RETIREMENT INSIGHTS

Legislative and regulatory bulletin

2Q 2018

Congress passes retirement plan changes ... and proposes many more

In recent weeks, Congress has enacted legislation affecting retirement plans and their participants, and has reintroduced a bill that, if passed into law, would make several important changes to the plan landscape.

The Bipartisan Budget Act of 2018

On February 9, 2018, President Trump signed the Bipartisan Budget Act of 2018. Although primarily spending and budget legislation, it includes a few provisions that will have an impact on retirement plans.

Here is a brief summary:

- **Hardship distributions from 401(k) and 403(b) plans:** The act eliminates the requirement that a participant take any available plan loan before receiving a hardship distribution, and it directs the Internal Revenue Service to delete the provision in its rules that prohibits a participant from making contributions for six months after taking such a distribution. Under the act, plans are permitted to allow hardship distributions to include employer contributions and earnings. These changes are effective for plan years beginning after 2018.
- **Relief for victims of the California wildfires:** Similar to the assistance Congress provided after 2017's hurricanes, the Bipartisan Budget Act contains measures to help victims of the recent California wildfires. It waives the 10% early distribution penalty for individuals whose principal residence is in the wildfire disaster area; this applies to distributions of up to $100,000 made between October 8, 2017, and January 1, 2019. The recipient can elect to pay the associated tax over three years and/or roll the amount distributed back into a plan or an IRA within three years. The act

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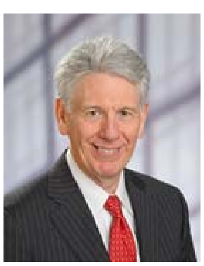

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liberalizes plan loan rules for individuals whose principal residence is in the disaster area by increasing the loan limit to the lesser of $100,000 or 100% of the participant's account balance (up from $50,000 and $50%, respectively) for loans taken between February 9, 2018, and December 31, 2018. In addition, affected participants can delay repayments for one year for loans outstanding on or after October 8, 2017.

The Retirement Enhancement and Savings Act of 2018

The Retirement Enhancement and Savings Act (RESA) is a bipartisan proposal that contains more than two dozen provisions affecting retirement plans. The Senate Finance Committee unanimously approved RESA in 2016, but the bill was not put to a vote by the full Congress before lawmakers adjourned at the end of that year. RESA (S. 2526) was reintroduced on March 8 by Senate Finance Committee chairman Orrin Hatch (R-UT) and ranking member Ron Wyden (D-OR). An identical piece of legislation (H.R. 5282) was introduced in the House of Representatives on March 14 by Mike Kelly (R-PA) and Ron Kind (D-WI), and has more than 20 co-sponsors from both sides of the aisle.

Many of RESA's provisions have been proposed in the past and enjoy widespread support from policymakers, employer groups and the financial services industry. In fact, proposals to allow unrelated employers to participate in multiple employer plans—"open" MEPs—are included in at least three other bills pending before Congress. (Please see our 1Q 2018 bulletin for a summary of these bills.)

As proposed, RESA's MEP provisions would be effective beginning in January 2022, while most of the other provisions would be generally effective beginning in 2019. Here is a brief summary of the key provisions:

- **Multiple employer plans:** RESA would authorize open MEPs by allowing unrelated employers to participate in a "pooled employer plan." It would also abolish the so-called one-bad-apple rule, which says if one employer in a MEP violates the qualification requirements, the entire MEP could be disqualified.
- **401(k) nondiscrimination safe harbor:** The bill would eliminate the 10% cap on automatic escalation of participant contribution rates in safe harbor 401(k)s. In addition, plan sponsors would have more time to elect safe harbor status if they make nonelective rather than matching contributions.
- **Tax credits for small employers:** The bill proposes to increase the start-up credit for small-employer plans, with 100 or fewer participants, to a maximum of $5,000 per year for the first three years. In addition, it would create a new tax credit for plans with automatic enrollment of up to $500 per year for the first three years.
- **Plan loans via credit cards:** RESA would ban plans from allowing participants to take loans via credit cards or similar arrangements, except for those in existence before September 21, 2016. Pre-existing arrangements could not allow loan amounts of less than $1,000 or transactions at certain locations (e.g., liquor stores or casinos).

- **Lifetime income in defined contribution plans:** RESA includes three related provisions:
  - It would provide a fiduciary safe harbor for plan sponsors that select insurance companies to provide lifetime income.
  - It would require participant statements to include a disclosure of the monthly amount a participant would receive as a single or joint life annuity, based on the individual's current balance.
  - It would facilitate the portability of lifetime income options by permitting direct transfers of a lifetime income investment to another plan or an IRA if the plan sponsor eliminated the investment as a plan option.
- **Adoption of plans after year-end:** The bill would permit an employer to establish a qualified plan for a calendar year as late as the due date of its tax return for that year (including extensions).
- **IRA contributions after age 70½:** RESA would allow working individuals over age 70½ to make traditional IRA contributions. Under the law today, you cannot make a traditional IRA contribution for the year in which you turn 70½.
- **Acceleration of required minimum distributions to nonspouse beneficiaries:** Under the bill, if a decedent's aggregate IRA and defined contribution plan assets exceeded $450,000, excess amounts would have to be paid to any nonspouse beneficiaries within five years (with some exceptions, such as disabled beneficiaries). Essentially, this would restrict the "stretch IRA" strategy.

NEXT STEPS

With a few notable exceptions, such as the Pension Protection Act of 2006, retirement legislation typically does not pass as a stand-alone bill. Rather, retirement provisions are usually tacked onto another bill—often one that Congress must pass, such as the Bipartisan Budget Act. Some Washington observers think it's possible that RESA could be attached to a must-pass bill before the current session of Congress adjourns at the end of the year.

We will continue to monitor all retirement plan-related legislative activity in Congress and keep you informed of any significant developments.

CONTACT US

To learn more about our ***Legislative and Regulatory Program*** or any of our other Retirement Insights programs, contact your J.P. Morgan representative.

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