



## Retirement Plan Provisions in the Year-End COVID Legislation and the Upcoming Expiration of Certain Extensions

January 2021

The Taxpayer Certainty and Disaster Tax Relief Act of 2020, informally known as “CARES Act 2.0,” became law on December 27, 2020 as part of the Consolidated Appropriations Act, 2021. Employers should note the following effects of CARES Act 2.0 on qualified retirement plans:

### Hardship Distribution and Loan Relief for Federal Disasters other than COVID-19

CARES Act 2.0 allows qualified plans to offer distribution and loan relief to individuals affected by federal disasters declared between January 1, 2020 and February 25, 2021. This relief consists of the following components, including several components similar to coronavirus relief under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act 1.0”):

- Distribution Relief. Plans may permit qualifying participants to withdraw up to \$100,000 (or the participant’s account balance, if less) by June 25, 2021 without an early withdrawal penalty. The withdrawal is taxable to the participant ratably over three years and may be recontributed to the plan as a rollover within three years.
- Loan Limit Relief. Plans may permit qualifying participants to borrow up to \$100,000 (or the participant’s account balance, if less).
- Loan Repayment Relief. Plans may suspend, for up to one year or until June 25, 2021, if later, all loan repayment obligations of qualifying participants that are due between the beginning of a federal disaster and 180 days after the disaster.
- Principal Residence Distribution Repayment Relief. Plans may permit qualifying participants to repay, no later than June 25, 2021, any hardship distributions taken between 180 days before a federal disaster and 30 days after the disaster to purchase or construct a principal residence in a federal disaster area (but not used for that purpose).

To avoid duplication with CARES Act 1.0, CARES Act 2.0 excludes relief to individuals affected by COVID-19 but no other federal disaster. As with CARES Act 1.0, employers adopting distribution and loan relief under CARES Act 2.0 must amend their plans by the end of the 2022 plan year (i.e., December 31, 2022 for calendar year plans). Governmental plan sponsors have two additional years to adopt the amendment.

### **Partial Termination Relief for Employers that Restore Their Workforce by March 2021**

CARES Act 2.0 provides relief from the partial termination vesting rules of Internal Revenue Code section 411(d)(3) for plan years that include March 13, 2020 and March 31, 2021. This relief applies to any plan whose number of active participants on March 31, 2021 is at least 80% of the number of active participants on March 13, 2020. This allows employers that have reduced their workforce after March 13, 2020 to avoid partial plan termination by restoring the active plan participant headcount on March 31, 2021 to 80% of the headcount on March 13, 2020.

### **Expansion of Working Retirement for Certain Construction and Building Trades Workers**

CARES Act 2.0 reduces the minimum age for penalty-free in-service distributions from 59.5 to 55 for employees participating in multiemployer plans that primarily cover employees in the building and construction industry. This change is effective retroactively and prospectively.

### **Expansion of Coronavirus-Related Distributions to Money Purchase Pension Plans**

CARES Act 2.0 retroactively confirms the ability of money purchase pension plans to make coronavirus-related distributions. Like other coronavirus-related distributions, these distributions from money purchase pension plans must have been made by December 30, 2020.

### **Expiration of ERISA Deadline Relief**

Although this change is unrelated to CARES Act 2.0, plan fiduciaries should be reminded that the Department of Labor (DOL) relief from various ERISA notice and disclosure deadlines automatically expires February 28, 2021 unless extended by future guidance. This relief, which was announced in Disaster Relief Notice 2020-01, applies to summary plan descriptions, summaries of material modification, summary annual reports, qualified default investment alternative notices, and other notices required by Title I of ERISA. The expiration of this relief is required by ERISA section 518, which limits the DOL's authority to extend deadlines to one year.

**Summary of Retirement Plan Changes in Division EE of the Consolidated Appropriations Act, 2021, The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (known as CARES Act 2.0)**

Section	Change	Comments	Effective
208	Minimum Age for Distributions During Working Retirement	Amends Code Section 401(a)(36) to reduce the age from 59.5 to 55 for certain employees in multiemployer plans in the building and construction industry	Distributions before, on or after the date of enactment
209	Temporary Rule Preventing Partial Plan Termination	No Code Section 411(d)(3) partial termination during any plan year that includes 3/13/20 or 3/31/21 if the number of active participants on 3/31/21 is at least 80% of the number of active participants on 3/13/20	Plan years 2020 and 2021
280	Expansion of Coronavirus-Related Distributions to Money Purchase Pension Plans	Confirms that money purchase pension plans were permitted to make coronavirus-related distributions	2020
301, 302	Hardship Distribution and Loan Relief for Federal Disasters	Provides the following relief for federally declared disasters other than COVID-19: <ul style="list-style-type: none"> <li>• Penalty-free in-service withdrawals up to \$100,000</li> <li>• Loan limit increased to \$100,000</li> <li>• Postponement, with interest, of loan repayments up to one year</li> <li>• Opportunity to repay principal residence distributions</li> </ul>	Federally declared disasters between Jan. 1, 2020 and Feb. 25, 2021

For questions, please contact a member of our [Benefits & Compensation Team](#).