

Final Hardship Distribution Regulations, Part One: Key Changes and Deadlines for Plan Sponsors

Employee Benefits & Executive Compensation Blog on **September 24, 2019**

Last week, the Department of Treasury and the IRS issued final regulations regarding hardship distributions from 401(k) and 403(b) plans. The final regulations respond to comments based on earlier [proposed regulations](#) and make a number of significant changes to the existing IRS rules that apply to hardship distributions.

Given the detailed material in the regulatory preamble as well as the final regulations themselves, we intend to release a series of blog entries analyzing the new rules for hardship distributions. Below is a summary of the issues raised in the final regulations that we will address in more detail in upcoming blog entries:

- **Plan Amendments/Plan Action Required:** Individually-designed 401(k) plans that currently permit hardship distributions will likely need to be amended to reflect the final regulations by December 31, 2021 – but operational changes will be needed to comply with the new regulations by **January 1, 2020**. (Individually-designed 403(b) plans and pre-approved 401(k) and/or 403(b) plans might have an earlier amendment deadline.) Plan sponsors that previously took action in response to the proposed regulations should review prior plan amendments and administrative changes to confirm operational and plan document compliance with the final regulations.
- **Elimination of Six-Month Suspension of Contributions:** Effective for hardship distributions on or after January 1, 2020, 401(k) and 403(b) plans cannot impose a six-month suspension of contributions following a hardship distribution.
- **Changes to Safe Harbor Events:** The final regulations modify the list of distributions deemed to be made on account of an immediate and heavy financial need by revising the casualty loss definition and adding a new FEMA disaster category, as well as incorporating prior IRS guidance on hardship distributions for primary beneficiaries. The revised list may be applied to hardship distributions as early as January 1, 2018.

- **Elimination of Requirement to Take Plan Loans:** Effective January 1, 2019, employees are not required to take plan loans before receiving a hardship distribution.
- **Elimination of “Facts and Circumstances” Analysis:** The facts and circumstances analysis for determining whether a hardship distribution is necessary to satisfy a financial need is eliminated in favor of a general standard that relies on three objective prongs (comparable to what was in the proposed regulations).
- **Expanded Hardship Distribution Sources for 401(k) Plans:** Sources available for hardship distributions now include earnings on elective deferrals, QNECs, QMACs, and earnings on QNECs and QMACs, regardless of when contributed or earned.
- **Expanded Hardship Distribution Sources for 403(b) Plans:** Earnings on pre-tax deferrals made to a 403(b) plan continue to be ineligible for hardship distributions. However, QNECs and QMACs would be eligible for hardship distributions in a 403(b) plan that are not held in a custodial account. QNECs and QMACs in a 403(b) plan that are held in a custodial account continue to be ineligible for hardship distributions.

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As explained above, future blog entries will provide more detailed analyses of these topics and the final regulations and will include best practices for implementing the operational changes affecting plan sponsors and plan administrators.

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