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BENEFITS BRIEF

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Budget Brings Pension and Health Care Relief

This morning, after an almost nine-hour government shutdown, President Trump signed into law the Bipartisan Budget Act of 2018. The bill creates a two-year budget that increases the caps on spending for domestic and military programs. It also funds the government through March 23, which provides Congress with approximately six weeks to pass an omnibus appropriation package. The bill includes a few changes in the retirement and health arenas, which we outline below.

Changes to Retirement Provisions

The bill includes some helpful relief for plan sponsors and participants of qualified plans –

Expanded Hardship Relief. Effective for the 2019 plan year, 403(b) and 401(k) plans will have relaxed hardship provisions, including (1) no longer requiring plan loans to be taken first, (2) eliminating the 6-month suspension period for contributions following a hardship withdrawal, and (3) expanding the types of contributions that can be distributed on account of a hardship to include QNECs, QMACs, safe harbor contributions, and including earnings from all eligible sources (which includes post 1/1/89 earnings on elective deferrals).

California Wildfire Relief. Relief similar to that available for Hurricanes Harvey, Maria, and Irma (which includes relief from the 10% early distribution tax, special in-services distributions of $100,000, increased loan limit to $100,000, special 3-year spread on taxation of benefits, and special 3-year rollover period) is extended to victims of the California wildfires.

Relief for Improper Federal Tax Levy. Effective January 1, 2018, a wrongful federal tax levy on retirement plan/IRA assets may be rolled back into the plan (if accepted) or to an IRA by the tax filing deadline (excluding extensions) for the year of the refund to avoid taxation (and restore the tax deferred status of the funds).

Joint Select Committee on Multiemployer Plans. The bill provides for a new joint Congressional committee to address the funding crisis faced by certain multiemployer pension plans and the Pension Benefit Guaranty Corporation ("PBGC") multiemployer program, with a goal to develop a bipartisan legislative solution to keep these plans, and the PBGC, solvent. The House and Senate Joint Select Committee on Solvency of Multiemployer Pension Plans (the "Committee") is tasked with the goal of improving the solvency of multiemployer pension plans and the PBGC. The Committee will be comprised of sixteen members, eight Senators and eight members of the House appointed by their party leaders, divided equally between Republicans and Democrats. The Committee will be required to hold at least five public hearings or public meetings.

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The Committee is required to vote on a report by November 30, 2018 detailing its findings, conclusions, recommendations, and proposed legislation to carry out the Committee's recommendations. For the report and proposed legislation to be approved, ten members of the Committee (consisting of at least five Republicans and five Democrats) must approve the report and draft legislation. Should the Committee approve draft legislation, the legislation will receive expedited consideration in the Senate.

While this is a step towards addressing the needs of the multiemployer pension system, it will be important to both pay attention to who is appointed to the Committee as well as to the tenor of the public hearings. Historically, Republicans have proposed benefit cuts and PBGC premium increases and Democrats have proposed using government assistance (including through low-interest loans) to multiemployer plans. Unless the Committee reaches a compromise, this effort likely will not successfully address the multiemployer pension crisis.

Changes to Health Provisions

Regarding health changes, this bill may be as notable for what it does not contain as for what it does: it makes no changes to the Affordable Care Act ("ACA") tax provisions nor does it include provisions related to market stabilization. It does, however, make keys changes to Medicare and provide funding for a number of popular domestic health programs. Details from the Congressional Budget Office ("CBO") on the costs of the health provisions can be found here.

Children's Health Insurance Program ("CHIP"). Perhaps the most significant health provision contained in the bill is the reauthorization of CHIP for an additional four years. This adds to the six year reauthorization for the program just two weeks ago in the bill that ended the January shutdown. This new budget agreement means CHIP now has full funding for a decade through fiscal year 2027.

Medicare. The bill eliminates the Independent Payment Advisory Board, a never-used spending oversight panel created under the ACA. The bill also requires pharmaceutical companies to pay 70% of drug costs for seniors, who reach the so-called "donut hole." The bill includes a number of structural reforms to Medicare and its reimbursement methodologies for home health, outpatient therapies, and skilled nursing benefits.

Additional Provisions. The bill provides funding for community health centers, which serve 26 million low-income Americans; the National Institutes of Health; the opioid crisis; and VA hospitals.

Next Steps

Now that Congress has passed a long-term budget, the appropriators will begin work on an appropriations package. They hope to pass an omnibus funding bill by March 23, the expiration date for the current appropriation legislation. It is possible, if not likely, that the omnibus will contain additional provisions affecting health and retirement plans. In the coming weeks, leadership in both houses will also choose members to sit on the multiemployer Joint Select Committee.