A Reminder about the Changing Rules for Hardship Withdrawals

The opportunities to take in-service distributions from retirement plans are limited prior to age 59½. An exception is hardship withdrawals.

The requirements for hardship withdrawals are changing as follows:

- **No Plan Loan** – To qualify for the safe harbor for hardships, plans no longer have to require that participants take the maximum loan available before requesting a hardship withdrawal.
- **No Suspension of Deferrals** – Also, to qualify for the safe harbor, plans no longer have to suspend employees from making deferrals for six months after receipt of a hardship withdrawal.
- **Withdrawal of Earnings** – Earnings on elective deferral contributions may now be included as part of a hardship withdrawal. This does not apply to earnings on elective deferral contributions in 403(b) plans.
- **Withdrawal of Qualified Non-elective Contributions (QNECs), Qualified Matching Contributions (QMACs), and Safe Harbor Plan Contributions** – QNECs, QMACs, and safe harbor plan contributions may now be available for a hardship withdrawal along with earnings. This includes post 1988 earnings on deferrals

It should be noted that plan sponsors have always been free to define the circumstances under which employees qualify for hardship withdrawals. The requirements to take a loan and suspend contributions are part of the safe harbor which most employers have chosen to adopt. Where the safe harbor is adopted, the IRS will not challenge hardship withdrawals. Some employers have elected to follow the safe harbor with the exception of the suspension of contributions.

Adopting these changes in the hardship rules will require a plan amendment. Those sponsors using a service provider's prototype or volume submitter document are best advised to wait for the provider to update its procedures and prepare the necessary amendment.

At this point, it is unclear whether employers may continue to impose the requirements to take a loan and suspend contributions and still qualify for the safe harbor. We hope further guidance from the Department of Treasury will answer this question.

These changes are effective for plan years beginning on or after January 1, 2019.