



HARDSHIP PROPOSED REGULATIONS

Effective January 1, 2019

The IRS has released the proposed regulations regarding hardship distributions affecting 401(k) and 403(b) plans. The regulations address many hardship distribution issues raised by both the “Budget Act” and “Tax Act”.

Proposed regulations include:

- **For 401(k) Plans:**
 - All sources of money (plus earnings) are now available for hardship distributions, including safe-harbor contributions and earnings on elective deferrals (credited after 1988). Plan sponsors are still able to restrict the sources available for hardship.
- **For 403(b) Plans:**
 - If assets are held in a custodial account, elective deferrals are still the only source of money available for hardship distributions. If assets are held in a non-custodial account, the money available for hardship distributions is the same as that for a 401(k) account, except that earnings on elective deferrals are still not available.
- **The 6-month suspension of deferrals is prohibited on hardship distributions taken on or after January 1, 2020.**
 - As of January 1, 2019, plan sponsors will have the discretion to eliminate the 6-month suspension for hardship distributions taken during the second half of 2018 or any time during 2019. Of course, whether or not they eliminate the suspension period will have to applied the same to all hardship distributions during this period.
- **A participant is no longer required to take a plan loan before a hardship distribution effective January 1, 2019.**
 - Plan sponsors do have the discretion to make loans required before hardships, though.
 - Participants are still required to take other available distributions (just not a loan) from the plan before a hardship.
- **The standard for determining the financial need for a hardship has been modified.**
 - Going forward, (1) a hardship distribution may not exceed the amount of an employee’s need; (2) the employee must first obtain other available distributions under the plan; and (3) the employee must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need (representation may be relied upon by administrator unless actual knowledge to the contrary). The requirement to obtain the employee’s representation applies for distributions made on or after January 1, 2020.