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Two-Year Budget Deal Will Impact Employer Plans

In the face of drama over immigration issues, dossier memos, and stock market volatility, Congress reached a two-year budget deal. This bipartisan agreement increases the debt ceiling and raises budget caps. It contains several provisions for employer-sponsored benefit plans.

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New Deadline: March 23

Lawmakers were up against a looming February 8 deadline to pass another continuing resolution or budget to avoid a second government shutdown. Reaching a bipartisan agreement on a two-year funding bill, Congress has given themselves six weeks, until March 23, to iron out the finer details for the current year's budget. The Bipartisan Budget Act of 2018 (Budget Act) carves out money for domestic and defense spending, including programs for National Institute of Health research and disaster relief/aid in California, Florida, Texas and Puerto Rico.

Healthcare

On the healthcare front, the Budget Act extends the Children's Health Insurance Program (CHIP) an additional four years through fiscal year 2027 (see our January 23, 2018 *FYI Alert*), provides a two-year extension of federal funding for community health centers (a program that serves low-income individuals), and supports additional funding for opioid addiction treatment.

The law repeals the ACA's Independent Payment Advisory Board (provided under Medicare). It will implement payment policies designed to improve management of chronic disease, and streamline care coordination for Medicare recipients. Additionally, the law makes several other reforms/changes to Medicare Part D that will impact certain employer plans:

- Accelerating closing the "donut hole" for brand prescription drug coverage by one year from 2020 to 2019 (see our May 15, 2017 *For Your Information)*
- Increasing the manufacturer brand coverage gap discount from 50% to 70%
- Making biosimilar drugs eligible for coverage gap discounts
- Increasing Part D (and Part B) premiums for some higher-income individuals

Pension and Retirement

In addition to a next step for multiemployer plan funding problems and relief for plan distributions aimed at supporting individuals affected by the late 2017 California wildfires, the Budget Act includes some provisions from the House tax bill last year that had been omitted from the final agreement.

Addressing the Multiemployer Crisis

The Budget Act establishes the Joint Select Committee on Solvency of Multiemployer Pension Plans. The committee will have 16 members — eight from each chamber with equal numbers of Democrats and Republicans. It is charged with holding at least five public meetings or hearings and reporting a bill by the end of November. In recent months, various ideas have been floated to help stabilize the multiemployer plan guarantee program, including the loan program in the Senate "Butch Lewis Act of 2017" and House "Rehabilitation for Multiemployer Pensions Act." You can read more about those proposals in our November 29, 2017 *Legislate*.

California Wildfire Distribution Relief

The Budget Act includes qualified plan distribution relief for the late 2017 California wildfires.

Qualified wildfire distributions made on or after October 8, 2017 and before January 1, 2019 may be repaid to the individual's plan account or IRA within three years of the distribution. Eligible individuals are those whose principal place of abode during the period from October 8, 2017 to the end of 2017 was in the declared wildfire disaster area and whose loss was due to the wildfires.

The Budget Act treats qualified wildfire distributions as exempt from the usual hardship and unforeseen emergency restrictions under the rules for 401(k), 403(b) and 457(b) plans and allows recontribution before June 30, 2018 of distributions received after March 31, 2017 and before January 15, 2018 that were intended for the purchase or construction of a residence in the disaster area.

Up to $100,000 of qualified distributions are exempt from the 10% early distribution penalty. In addition, the Budget Act permits three-year ratable income inclusion and exempts qualified wildfire distributions from withholding and the automatic rollover rules.

The Budget Act also includes plan loan relief for these wildfire victims. Plans may allow loans of up to the lesser of $100,000 or 100% of the participant's benefit under the plan; additional time is allowed for repayment.

More Plan Changes

The new law instructs IRS to modify their regulations to delete the six-month suspension of deferrals after a hardship withdrawal for plan years beginning after 2018. The regulations are also to be modified to "carry out the purposes" of the Internal Revenue Code hardship withdrawal rule.

> **Comment.** It is not clear what specific change is intended for the open-ended instruction, but perhaps delinking the home repair safe harbor from the new casualty deduction restriction would be a good candidate.

The Budget Act also opens the door to permitting hardship distributions from earnings and employer contributions and eliminates the requirement to obtain loans before taking hardship distributions. These changes apply to plan years beginning after 2018. The Budget Act does not include the proposal from the House tax bill last year to allow defined benefit and governmental 457(b) plans to allow in-service withdrawals from age 59½. Nor does it include nondiscrimination testing relief for closed defined benefit plans.

Labor and Employment

Employers affected by the California wildfires are offered a tax credit for providing a limited amount of California wildfire employee retention wages. The credit is limited to 40% of wages incurred during the disaster period of up to $6,000 per individual employee working in the California wildfire disaster zone.

Looking Forward

With an agreement in place on spending caps, lawmakers can turn to writing the details on funding for the remainder of the year (through September 30). Immigration negotiations remain on the front burner and will likely divert attention from other issues such as ACA reforms or paid leave issues.

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