CENTURION GROUP

IRS Releases Proposed Hardship Withdrawal Regulations

The IRS published on November 14th proposed regulations pertaining to hardship distributions, as a consequence of recent legislative changes including those in the Bipartisan Budget Act of 2018. The most significant provisions addressed in the proposed regulation include –

401(k) hardship administration changes

- The elimination of the requirement that a **plan loan** must be taken in advance of a hardship distribution (effective beginning January 1, 2019).
- The elimination of the **six month suspension** of elective deferrals as a condition of obtaining a hardship distribution.
- Plans may expand the maximum amount available for hardship to include employer matching and employer non-elective contributions (QMACs and QNECs) and earnings.

The elimination of the six month deferral suspension would generally be required for hardship distributions made in 2020, and is permissive for 2019.

Simplified Demonstration of Need

The proposal replaces the "facts and circumstances" test with a general standard for determining whether a distribution is necessary:

- The hardship distribution must not exceed the financial need, including taxes
- The employee must have obtained other available plan distributions
- The employee must represent that they have insufficient cash or liquid resources to satisfy the financial need.

401(k) hardship safe harbor changes

The list of expenses that are considered an immediate and heavy need eligible for a hardship distribution would be expanded to include the medical, educational, and funeral expenses for the **primary beneficiary** under the plan. The proposed regulation would delete provisions that the employee's resources for meeting their financial need include assets of their spouse and children that were reasonably available to the employee.

Impact on 403(b) Plans

403(b) plans are generally subject to the 401(k) hardship rules, however earnings on 403(b) deferrals will remain ineligible for distribution on account of hardship.

Plan Amendments Necessary Later

The IRS cautioned that these provisions would require a plan amendment, and set uniform amendment deadline for all the changes in the proposed regulation. This deadline will be two years after the changes within the finalized regulations are added to the annual IRS Required Amendments List.

Centurion will closely follow this proposed regulation and any changes as it is finalized sometime in 2019. If you have any questions about how these proposed regulations will affect your plan, please contact your Centurion consultant.