

Updates

October 23, 2019

IRS Finalizes Changes to 401(k) Hardship Distribution Rules

The Internal Revenue Service issued final [regulations](#) on September 19, 2019, easing the 401(k) hardship distribution rules. The final regulations are substantially similar to the [proposed regulations](#) issued late last year, and plans that complied with the proposed regulations will satisfy the final regulations.

Highlights of the changes to the 401(k) hardship distribution rules include:

- Elimination of the six-month deferral suspension following hardship distributions (required)
- Elimination of the facts?and?circumstances standard in favor of a general standard for determining whether a distribution is necessary (required)
- Elimination of the requirement that participants take plan loans before obtaining hardship distributions (optional)
- Allowing hardship distributions from elective deferrals, qualified nonelective contributions, qualified matching contributions, safe harbor contributions and earnings on those amounts, regardless of when contributed (optional)
- Clarification that damage to a participant's primary residence due to a casualty loss that would otherwise be deductible under Code § 165 need not be in a federally-declared disaster area (optional)
- Addition of a new type of safe harbor hardship distribution expense relating to expenses incurred due to certain federally-declared disasters (optional)
- Addition of a participant's primary beneficiary as an individual for whom qualifying medical, educational and funeral expenses may be incurred (optional)

Conclusion

Because the final regulations are generally effective for hardship distributions made on or after January 1, 2020 (but can be applied earlier), 401(k) plan administrators should be actively working with their recordkeepers to align the operations of the plan with the final regulations by this effective date.

As to corresponding plan amendments, plan sponsors of individually?designed 401(k) plans will need to amend such plans by the end of the second calendar year that begins after the issuance of the IRS' Required Amendments List that includes the changes—by December 31, 2021, if the final regulations are included in the 2019 list. We have seen that some plan sponsors are choosing to prepare plan amendments currently to align with the operational changes effective on January 1, 2020. Pre-approved 401(k) plans will be amended by the document sponsors in conjunction with communications to and potential elections by adopting employers. Such amendments will generally need to be adopted by the tax filing deadline, including extensions, of the adopting employer's tax year in which the required changes are put into effect.

Additional Information

Individuals seeking more information on these rules should consult legal counsel.

Authors

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