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Summary of Retirement Technical Corrections Included in the Senate Finance Committee Provisions of the Health, Economic Assistance, Liability Protection and Schools (HEALS) Act

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The Health, Economic Assistance, Liability Protection and Schools (HEALS) Act – the latest version of pandemic relief and recovery legislation – was introduced by U.S. Senate Republicans on July 27.

Included in the measure as introduced were three retroactive technical corrections to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the law passed in March that provided special coronavirus-related distribution (CRD) options and rollover rules for retirement plans and IRAs, expanded permissible loans from certain retirement plans, and provided temporary defined benefit plan funding relief.

These provisions are:

1. **Delay of the deadline for defined benefit plan funding from January 1, 2021, to January 4, 2021:** Under the CARES Act, all single-employer DB funding obligations otherwise due during 2020 may be delayed until January 1, 2021. Since January 1 is a holiday and January 2 and 3 are weekend days, the bill introduced by Senator Grassley (R-IA), which is part of the HEALS Act, delays the due date until January 4, 2021.

Comment: The delay in the new bill may be partially mooted by recent guidance by the Pension Benefit Guaranty Corporation (PBGC). The CARES delay applies both to contributions for 2019 due in 2020 and to quarterly contributions due in 2020 for 2020.

However, under recent guidance issued by the PBGC, if an employer uses the delay past October 15, 2020, for 2019 contributions, the employer may not count those contributions for PBGC premium purposes. This imposes a 4.5% penalty on using the full delay, which is the equivalent of an additional 21.6% interest. Thus, unless PBGC changes its position or this issue is addressed in the legislation, employers will effectively be precluded from using any delay past October 15, 2020, for 2019 contributions.

2. **Self-certification of eligibility for CARES Act loan provisions:** The CARES Act permits eligible retirement plans to rely on an employee's certification that the employee qualifies to receive a coronavirus-related distribution. Technically, under CARES, a plan can't rely on such a certification for purposes of determining whether an employee is eligible for the special CARES loan rules.

   The HEALS Act, like the U.S. House of Representatives-passed Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800), permits plan reliance on such certifications for loan purposes. This was also permitted in IRS Notice 2020-50.

3. **Allowing money purchase pension plans to make in-service coronavirus-related distributions (CRDs):** The CARES Act provided certain favorable tax treatment for CRDs from all types of retirement plans and IRAs to individuals affected by the coronavirus, such as (1) an exemption from the 10% early distribution tax and (2) the ability to roll the CRD back into a plan or IRA within three years.

   In addition, under the CARES Act, 401(k), 403(b), and governmental 457(b) plans are permitted, but not required, to make CRDs even if distributions would not otherwise be permitted (i.e., no severance from employment, hardship, etc.).

   Under the CARES Act, defined benefit pension plans and money purchase pension plans (MPPPs) get the favorable tax treatment described above but were not permitted to make in-service CRDs, like 401(k), 403(b), and governmental 457(b) plans. (MPPPs are a relatively less common form of defined contribution plan, with respect to which, for example, (1) 401(k) contributions and hardship distributions are generally not allowed (with certain exceptions), (2) the employer cannot have discretion over contributions levels, except by plan amendment, and (3) the DB spousal consent rules apply to distributions.) The Grassley bill allows MPPPs to make in-service CRDs.