King & Spalding

Compensation and Benefits Insights

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Bipartisan Budget Deal Impacts Qualified Retirement Plans

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On February 9, 2018, President Trump signed into law the Bipartisan Budget Act of 2018 (the "Budget Act"). Interestingly, the Budget Act includes several provisions that were proposed in early drafts of, but ultimately not included in, the Tax Cuts and Jobs Act passed in December 2017 (which was previously discussed by King & Spalding here).

The following provisions included in the Budget Act affect qualified retirement plans:

- Hardship Withdrawals: The Budget Act generally loosens requirements for participants taking hardship withdrawals from tax-qualified individual account retirement plans (e.g., 401(k) plans and 403(b) plans) for plan years beginning after December 31, 2018. If an employer wishes to take advantage of these changes, amendments will be required by the end of 2019 for calendar year plans.
  - Availability of Loans: Under prior law, participants had to exhaust the opportunity to take loans under the plan prior to receiving a hardship withdrawal. Section 41114 of the Budget Act eliminates this requirement. While this streamlines the withdrawal process, it could exacerbate plan "leakage" due to the fact that loans must be (and hardship withdrawals cannot be) repaid to the plan.
  - Expansion of Hardship Sources: Under prior law, participants could take a hardship withdrawal from elective deferral contributions and profit sharing and matching contribution accounts only. Section 41114 of the Budget Act expands the potential sources of withdrawal to include qualified nonelective contributions ("QNEC"), qualified matching contributions ("QMAC") and earnings on elective deferrals or QNEC/QMAC contributions. In addition to expanding the sources available for hardship withdrawals, this change will have the added

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan "stock drop" cases and other breach-of-fiduciary-duty class actions.

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benefit of employers and recordkeepers not needing to keep track of the sources of contributions for purposes of hardship withdrawals.

- Post-Withdrawal Prohibition on Deferrals: Under current safe harbor regulations applicable to hardship withdrawals, if a participant receives a hardship withdrawal, the participant is prohibited from making deferrals to the plan or any other plan maintained by the employer (which includes qualified retirement plans and nonqualified deferred compensation plans) for the six month period following the distribution. Section 41113 of the Budget Act directs the IRS to draft new regulations eliminating this requirement. Transition guidance is expected to address individuals subject to the prohibition at the time of the effective date of the new regulations.

- California Wildfire Relief: Disaster relief similar to the relief provided in September for Hurricanes Harvey, Irma and Maria for loans and distributions has been expanded by Section 20102 of the Budget Act to cover victims of the 2017 California wildfires. IRS previously issued guidance in November 2017 relating to the California wildfires, which loosened loan and hardship distribution administrative requirements.

  In order to be eligible, the participant must have his or her principal place of abode in the Presidentially declared California wildfire disaster area during the period from October 8, 2017 to December 31, 2017 and suffered an economic loss (not necessarily related to the participant's home) due to the fires. This relief is discretionary, may be offered immediately and, if offered, plans must be so amended by the last day of the first plan year on or after January 1, 2019. The distribution relief includes:

  - Expansion of Loan Limit: The ordinary plan loan limit is 50% of the vested account balance up to $50,000. The relief expands this limit to 100% of the vested account balance up to $100,000. To be eligible for the relief, the loan must occur prior to January 1, 2019.

  - Extension of Loan Repayment Deadline: The due date for loan repayments for loans outstanding on or after October 8, 2017 may be delayed for up to one year without regard to the five-year maximum repayment period.

  - Disaster Relief Distributions: Otherwise unavailable distributions of up to $100,000 may be permitted without imposition of the 10% early distribution penalty or mandatory 20% withholding. Such amounts may be recontributed to the plan over a three-year period to avoid income taxation, or the taxes on the distribution may be spread over a three-year period. To be eligible for the relief, the distribution must occur on or after October 8, 2017 but prior to January 1, 2019.

  - Hardship for Purchase/Construction of House: If a participant took a hardship distribution after March 31, 2017 and before January 15, 2018 to purchase or construct a home and was unable to do so because of the wildfires, the participant can redeposit the distribution to the plan or any other plan that can accept rollovers by June 30, 2018, without resulting taxable income to the participant.

- Wrongful IRS Levy: In certain cases, the IRS may levy upon distributable individual retirement account ("IRA") or qualified retirement plan assets to collect federal taxes owed. If an amount is withdrawn by a participant from such an account pursuant to a levy but the IRS later returns the amounts because of a wrongful levy, Section 41104 of the Budget Act permits affected individuals to recontribute such assets (plus interest) to the IRA or plan on or after January 1, 2018 without interest. The recontributed amount is treated as a rollover, which means that such amount must be recontributed by the individual's tax return deadline for the year in which the amount is returned by the IRS.

- Multiemployer Pension Plan Committee: Title IV, Subtitle A of the Budget Act establishes the "Joint Select Committee on Solvency of Multiemployer Pension Plans," which is meant to provide recommendations and propose legislative solutions by November 2018 to address the solvency crisis impacting multiemployer pension plans and the Pension Benefit Guaranty Corporation ("PBGC"). The bipartisan committee of 16 members appointed by party leaders will hold public hearings, approve a report and finalize proposed legislation.

King & Spalding would be happy to assist you with any questions you have about the Budget Act and its impact on retirement plans.

March and April 2018 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for the next two months. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is generally delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
March 1 (60 days after the beginning of the plan year)	Medicare Part D Creditable Coverage Disclosure	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to disclose to the Centers for Medicaid and Medicare Services (CMS) whether the coverage is "creditable prescription drug coverage" by completing the Online Disclosure to CMS Form at https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
March 2	IRS Form 1095-B Individual Statements	Deadline for providers of minimum essential coverage to distribute forms used to report to responsible individuals the months during the year that the individuals satisfied the individual mandate by enrolling in minimum essential coverage. This deadline was extended from its original deadline of January 31. Note that self-insured ALEs can report this information on Form 1095-C. Fully insured plan sponsors that are not ALEs are not required to distribute Form 1095-B, which are distributed by the group health plan insurers.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1095-C Individual Statements	Deadline for ALEs to report to provide a written statement to employees indicating whether the ALEs offered an opportunity to enroll in (and whether the employee did enroll in) minimum essential coverage under the ALE's sponsored plan. This deadline was extended from its original deadline of January 31.	Applicable Large Employers

Deadline	Item	Action	Affected Plans
March 15	Plan Contribution Deadline	Deadline for corporate employer contributions to be made to plan trusts in order for such amounts to be deductible on corporate tax returns (assuming the employer is operating on a calendar-year fiscal year). Note that this deadline may be extended if an extension is obtained for the corporate tax return.	Qualified Retirement Plans*
March 15 (2 ½ months after the plan year)	Excess Contributions	Deadline for plan administrator to distribute any excess contributions and earnings from the prior year to avoid 10% excise tax on employer (other than eligible automatic contribution arrangements (EACAs)).	401(k) Plans Other Than EACAs
March 31 (last day of 3rd month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is 10 points less than prior year AFTAP.	Defined Benefit Plans
March 31 (if filing electronically)	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage.	Self-Insured Group Health Plans and Group Health Plan Insurers

* Qualified Retirement Plans include all defined benefit and defined contribution plans that are intended to satisfy Internal Revenue Code §401(a).

Deadline	Item	Action	Affected Plans
	IRS Form 1094-C Transmittal Forms	Deadline for ALEs to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE's sponsored plan.	Applicable Large Employers
April 1	Age 70 ½ Distribution Requirements	Deadline for plan administrator to distribute prior year's required minimum distribution for any terminated employee who reached age 70 ½ or older during the prior year.	Qualified Retirement Plans
April 15	Excess Deferrals	Deadline for plan to distribute prior year's deferrals in excess of Internal Revenue Code (IRC) §402(g) annual dollar limit and related earnings.	401(k) Plans
April 16 (105 days after the end of the plan year)	PBGC 4010 Filing	Deadline for contributing sponsors (and each controlled group member) to file PBGC Form 4010 if: 1) Any single-employer plan in the contributing sponsor's controlled group had a prior year AFTAP of less than 80%; 2) Any single-employer plan in the contributing sponsor's controlled group fails to make a required installment or other required payments to a plan, and as a result, a lien is imposed pursuant to ERISA section 303(k)(1) or IRC section 430(k)(1); or 3) The IRS has granted funding waivers of more than $1 million to any single-employer plan in the contributing sponsor's controlled group and any portion of such waiver is still outstanding.	Defined Benefit Plans

Deadline	Item	Action	Affected Plans
April 30 (no later than 120 days after the end of the plan year)	Annual Funding Notice	Deadline for the plan administrator to provide a plan funding notice to the PBGC, to each plan participant and beneficiary and to each employer that has an obligation to contribute under the plan.	Defined Benefit Plans