



April 13, 2018

Legislative Updates

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Over the course of the last few months there have been several legislative actions that directly impact retirement plans. You have likely read articles or heard discussions on the topic of the new Department of Labor (DOL) disability claims procedures for ERISA health, welfare and retirement plans, the Bipartisan Budget Act of 2018, and of course, the Tax Cuts and Jobs Act of 2017. We wanted to provide you with a short summary of how these legislative actions may impact you and your retirement plan clients.

Department of Labor Disability Claims

The new DOL disability claims procedures went into effect April 1, 2018. First, let us address the fact that the plan document utilized by Benchmark Retirement Plan Services, Inc. (Benchmark RPS) includes language to avoid a required amendment as a result of these new DOL procedures. Our current documents address the topic of disability determinations by stating that the determinations will follow applicable DOL regulations. Therefore, when these regulations change, an amendment and Summary of Material Modifications (SMM) are not required. This may not be true with documents from other providers so each plan sponsor will need to determine whether or not an amendment is required.

In general, the new procedures impact ERISA plans in which disability is determined by the Plan Administrator. A plan's document or adoption agreement will state whether the Plan Administrator makes the determination or if it is made by a third party such as the Social Security Administration or a long-term disability carrier.

When a disability claim is denied by the Plan Administrator the new regulations have added additional timing and notice requirements to the fairly strict requirements that were already in place. We won't discuss the details of the new requirements here, but our opinion is that 401(k) plan sponsors should use the Social Security Administration or their long-term disability carrier to determine disability. If you have a client that currently has another definition, now would be a good time to address this topic and suggest amending the adoption agreement to alleviate these new requirements. The default option for all clients of Benchmark RPS is to rely on the Social Security Administration to make the determination and therefore the new rules do not apply to our clients.

Bipartisan Budget Act of 2018

On February 9, 2018, Congress passed the Bipartisan Budget Act of 2018. The impact of this legislation on qualified retirement plans was not substantial, but there are two specific changes we want to highlight. The first is that the rules related to hardship withdrawals have been relaxed in three significant ways beginning with plan years that commence after December 31, 2018:

1. Hardship withdrawals can be taken from earnings on deferrals as well as QNEC, QMAC and safe harbor sources;
2. The requirement to take a 401(k) loan prior to taking a hardship withdrawal is removed; and
3. The 6-month deferral suspension requirement is removed.

An amendment will be required to update the plan document for these new provisions. We will provide our clients and their advisors more information on the amendment process as we get closer to the date these provisions can take effect.

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The second impact of the Bipartisan Budget Act of 2018 that we want to highlight is regarding California Wildfire Relief. This relief is similar to the relief granted to the victims of Hurricanes Harvey, Irma, and Maria in 2017. Individuals who incurred a loss in a Presidentially-declared California wildfire disaster area between October 8, 2017 and December 31, 2017, can qualify for the following:

1. A qualified wildfire distribution of up to \$100,000. Qualified wildfire distributions are not subject to the 10% early withdrawal penalty, can be recontributed over a three-year period, and will be included in the participant's income over three-years unless the participant elects otherwise.
2. The loan amount that a Qualified Individual can take from his account under a qualified retirement plan is increased to the lesser of \$100,000 or the full amount of the individual's vested account balance. Qualified Individuals who have loans outstanding are permitted to delay loan repayments for up to one year.
3. A participant who took a distribution after March 31, 2017, and before January 15, 2018, to purchase or construct a home in the area where the California wildfires occurred is permitted to repay such distribution if the participant was unable to actually purchase or construct the home due to the California wildfires. Such repayment must occur no later than June 30, 2018.

Plan sponsors are not required to grant this special disaster relief and plan documents will need to be amended should they wish to do so.

Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (TCJA). Unlike past major tax reform legislation, TCJA did not have a major impact on qualified retirement plans. There were only three key items that changed:

1. Prior to 2018, a participant had 60 days to indirectly roll over a 401(k) loan balance to another plan. Effective January 1, 2018, the participant now has until their tax filing deadline (including extensions) for the year of the default which, in most cases, significantly extends the roll over period.
2. Effective January 1, 2018, TCJA permits casualty deductions under section 165 only for losses attributable to a disaster declared by the President of the United States under the Disaster Relief and Emergency Assistance Act. The effect is to narrow hardship distributions for casualty losses only to damage caused by a natural disaster specifically declared an emergency. Damage due to fires or storms not declared a specific emergency cannot be the basis of a hardship distribution effective January 1, 2018.
3. Tax relief is granted for 2016 and 2017 distributions from qualified retirement plans due to 2016 storms and flooding. Under TCJA, distributions made in 2016 and 2017 that constitute a "qualified 2016 disaster distribution" include distributions of up to \$100,000 between January 1, 2016 and January 1, 2018 for a participant whose principal residence in 2016 was in a federal disaster area as declared by the President. These qualified disaster distributions are eligible for a waiver of the 10% early withdrawal penalty tax and 20% mandatory withholding, the tax on the distribution may be spread over a three-year period, and the amount of the distribution may be recontributed to an eligible retirement plan within three years.

While these changes do not have a major impact on most retirement plans, the cumulative impact should be considered and discussed with plan sponsors. Should you have any questions about the content of this article, please contact your Benchmark RPS representative and we will be glad to discuss these, or any other topics, with you and your clients.

Benchmark Retirement Plan Services, Inc.

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