

LEGAL UPDATES

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# IRS Offers Easier Option for Substantiating Hardship Withdrawals

On February 23, 2017, the Internal Revenue Service (IRS) issued a memorandum to its employee plan examiners setting forth substantiation requirements for 401(k) plan safe-harbor hardship distributions. The memorandum describes alternative – and less burdensome – ways that a plan administrator can demonstrate that a hardship distribution is “deemed to be on account of an immediate and heavy financial need.” This memorandum is also pertinent to employers maintaining 403(b) tax-sheltered annuities and similar types of defined contribution plans permitting hardship withdrawals.

## The New Guidance

Prior informal guidance set out the IRS position that plan administrators must retain financial information and documentation to substantiate the need for a hardship distribution. The new IRS memorandum also provides a much simpler and less burdensome way. Rather than retaining source documents, a plan administrator may retain a summary of information contained in source documents. To rely on such a summary, the employee obtaining a hardship distribution must be provided a notice containing information specified in the IRS memorandum, such as the tax consequences of a hardship distribution and the participant’s obligation to preserve source documents relating to the hardship.

All summaries must include general information about the hardship distribution, including the participant’s name, total cost of the event causing hardship, amount requested and a participant certification that the information provided is true and accurate. In addition, each summary must include basic information specific to the type of hardship distribution. For example, a summary for a hardship distribution for funeral and burial expenses must include the name of the deceased, the relationship to the

participant, date of death, and the name and address of the service provider (i.e., cemetery or funeral home).

## **What This Means to You**

Plan administrators and record keepers should revise their hardship distribution procedures to conform to the guidelines set out in the IRS memorandum. Employers should have their record keepers confirm that the guidelines in the IRS memorandum will be followed.

## **Contact Us**

For assistance in developing new procedures for the substantiation of hardship withdrawals, please contact any member of Husch Blackwell's Employee Benefits & Executive Compensation team.