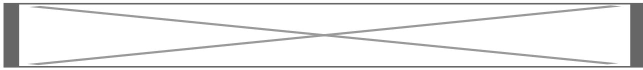

Insights

Bipartisan Budget Act of 2018

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As reported in our previous Employee Benefits ALERT, the Tax Cuts and Jobs Act provided several changes affecting qualified retirement plans. On February 9, 2018, Congress passed, and President Trump signed into law, the "Bipartisan Budget Act of 2018" (the "Act"). The Act contains some provisions which were originally reviewed but did not pass under the Tax Cuts and Jobs Act. Most notably, the Act eases the rules governing hardship withdrawals from 401(k) and 403(b) plans and provides relief to those affected by the recent California wildfires.

Hardship Distributions

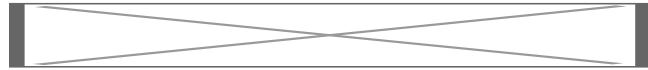
Plans that provide for elective deferrals may, but are not required to, permit employees to withdraw the elective contributions (excluding earnings) they have made in the event of a hardship if the withdrawal is necessary to satisfy an immediate and heavy financial need. A distribution is deemed to have satisfied an immediate and heavy financial need if (i) the employee has obtained all other currently available distributions and loans under the plan and all other plans maintained by the employer and (ii) the employee is prohibited from making elective contributions to the plan and all other plans maintained by the employer for at least six months after receipt of the hardship distribution.

The Act directs the Secretary of Treasury to modify the regulations to eliminate the six-month prohibition on elective contributions no later than one year after the date of enactment of the Act. The Act also adds section 401(k)(14) to the Internal Revenue Code (the "Code") to expand the sources from which an employee may take a hardship distribution. Effective for plan years beginning after December 31, 2018, in addition to an employee's elective contribution, hardship withdrawals will be permitted from profit sharing contributions, qualified nonelective contributions and qualified matching contributions, plus earnings on any employee or employer contributions. Code Section 401(k)(14) also removes the requirements for participants to first take a loan before taking a hardship withdrawal.

Plan sponsors who wish to take advantage of the relaxed hardship provisions will want to amend their plans by the first day of the plan year beginning on or after December 31, 2018.

California Wildfires

The Act also provides for relief to those individuals impacted by the California wildfires in 2017. Individuals who received distributions up to $100,000 from an eligible retirement plan on or after October 8, 2017, and before January 1, 2019, and whose principal place of residence during any portion of the period from October 8, 2017, to December 31, 2017, was located in the California wildfire disaster area and who have sustained an



economic loss by reason of the wildfires may elect that the distribution be included in income ratably over the three-year taxable period, beginning with the year of the distribution. The 10 percent early distribution penalty tax is waived as well as the 20 percent withholding requirement applicable to eligible rollover distributions. Alternatively, the distribution may be repaid or contributed to a plan that would accept such amount as a rollover distribution, at any time during the three-year period following distribution and would not be includible in income.

The Act further provides that individuals who took withdrawals after March 31, 2017, and before January 15, 2018, for the purpose of purchasing or constructing a home but could not do so on account of the wildfires may elect to make one or more contributions, not to exceed the amount of the distribution, to an eligible retirement plan. The amount(s) must be contributed during the period beginning on October 8, 2017 and ending on June 30, 2018.

The Act doubles the maximum amount an individual may borrow to the lesser of $100,000 or 100 percent of the employee's vested account balance (reduced by prior loan balances). In order to qualify for the higher loan limits, the loan must be taken between February 9, 2018, and December 31, 2018. The Act also delays the date by which an employee with an outstanding loan balance on or after October 8, 2017, which are payable in full between October 8, 2017 and December 31, 2018 by one year.

Plan sponsors wanting to amend their plans to incorporate these changes must do so on or before the last day of the first plan year that begins on or after January 1, 2019 provided that the plan operates in compliance with such provisions until such time as the amendment is adopted and that the effective date of the amendment is retroactive to February 9, 2018, the effective date of the Act. Governmental plans have an additional two years to adopted an amendment.

Improper Levy on Retirement Plans

Effective as of January 1, 2018, if an individual received a distribution from the plan to pay for a levy imposed by the IRS that is later deemed to be invalid, the individual may repay the distribution, plus interest, provided such repayment is permitted by the plan. Alternatively, the amount may be contributed by the individual to an IRA. The amount must be repaid or contributed by the due date of the individual's tax return (without extension) for the year in which the IRS returns the funds. The amount levied and the amount repaid or contributed are treated as eligible rollover distributions and therefore not subject to income tax withholding (unless the amount distributed is from a non-Roth account and repaid to a Roth account or Roth IRA).

If Plan sponsors want to provide for the repayment of tax levies later determined to be invalid, the plan must be amended to provide for such repayment.