

Benefit Insights®

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RETIREMENT ♦ PLAN ♦ EXPERTS

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Hardships Get a Little Easier

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Earlier this year, the Bipartisan Budget Act of 2018 was passed by Congress and signed into law. While this law made several changes that impact retirement plans, one provision changing the rules around hardship distributions is particularly notable. As a result of the act, changes to the hardship distribution rules for 401(k) plans will take effect for the 2019 plan year (e.g., as of January 1, 2019, for calendar year plans).

There are three primary changes to the current hardship distribution rules:

- ◇ Participants will no longer be required to take available plan loans before a hardship distribution is granted.
- ◇ When a hardship is taken, it is no longer necessary to suspend employee salary deferrals for six months following the withdrawal.
- ◇ The plan will allow for the distribution of other types of contributions beyond employee salary deferrals and pre-1989 earnings as part of a hardship distribution, including qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), safe harbor contributions, and earnings from all eligible sources (including post 1988 earnings on elective deferrals).

The first and second changes are currently part of the IRS's requirements for a hardship distribution to meet the safe harbor definition of "necessary to satisfy an immediate and heavy financial need." If your plan currently uses anything other than the safe harbor definition for hardship distributions, your plan participants may not take advantage of these new regulations. To adopt these new hardship rules, you'll need to ensure that:

- ◇ You confirm with your document provider whether you use the safe harbor definition for hardship distributions.
- ◇ Your hardship distribution procedures are updated to reflect the changes.
- ◇ All necessary administrative changes are being implemented by the plan record keepers.
- ◇ You address the language of your plan document for any necessary amendments.

What if you sponsor a 403(b) plan? While the Treasury regulations for a hardship withdrawal under 401(k) and 403(b) regulations have the same meaning, further clarification concerning the latter is still needed from the IRS. While applying the new hardship rules to both types may have been Congress' intent, the law itself does not currently extend to 403(b) plans. Many are hoping for a technical correction bill to address

403(b) plans and issues such as salary deferral suspension for hardships late in the year. The Treasury Secretary still has until early 2019 to modify the current 401(k) regulations to reflect the new hardship distribution rules.

Come 2019, a general certainty is plan sponsors may incorporate softer hardship distribution rules into their plans, policies, and procedures due to changes made under the Bipartisan Budget Act of 2018.

2019 Cost of Living Adjustments

Every Fall, the coming year's Cost-of-Living Adjustments (COLAs) are released by the Internal Revenue Service. The benefit increases counteract the effects of inflation and keep up with the "cost of living". Below are the limits for 2019.

	2019	2018
Maximum compensation limit	\$280,000	\$275,000
Defined contribution plan maximum contribution	\$56,000	\$55,000
Defined benefit plan maximum benefit	\$225,000	\$220,000
401(k), 403(b) and 457 plan elective maximum elective deferrals	\$19,000	\$18,500
Catch-up contributions	\$6000	\$6000
SIMPLE plan elective deferrals	\$13,000	\$12,500
Catch-up contributions	\$3000	\$3000
IRA	\$6,000	\$5,500
Catch-up contributions	\$1,000	\$1,000
Highly Compensated Salary Threshold	\$125,000	\$120,000
Officer Salary Threshold	\$180,000	\$175,000
Social Security taxable wage base	\$132,900	\$128,400

Helping Hands

One of the most prevalent and difficult challenges for many twenty somethings these days is the repayment of their, often substantial, student loan debt. Statistics show that the average college graduate with a bachelor's degree left school in 2016 with \$28,446 in student loan debt. While paying off this mountain of debt is certainly a difficult task on its own, doing so and contributing toward retirement can be a seemingly insurmountable challenge. But, there's hope. A recent private letter ruling made public by the IRS in August takes aim at alleviating some of this burden for the participant while doubling as an added tax benefit to the plan sponsor.

In August, the IRS issued the private letter ruling to Abbott Laboratories which allowed its employees, who qualified for the company's 401(k) Plan, to receive a full matching contribution if they were to contribute at least 2% of their pay toward reducing their student loan debt. The IRS ruled that the contributions would be allowed even if the employees weren't contributing any portion of their pay to the plan. Abbott stated that the change to the plan responds to the financial challenges facing their young employees. The change gives free retirement money for the student loan borrower and a tax benefit for the employer.

While this is fantastic news for employees that can't afford to contribute because of student loan debt, the lingering question is "Is it legal?". After all, a private ruling does not constitute tax law and, at the moment, the letter only applies to one Chicago company. However, Abbott isn't the only employer to adopt this type of program. Financial giant, Prudential Retirement, started offering a similar program in 2016. Until the IRS issue expands guidance, employers wishing to implement student-aid based contributions should contact their TPA or legal counsel to understand any potential liability.

'Tis the season...

It's the time of year when Plan Sponsors scramble to deliver the myriad notices required to be given to their participants. Even with the help of service providers, the sheer number of notices can be overwhelming. Below is a summary of the notices that may apply to a calendar year 401k plan.

Safe Harbor Notice – December 1st marks the deadline to distribute a notice of intent to use a safe harbor formula in the 2019 plan year. This notice must be provided to participants and plan beneficiaries no less than 30 days, but not more than 90 days, before the beginning of the plan year for which the election will apply.

Qualified Default Investment Alternative (QDIA)

Annual Notice – Also due December 1st, regulations require a plan utilizing a default investment option to issue an annual notice to all active participants, former employees with account balances, and plan beneficiaries, who were previously defaulted into the QDIA and who have not subsequently directed the investment of their account. The notice must be delivered no less than 30 days prior to the beginning of the plan year.

Automatic Contribution Arrangement – If a plan offers either an eligible or qualified automatic contribution arrangement, commonly referred to as auto-enrollment, the employer must provide a notice explaining election options under the plan to all employees who are eligible to participate no less than 30 days, and no more than 90 days, prior to the beginning of each plan year.

ERISA 404(c) Disclosures – Due December 31st, the plan administrator must distribute notices to participants

and beneficiaries if the employer wants to limit fiduciary liability for participant-directed investment decisions. If the decision to be covered by 404(c) is stated in the Summary Plan Description, this notice does not need to be distributed annually.

Fee Disclosure Notice – If not provided earlier in the year, December 31st is the last day to provide plan participants with the fee disclosure information required by ERISA 404a-5. The regulations require that plan participants and their beneficiaries receive an annual notice detailing information regarding the fees associated with the plan's investments and any administrative service fees that are charged against participant accounts.

Port In A Storm

Natural disasters can cause upheaval in many aspects of victims' lives and this destruction often extends to financial matters. What should otherwise be routine compliance for plan deadlines can prove difficult in these extreme events and the government tends to grant temporary relief in such cases.

The Department of Labor announced Oct. 26th that it has published employee benefit plan compliance guidance and relief for victims of recent Hurricanes Florence and Michael. The relief includes easing of enforcement concerning the rules governing plan loans and distributions, as well as relief regarding filing the Form 5500. This is in conjunction with an earlier October 12th release by the IRS announcing it is granting relief to certain victims in areas of Florida and Georgia that suffered at the hands of these storms. To see the full IRS release and further detail on the relief extensions, visit <https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-michael-in-florida>.

Storm victims in the following counties are subject to the extensions:

Florida counties - Bay, Calhoun, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Suwannee, Taylor, Wakulla and Washington

Georgia counties - Baker, Bleckley, Burke, Calhoun, Colquitt, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Emanuel, Grady, Houston, Jefferson, Jenkins, Johnson,

Laurens, Lee, Macon, Miller, Mitchell, Pulaski, Seminole, Sumter, Terrell, Thomas, Treutlen, Turner, Wilcox, and Worth

The DOL also announced that it will not allege a violation of the blackout notice requirements solely on the basis that

a fiduciary did not make the required written determination due to Hurricane Florence or Hurricane Michael. If you were subject to these natural disasters, it's in your best interest to work with your TPA to take advantage of the possible relief offered by the DOL and IRS.

Upcoming Compliance Deadlines for Calendar-Year Plans (12/31)

December	
December 1st	Participant Notices - Annual notices due for Safe Harbor elections, Qualified Default Contributions (QDIA), and Automatic Contribution Arrangements (EACA or QACA).
December 31st	Participant Notices - Annual notices due for ERISA 404(c) and Fee Disclosure.
December 31st	Discretionary Amendments - Deadline to adopt discretionary plan amendments for calendar-year plans. If changes have been made to your retirement plan this year, the amendment documenting this change must be signed by the last day of the plan year in which it became effective.
December 31st	Required Minimum Distributions - Participants who have attained age 70 1/2, and have begun receiving distributions from their account, are required to receive a distribution each year prior to December 31st.
January 2019	
January 31st	IRS Form 945 - Deadline to file IRS Form 945 to report income tax withheld from qualified plan distributions made during the prior plan year. The deadline may be extended to February 10th if taxes were deposited on time during the prior plan year.
January 31st	IRS Form 1099-R - Deadline to distribute Form 1099-R to participants and beneficiaries who received a distribution or a deemed distribution during prior plan year. A deemed distribution can occur if a participant fails to make timely loan repayments.
January 31st	IRS Form W-2 - Deadline to distribute Form W-2, which must reflect aggregate value of employer-provided employee benefits.

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