Sponsors Of 401(k) And 403(b) Plans Should Consider Adopting Recent Changes To The Hardship Distribution Rules

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The Bipartisan Budget Act of 2018 (Act), along with recently issued Department of Treasury proposed regulations, made changes to the rules regarding hardship distributions from 401(k) plans. The Act eases administration of hardship distributions and the burden on employees who take such distributions. Under the Act, an employer is prohibited from requiring that a participant exhaust all plan loans before taking a hardship distribution.

The Act also eliminated the safe harbor regulatory requirement that an individual who takes a hardship distribution cannot make elective deferrals to any employer plan for a period of six months following the hardship distribution. These changes generally require sponsors of 401(k) plans that allow for hardship distributions to amend their plans.

The prohibition on requiring employees to exhaust plan loans takes effect January 1, 2019. While the prohibition on the six-month restriction will not be effective until January 1, 2020 per the proposed regulations, employers may adopt this change effective January 1, 2019. In addition, effective January 1, 2019, the new rules permit—but do not require—hardship distributions to be made from accounts other than elective deferral accounts, and from the earnings on elective deferrals and those other accounts.

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The proposed regulations also apply to 403(b) plans, except that earnings on elective deferrals in a 403(b) plan cannot be part of a hardship distribution, and qualified nonelective and matching contributions can only be distributed because of hardship if the 403(b) plan is not in a custodial account.