SEYFARTH SHAW

Management Alert

Massive Budget Deal Includes Important Changes to Hardship Withdrawal Rules

By Sarah Touzalin, Kaley Ventura, Randell Montellaro and Jake Downing

On Friday, February 9, 2018, the Bipartisan Budget Act of 2018 (the "Act") was signed into law by President Trump, ending a brief government shutdown that began at 12:01 a.m. on Thursday, February 8, 2018. In addition to creating a two-year budget deal, the Act includes a number of important employee benefit changes – most notably to the hardship withdrawal rules for defined contribution plans – as generally described below.

Hardship Withdrawals

Effective for plan years beginning after December 31, 2018, the Act makes a number of changes to the rules governing hardship withdrawals from defined contribution plans (i.e., 401(k) and 403(b) plans). Notably, the Act:

- Directs the Department of Treasury to modify IRS regulations to remove the six month suspension requirement for employee contributions to all plans maintained by the employer following a hardship withdrawal.
- Amends the Internal Revenue Code to (1) expand the plan assets from which a participant may take a hardship withdrawal to include qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), and earnings on QNECs, QMACs and employee contributions (even if these contributions and earnings were credited to the participant's account after 1988); and (2) provide that a participant may take a hardship withdrawal before requesting a plan loan.

It is worth noting that this is not the first time that we have seen these changes proposed to the hardship withdrawal rules, as some or all of the changes were included in early versions of the tax reform bills that passed in the House and Senate last year. However, those proposed changes did not remain in the final tax reform bill as it worked its way through the legislative process and onto President's Trump desk for signature on December 22, 2017. (Please see our previous alert for more information on the final version of the tax reform bill.)

It appears that the removal of the six month suspension requirement applies to hardship withdrawals actually made in plan years beginning after 2018. However, it's not clear whether the removal of the six month suspension requirement may also be applied to a suspension that begins in 2018 (or begins in early 2019 as the result of a hardship withdrawal that is made in late 2018), and continues into the 2019 plan year. It also seems that the expansion of sources available for hardship withdrawals and the ability to take a hardship withdrawal before requesting a plan loan may be optional, and not required changes. It would be helpful if the Department of Treasury provided some additional clarification.

©2018 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.

The Department of Treasury has one year from the enactment date of the Act (i.e., February 9, 2019) to modify the IRS regulations to remove the suspension requirement. In the meantime, it is important that employers consider these changes, and speak with their Seyfarth employee benefits attorney about next steps. We also expect that pre-approved plan providers will be reviewing their underlying base plan documents and adoption agreements in anticipation of these changes, and preparing amendments to these documents.

Additional Highlights

Some of the other notable retirement and health-related provisions within the Act include the following:

- ***Disaster Relief for California Wildfire Victims.*** The Act provides disaster relief to the victims of the 2017 California wildfires that is similar to the relief provided to victims of Hurricanes Harvey, Maria and Irma under legislation passed last year, including an increased limit for plan loans, the availability of "qualified wildfire distributions" of up to $100,000 without penalty and the ability to recontribute certain distributions. Plans are not required to offer this relief, but if they choose to do so, a plan amendment reflecting these provisions must be adopted no later than the last day of the first plan year beginning on or after January 1, 2019 (i.e., December 31, 2019 for calendar year plans).

- ***Relief for Improper IRS Levy on Retirement Accounts.*** Effective January 1, 2018, the Act allows an individual who receives a refund of retirement plan amounts that were subject to a wrongful levy by the IRS to recontribute those amounts (plus interest) to the plan or an IRA to prevent taxation. The amounts must be recontributed by the individuals' tax filing deadline (including extensions) for the year of the refund to take advantage of this relief.

- **Joint Select Committee on Solvency of Multiemployer Pension Plans.** The Act establishes a joint Congressional committee to address solvency concerns facing certain multiemployer pension plans and the Pension Benefit Guaranty Corporation.

- ***Children's Health Insurance Program (CHIP).*** The Act extends CHIP for an additional four years. This extension, in conjunction with the six-year extension that was passed by Congress last month in the bill that ended the January 2018 government shutdown, means that CHIP will now be fully funded through at least fiscal year 2027.

If you have any questions, please contact Sarah Touzalin at ***stouzalin@seyfarth.com***, Kaley Ventura at ***kmventura@seyfarth.com***, Randy Montellaro at ***rmontellaro@seyfarth.com*** or Jake Downing at ***jdowning@seyfarth.com***.

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

©2018 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.