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Commco Comments

Timely Information and Updates for Employers and Retirement Plan Sponsors

Rules for Hardship Distributions Changing in 2019

The new year is set to bring changes to the way that hardship distributions from employer-sponsored retirement plans are administered. The Tax Cuts and Jobs Act of 2017 and the Bipartisan Budget Act of 2018 both included hardship rule changes to 401(k) plans. On November 9, 2018, the US Department of the Treasury and the IRS issued proposed regulations addressing the changes in both acts, as well as some others.

Currently the details of the new regulations are in a preliminary status and the final regulations have not yet been released. In the absence of a final ruling, the changes indicated below are set to take effect under the proposed rules on January 1.

What's changing:

- Under the previous rules, employees who took a hardship withdrawal were prohibited from contributing to the plan for six months after the date of the distribution. Under the new rules, the six-month exclusion period is eliminated. Plans may opt to wait until January 1 of 2020 to adopt this change.
- Under the old rules, employees could request a hardship distribution only of those funds that represented their own salary deferrals, excluding earnings. Under the new rules, hardship distributions from 401(k) plans (but not from 403(b) plans) may come from salary deferrals including earnings.
- For 401(k) plans that have Qualified Matching Contributions (QMACs) or Qualified Nonelective Contributions (QNECs), those funds, as well as any earnings on them, may also now be used for hardship distributions. This was not permitted under the prior rules and adoption of this new allowance is optional under the new proposed rules.
- Previously, employees were required to obtain all available nontaxable loans under the plan (and any other plans maintained by the employer) before being eligible to request a taxable hardship distribution. This requirement is being removed, although employers have the option to retain it as a rule specific to their plan.

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In general, are hardship rules getting more or less restrictive in 2019 compared to previous plan years?

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Retirement & Investment Services

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What plan sponsors should do:

- Expect information and instructions from your TPA in the coming months regarding the necessity of a plan document amendment or restatement -- including any actions needed on your part, costs involved in the process, and updated documentation that should be retained.
- If employees request a hardship distribution shortly before the new rules take effect, make sure they understand these upcoming changes. Where feasible, they may find that waiting to submit their request under the new rules could be better for them.
- Keep in mind that while these new rules make hardship distributions easier and more attractive to participants, they can still have dramatic impacts on an employee's retirement planning and should be used as a last resort only.
- If you have questions, please ask! If your employees have questions, you are (as always) invited to refer them to our office for assistance as well.

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