

2. Limited Retirement Plan Disaster Relief

The CAA provides for a number of qualified disaster relief provisions (discussed below) that are similar in nature to the CARES Act retirement plan relief provisions, as well as previous hurricane disaster relief provisions. A “qualified disaster” for CAA purposes is any major disaster declared by the President under the Stafford Act during the period beginning January 1, 2020 and ending 60 days after the date of enactment of the CAA (February 25, 2021), excluding those areas where the only declared major disaster was by reason of the COVID-19 pandemic. For example, the California wildfires or Hurricane Isaias would be covered. A list of all major disaster declarations can be found at

https://www.fema.gov/disasters/disaster-declarations. The qualified disaster relief provisions are optional and if adopted by an employer, the plan must be amended no later than the last day of the first plan year beginning on or after January 1, 2022 (December 31, 2022 for calendar year plans).

- **Qualified Disaster Distributions.** Eligible participants can generally take "qualified disaster distributions" of up to $100,000 in the aggregate, reduced by any such distributions made in prior tax years. The 10% early withdrawal penalty on distributions from an employer retirement plan to an employee who is under age 59½ does not apply to such distributions, and an employee may avoid income tax on the distribution if the distribution is repaid to the plan within three years. A qualified disaster distribution for purposes of the CAA is any distribution from an eligible retirement plan 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 the enactment of the CAA (June 25, 2021), and (ii) to an individual whose principal place of abode at any time during the incident period is located in the qualified disaster area and who has sustained an economic loss by reason of such qualified disaster.
- **Ability to Repay Hardship Distributions for Principal Residence.** A participant who received a hardship distribution to purchase or construct a principal residence within the period beginning 180 days before the first day of a qualified disaster incident period and ending 30 days after the last date of the qualified disaster incident period, may repay the amount of the hardship distribution to the plan any time during the period beginning on the first day of the qualified disaster incident period and ending 180 days after the enactment of the CAA (June 25, 2021) and avoid taxation of the distribution.
- **Loan Relief.** An individual whose principal place of abode at any time during the incident period is located in the qualified disaster area and who has sustained an economic loss by reason of such qualified disaster is eligible for the following relief:

  For any loan taken during the 180-day period beginning on the date of enactment of the CAA and ending on June 25, 2021, the maximum amount of loan is $100,000 (or 100% of a participant's vested account if less than $100,000).

  Effective for both new loans and existing loans, any loan repayment due beginning on the first day of the qualified disaster incident period and ending on 180 days after the last day of the qualified disaster incident period, shall be delayed for one year. Subsequent loan repayments will be adjusted to reflect the delay.

3. Money Purchase Plan Coronavirus-Related Distributions

Under the CARES Act, money purchase plan participants were not eligible for coronavirus-related distributions (which were similar to qualified disaster relief distributions). The CAA retroactively applies the coronavirus-related distribution rules to money purchase plan distributions taken by

December 31, 2020. Since this relief came so late in the year, it will likely be too late for a money purchase plan to implement this provision now, but the relief would help a money purchase plan that mistakenly allowed coronavirus-related distributions during 2020.

4. Multiemployer Plan Minimum Age for Distributions During Working Retirement

Effective on both a retroactive and prospective basis, the CAA provides that certain multiemployer pension plan participants in the building and construction industry shall be eligible to begin receiving benefits at age 55, even if they are still employed at the time of such distributions.

5. Transfers of Excess Pension Assets to Retiree Health or Life Accounts

Under current law, certain retiree health and life insurance costs may be transferred from a defined benefit pension plan to a retiree health or life insurance account within the pension plan over an elected transfer period of up to 10 years. The CAA, provided certain conditions are met, permits employers to make a one-time election during 2020 or 2021 to end any existing transfer period for any taxable year beginning after the date of such election.

TEMPORARY RELIEF APPLICABLE TO FSA ADMINISTRATION

- **Temporary FSA Carryover Rule or Extended Grace Period.** Under the CAA, employers may permit extended grace periods or expanded carryovers for health and dependent care flexible spending accounts (FSAs) for plan years ending in 2020 and 2021. This will allow active participants to use FSA funds during a healthcare FSA grace period of up to 12 months in length or temporarily permit unlimited carryovers (without regard to the $550 limit generally imposed on an FSA carryover) for healthcare FSA (HFSA) and dependent care FSAs (DFSA). For example, an FSA participant with unused FSA funds on December 31, 2020 would have until December 31, 2021 to incur expenses that may be paid for with the unused 2020 HFSA funds either as a result of the extended 12-month grace period or temporarily expanded carryover rule. Note that electing the temporarily expanded carryover relief may be preferable for plans that contain an HSA option. The IRS has previously clarified that carryovers that are credited to a limited purpose or post-deductible HFSA account will not disqualify an individual's coverage for HSA eligibility purpose (such relief does not apply to HFSAs that utilize a grace period).
- **Temporary Health FSA Runout Period Rule.** The CAA will also allow employees whose coverage terminated during 2020 or 2021 to use benefits and contributions in a health flexible spending account (HFSA) through the end of the year of termination (and through the end of any applicable grace period established by the HFSA). This would allow an employee who terminated HFSA coverage in 2020 to use any unused HFSA funds for qualifying expenses incurred though 2020 (and through 2021, if the plan

adopts an extended grace period).

- **Temporary DCAP Rule for Older Dependents.** The CAA temporarily changes the maximum age of a dependent from age 13 to 14 and allows participants who had children who aged out of dependent care FSA (DFSA) coverage in 2020 to use DFSA funds through the plan year ending in 2021 to reimburse expenses for the dependent until the dependent attains the age of 14.
- **Temporary Election Change Relief.** Health and dependent care FSAs may permit participants to make prospective changes to their FSA contribution elections for plan years ending in 2021. These changes are permitted without regard to any change in status under existing FSA requirements.

Plans must be amended by the end of the year following the year in which the plan change took effect. Accordingly, calendar year plans adopting a plan change for 2020 would have until the end of 2021 to amend their plan to comply.

EXTENDED EMPLOYER ASSISTANCE FOR STUDENT LOANS

The CARES Act previously amended the Internal Revenue Code to allow employers to treat student loan repayments as nontaxable employer provided educational assistance. This CARES Act relief was set to expire on December 31, 2020. The CAA extended the relief previously afforded under the CARES Act to employer loan assistance provided through December 31, 2025. Accordingly, employers may amend their employer educational assistance programs to include up to $5,250 worth of student loan payments that may be reimbursed or paid on behalf of an employee on a tax-free basis. Importantly, the $5,250 cap applies as a single unified limitation on both loan payments and other employer provided educational assistance.

EMPLOYER GROUP HEALTH PLANS

The CAA made significant changes to several hot topic benefit plan issues. These include rules protecting plan participants from surprise medical billing, provider fee transparency, and heightened enforcement of mental health parity laws.

1. New Surprise Medical Billing Rules

The CAA contains extensive reforms related to medical health cost transparency and surprise medical billing. These changes generally become effective in 2022. Some key changes include:

Participant Protections

- Eliminates a plan's ability to impose restrictions on use of out of network services and restricts a plan's ability to impose different cost sharing percentages on services provided by an out of network facility.
- Requires group health plans to calculate an employee's cost sharing amount for out of network services based on out of network

pricing procedures set forth in the CAA. Further, any cost sharing paid by the participant for out of network services must be counted toward the in-network deductible and maximum out of pocket amount.

- Prohibits out of network providers from the practice of billing the plan participant for the balance of the out of network charge not paid by the plan. The law will allow some out of network providers at in network facilities to balance bill participants for nonemergency ancillary services provided to the participant so long as certain notice and consent requirements are met.
- Requires that group health plans and carriers add deductible, out of pocket maximum and consumer resource contact information to any paper or electronic insurance card issued to participants.
- Requires that group health plans and carriers provide advanced billing and personal cost information to participants based on the contracted rate the plan has established with the provider, along with good faith estimates of the participant's share of the cost of service and a good faith estimate of the amount that the participant has already incurred toward meeting the plan out of pocket maximums.

Out of Network Cost Procedures Applicable to Group Health Plans

- Requires that group health plans and carriers within 30 days of receiving a bill from an out of network provider either deny the claim or make an initial payment to the provider.
- Mandates that group health plans and carriers negotiate with out of network providers if they dispute the provider's fee, in the event parties do not reach agreement, the CAA contains a dispute resolution process for determining the amount the plan or carrier must ultimately pay.
- Establishes a certification process for independent dispute resolution entities that will resolve billing disputes between plans/carriers and the out of network providers.
- Establishes new auditing guidelines of group health plans and insurers to ensure that plans are complying with the surprise medical billing requirements set forth in the CAA.
- Requires healthcare providers to provide billing information to the group health plan or carrier that the plan or carrier will use to provide billing disclosures to plan participants.

2. New Mental Health Parity Rules

Insured and self-insured group health plans that offer mental health or substance use disorder benefits must comply with new disclosure procedures implemented by the CAA. These disclosures are intended to bring coverage parity among mental health, substance abuse, and medical/surgical benefits provided by group health plans. Plans that offer mental health and substance use disorder benefits are required by the Mental Health Parity and Addiction Equity Act (MHPAEA) to offer mental health and substance use disorder benefits in a manner similar to the manner in which medical and surgical benefits are offered under the group

health plan. If these plans impose nonquantitative treatment limitations (referred to as “NQTLs”) on mental health or substance use disorders that are not imposed on similar categories of medical and surgical benefits offered under the plan, the plan is in violation of the MHPAEA.

Group health plans that impose any NQTL on mental health or substance use disorder benefits must within 45 days of enactment of the CAA make available to the applicable state or federal agency (*i.e.*, US Department of Labor (DOL) or US Health and Human Services (HHS)), upon request, sufficient information to determine that the NQTLs imposed on the mental health or substance use disorder benefits are no more extensive than the NQTLs imposed on medical and surgical benefits provided by the group health plans.

It appears this new disclosure and review process imposed by the CAA is intended to be an information gathering process that will culminate in a joint agency report intended to help states, group health plans and individuals evaluate whether an NQTL imposed on mental health or substance use disorder benefits imposed by a group health plan complies with the MHPAEA. However, employers should be aware that if a group health plan is found through this information request process to impose NQTL's incorrectly (and those restrictions are not remedied by the group health plan), the CAA provides that such failures are to be communicated to plan participants.