CONSOLIDATED APPROPRIATIONS ACT: WHAT PLAN SPONSORS NEED TO KNOW ABOUT RETIREMENT PLAN RELIEF

The Consolidated Appropriations Act, 2021 (CAA), which was enacted on December 27, 2020, is mostly known for the $900 billion it provided in additional stimulus funding for pandemic relief. Additionally, the law contains several useful provisions for retirement plans, including non-COVID disaster emergency relief, multiemployer and defined benefit plan changes, and updates to partial plan terminations. All of these provisions are discretionary, and have very narrow applicability. Regardless, plan sponsors should take the time to understand the relevant parts of the law and see whether the various provisions might benefit their organizations and plan participants.

Non-COVID-Related Disaster Relief

The CAA allows (but does not require) special retirement plan distributions for non-COVID major disasters (such as the 2020 Gulf Coast hurricanes and California wildfires) that occurred between December 28, 2019 and December 27, 2020 (the date the CAA was enacted), so long as the disaster declaration occurs no later than 60 days after the CAA was enacted. Participants whose principal residence was within the disaster area and who sustained an economic loss as a result of the disaster have until June 25, 2021 (180 days after the CAA was enacted) to receive these special CAA disaster distributions. It is important to note that this law does not extend disaster relief outlined in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, but it does mirror aid offered for previous natural disasters. The law allows organizations to amend their 401(k), 403(b) or 457(b) plans to permit qualified participants living in the declared disaster area to obtain special relief using the following methods:

- **Disaster-related distributions:** Qualified participants in defined contribution retirement plans and individual retirement accounts (IRA) may take up to $100,000 out of their accounts for each separate disaster without incurring the 10% early withdrawal fee. Although such distributions are taxable, they may be repaid in full or in part over a three-year period beginning on the distribution date (and such repayments will be treated as rollover contributions).
- **Plan loan relief:** Similar to the CARES Act provision, participants can borrow the lesser of 100% of the vested account balance or $100,000 for each separate disaster.
- **Loan repayments:** Repayments on the aforementioned loans may be suspended for up to one year if the repayment of the loan would have normally been due on the first day of the disaster through 180 days after the last day of the disaster.
- **Recontribution of hardship distributions for home purchases:** Qualified participants who took a distribution to buy or reconstruct a home and were unable to use some or all of the funds can return those funds to their accounts. The funds must have been received no more than 180 days before and up to 30 days after the qualified disaster.

In general, plan sponsors interested in adopting all or some of these changes should amend their plans on or before the last day of the first plan year beginning on or after January 1, 2022.

Money Purchase Plan Distributions Qualify for COVID-Related Distributions (CRDs)

The CAA reverses Internal Revenue Service (IRS) Notice 2020-50, which said in-service distributions from money purchase pension plans did not qualify as a CRD. The change may have come too late for plan sponsors that denied CRDs based on the IRS's initial notice, but it could reassure others who altered their plans to help participants.

Relief for Overfunded Pension Plans

The Internal Revenue Code (IRC) Section 420 says plan sponsors with overfunded defined benefit plans can make a future transfer of that surplus to retiree health and/or insurance accounts. Because of market volatility over the past year, pension funding may have declined, so the CAA allows plan sponsors to reverse their planned, future Section 420 transfers.

In-Service Distributions for Specific Trade Multiemployer Plans

IRC Section 401(a)(36) provides incentives for phased retirement programs by allowing in-service distributions from multiemployer plans for active/working participants age 59½ or older. The CAA reduces this age requirement to 55 for participants in multiemployer plans from building and construction industries. One additional requirement: participants must have been in the plan on or before April 30, 2013.

Partial Plan Terminations

The CAA creates a safe harbor to protect plans that might otherwise experience a partial plan termination. Before, a partial plan termination would have generally occurred when 20% or more of employees participating in a defined benefit or defined contribution plan were involuntarily terminated from employment without full vesting during a plan year (or over several plan years). The CAA provides that 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, the plan will not be treated as having a partial termination. The relief is based on the total number of active participants, so employers do not have to rehire the same workers who were laid off.

Insights

The CAA offers many tools plan sponsors can use to help ease participants' financial strain. It is important to read the details in the law's provisions and pay attention to qualifications and deadlines. Plan sponsors interested in adopting any aspects of this relief should reach out to the plan's service providers to see whether immediate adjustments are needed to existing plan processes.

Our professionals can examine retirement plans and assist in determining whether the CAA provisions might benefit your organization's circumstances.