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PENSION ANALYST
COMPLIANCE BULLETIN

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Bipartisan Budget Act includes retirement plan provisions

On February 9, 2018, President Trump signed into law the Bipartisan Budget Act of 2018 (the Act), which included a few provisions affecting retirement plans. While most of these provisions affect defined contribution plans, there are a couple of provisions that may also impact defined benefit plans.

Hardship withdrawal provisions

Section 401(k) and 403(b) plans may generally permit a participant to receive a distribution of elective deferrals due to a financial hardship. A hardship distribution may only be made if the participant has an immediate and heavy financial need and if the distribution is necessary to satisfy the financial need.

The hardship rules provide a "safe harbor" definition of hardship, under which the distribution is deemed to be for an immediate and heavy financial hardship if it satisfies certain requirements. One of these requirements includes suspending the participant from making elective deferrals or after-tax contributions to the plan for a period of at least 6 months. The Act now eliminates this suspension requirement for plan years beginning after December 31, 2018.

The "safe harbor" definition also requires a participant to take any available distributions and plan loans before taking a hardship withdrawal. The Act directs the Treasury Department to change this rule for plan years beginning after December 31, 2018, to provide that hardship withdrawals may be taken before the participant has taken all available plan loans.

Additionally, a participant may not currently withdraw earnings on elective deferrals, qualified nonelective contributions (QNECs), and qualified matching contributions (QMACs) including related earnings due to a hardship. For plan years beginning after December 31, 2018, the Act permits QNECs, QMACs, and earnings on elective deferrals, to be able to be taken for a hardship withdrawal.

Disaster relief for California wildfire victims

Similar to disaster relief provided to hurricane victims in the past, the Act provides participants affected by California wildfires with additional access to their retirement savings and lessens the tax burdens related to these special hardship distributions.

Hardship Distributions

In guidance issued prior to the Act, the IRS allowed plan sponsors to make hardship distributions available on a broader basis to individuals affected by California wildfires. For more information regarding these rules, see Prudential's November 2017 Pension Analyst publication titled Hurricane Maria and California Wildfires affect retirement plan administration. These special hardship distribution provisions still apply.

The Act also contains a special recontribution provision for individuals who took hardship distributions from a 401(k) plan or 403(b) plan to purchase a home in the California wildfire disaster area, and that principal residence was not purchased or built on account of the wildfires. The relief is available for distributions taken after March 31, 2017, and before January 15, 2018, if the distributions are recontributed on or after October 8, 2017, and before July 1, 2018.

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Qualified Wildfire Distributions

The Act permits individuals who were directly affected by the California Wildfires to take "qualified wildfire distributions" from their retirement plans. Qualified wildfire distributions must be made on or after October 8, 2017, and before January 1, 2019, to an individual:

- Whose principal place of abode during any portion of the period from October 8, 2017, to December 31, 2017, is located in the California wildfire disaster area; and
- Who sustained an economic loss by reason of the wildfires.

An individual's total qualified wildfire distributions, taken from all eligible plans, cannot exceed $100,000. When applying this limit, plan sponsors are responsible for tracking distributions from all plans that they or other members of their controlled group sponsor.

The following special tax rules apply to qualified wildfire distributions:

- They are exempt from the 10% federal income tax penalty on early distributions.
- If made from a qualified plan, 403(b) plan, or governmental section 457 plan, they are not eligible for rollover and therefore, are not subject to mandatory 20% federal tax withholding.
- They are included in the individual's gross income ratably over a three-taxable year period, beginning with the year in which the distribution occurred, unless the individual elects otherwise.
- They may be repaid within three years to an "eligible retirement plan" (i.e., an IRA, a qualified plan, a governmental section 457 plan, or a 403(b) arrangement) in which the individual is participating, provided the plan is eligible to receive a rollover contribution. The repayment does not have to be made to the same plan or IRA from which the distribution was made

Loans

The IRS had also issued relief prior to the Act which allowed plan sponsors to make plan loans available to individuals who were directly or indirectly affected by California wildfires. However, these loans remained subject to the standard loan limits of the lesser of $50,000 or 50% of the participant's vested account balance.

Under the Act, plans may allow individuals who are eligible to take qualified wildfire distributions to take larger loans from qualified plans, 403(b) plans, and governmental section 457 plans. The maximum loan amount available to these individuals for loans taken before January 1, 2019 (when added to the outstanding balance of all other loans from the plan), cannot exceed the lesser of $100,000, or 100% of the participant's vested account balance.

In addition, an individual with an outstanding plan loan on or after the qualified beginning date may delay for one year any loan repayments due after October 8, 2017, and before January 1, 2019. *For example, a repayment originally due on November 18, 2017, may be delayed to November 18, 2018.* This delay will not cause the loan to become a taxable deemed distribution. After the one-year period ends, the loan must be reamortized to adjust payments for the new due date and accrued interest. The one-year postponement period will be ignored with respect to the term of the loan.

Plan Amendments

In general, the deadline for conforming plan amendments to reflect these new disaster relief provisions is on or before the last day of the first plan year beginning on or after January 1, 2019. For governmental plans, plan amendments must be adopted on or before the last day of the first plan year beginning on or after January 1, 2021.

Joint Select Committee on Solvency of Multiemployer Pension Plans

The Act provides for a new joint Congressional Committee to address the funding crisis faced by certain multiemployer pension plans and the Pension Benefit Guaranty Corporation (PBGC) multiemployer program. The goal of the new committee is to improve the solvency of multiemployer plans and PBGC. The Joint Committee is required to vote on a report containing its findings, recommendations, and proposed legislative language by November 30, 2018.

Improper levy on retirement plans

Under the Act, effective January 1, 2018, an improper IRS levy on retirement plan assets that was refunded (including interest thereupon) may be rolled back into the plan or a different eligible plan or IRA by the tax filing deadline (not including extensions) for the year of the refund to defer taxation.

Next steps

The IRS is expected to issue guidance on hardship provisions of this Act. In the meantime, Prudential Retirement is already taking steps to be ready to administratively accommodate such changes for 2019. Plan amendments will likely be required for plans that will be changing their hardship withdrawal provisions, but we expect to hear more regarding plan amendment deadlines when the IRS issues additional guidance.

To the extent you are interested in adopting the additional disaster relief for California wildfires, please contact your Prudential representative.

Compliance Bulletin by Prudential Retirement
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