

## Hardship Withdrawals No Longer Limit Non-Qualified Plan Deferrals

### Pre-2019 Rule (old Rule)

Up until this year, before the Bipartisan Budget Act of 2018 was signed into law, a participant in a non-qualified deferred compensation plan was subject to limitations in his non-qualified deferred compensation plan if he applied for and received an early withdrawal of funds from his 401(k) plan due to financial hardship. These limitations included an immediate cessation of any further deferrals into a deferred compensation plan also offered by his employer.

### Post-2018 Rule (New Rule)

Under the Bipartisan Budget Act of 2018, this limitation is no longer in effect. Rather than waiting the required six months or more after a hardship withdrawal is taken, a participant may continue all deferrals without any waiting period. In practice, where previously 401(k) plan sponsors were required to include a waiting period provision in their plan documents, that requirement is no longer necessary beginning with plan years commencing after December 31, 2018. For this reason, we recommend that you thoroughly review your plan documents to determine if such a provision needs amendment or removal.

### Are participants who took a hardship withdrawal in 2018 eligible for deferrals in 2019?

There has not yet been any clear guidance from the IRS about whether the old rule or the new rule will apply to a participant who has taken a hardship withdrawal in 2018. Since the amendment to the qualified plan rule will not take effect until 12/31/2018, the letter of the law says that the six-month waiting period would apply to participants who took a hardship withdrawal in 2018. Accordingly, the conservative course of action is to remove affected participants from the enrollment census for 2019 deferrals, effectively applying the old rule.

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