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Budget Act Includes Qualified Retirement Plan Provisions

by Harrison Taylor and Todd Castleton

The two-year budget bill passed by Congress and signed by the President in the early morning hours of February 9, 2018—entitled the Bipartisan Budget Act of 2018 (the "Budget Act")—not only funded the federal government for the next two years but also enacted several provisions affecting qualified defined contribution plans. The Budget Act allows participants in qualified retirement plans who were affected by the California wildfires to take benefit distributions and other relief similar to the relief Congress provided last year to victims of the 2017 hurricanes, and prescribes changes to the rules on taking hardship distributions from qualified retirement plans that were proposed but not enacted as part of tax reform. The Budget Act also provides relief for some participants whose qualified plan accounts were distributed in connection with a wrongful IRS levy, and calls for Congress to form a bipartisan, bicameral committee to hold hearings and propose legislative changes to address solvency concerns with multiemployer pension plans and the Pension Benefit Guarantee Corporation ("PBGC").

California Wildfire Relief

For "qualified individuals"–or those retirement plan participants whose principal place of abode was in a Presidentially-declared wildfire disaster zone between October 8, 2017, and December 31, 2017–the Budget Act offers several opportunities to access plan benefits that are otherwise unavailable. It allows participants to take withdrawals of their accounts up to the withdrawal limit of $100,000 exempt from the 10% early withdrawal penalty normally applicable to early withdrawals by participants before reaching age 59-½. In addition, qualified individuals may elect to include the qualified wildfire distribution in income ratably over a three-year period. The Budget Act also permits qualified individuals to repay qualified wildfire distribution within three years from the date of the distribution with any repayments being treated as qualified rollover distributions.

Qualified individuals may also recontribute plan distributions taken between March 31, 2017, and January 15, 2018, that were intended to be used to purchase or build a home in a California wildfire disaster zone but were not so used because of the wildfires. Finally, the Budget Act increases the qualified plan loan limits allowing plans to permit qualified individuals to take loans of up to the lesser of $100,000 and the full amount of their nonforfeitable accrued plan benefit, and allows qualified individuals with outstanding loans to delay loan repayments for one year, but with interest continuing to accrue during the period of delay. The relief is similar to relief for victims of the 2017 hurricanes that was part of the Disaster Tax Relief and Airport and Airway Extension Act of 2017 signed into law September 29, 2017.

Qualified plans that wish to offer this relief to their participants may begin offering the relief immediately and the IRS will deem the plan to be qualified as long as an amendment conforming the plan to its operations is made by the last day of the first plan year beginning on or after January 1, 2019 (December 31, 2019, for calendar year plans).

Hardship Distribution Changes

The Budget Act eases the requirements for participants wishing to take hardship distributions from the qualified plans in which they participate beginning with plan years that commence after December 31, 2018. At such time, plans may allow participants to take hardship withdrawals from participant elective deferrals, qualified nonelective contributions, qualified matching contributions and the earnings on each of these contributions sources. Prior to the Budget Act, only participant elective deferrals—but not earnings on those deferrals—were eligible for distribution upon hardship. Additionally, plans will no longer need to require participants to take loans available under the plan to establish the need for a hardship. Finally, it directs the Secretary of the Treasury to change the Treasury Regulation that currently requires plans to suspend participants who take a hardship distribution from making elective deferrals for a period of six month following the hardship distribution and remove this requirement going forward.

These changes to the hardship distribution rules were originally included with several proposed changes to the qualified retirement plan rules in the Tax Reform and Jobs Act of 2017 that were introduced in the House of Representatives bill but were eliminated before tax reform became final and signed into law December 22, 2017.

Wrongful IRS Levy Relief

For individuals that have withdrawn funds from their qualified plan accounts after December 31, 2017, to satisfy an IRS levy, the Budget Act permits amounts returned by the IRS due to a wrongful levy to be recontributed to the plan and treated as rollover contributions.

Multiemployer Pension Plan Committee

In recognition of the solvency concerns facing multiemployer pension plans and the PBGC, the Budget Act establishes the “Joint Select Committee on Solvency of Multiemployer Pension Plans.” The committee is charged with provide recommendations and legislative language by the end of November 2018 for multiemployer pension plans and the PBGC to significantly improve their respective financial conditions.