

Plan Amendment Deadline Approaching for Plans That Implemented Hardship Changes in 2018 and 2019

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Retirement plan sponsors that implemented hardship distribution changes and other disaster relief in 2018 and 2019 probably have to amend their plan documents by the end of this year if they haven't done so already. We recommend that all plan sponsors determine whether they implemented any of the changes summarized below and, if so, whether they already amended their plan documents to describe those changes. In general, plan sponsors should have notified participants if or when they implemented any of these changes, or issued a formal "summary of material modifications" (SMM) to their summary plan description if amendments were already adopted, so knowing whether such notices went out might be helpful.

Background

The federal government and the Internal Revenue Service previously passed laws and regulations to make it easier for those affected by national disasters to access their retirement plan funds. [We previously issued an alert](#) on one particular change that concerned us. The Bipartisan Budget Act of 2018 enacted [three changes](#) to the hardship distributions rules:

- Repealed the previously required six-month suspension of elective deferrals after a participant received a hardship distribution
- Expanded the sources of plan assets that can be available for a hardship distribution
- Removed the requirement to take available plan loans prior to requesting a hardship

The IRS issued proposed amendments to revise the standards governing when a distribution can be made on account of hardship, and to permit hardship distributions to participants seeking to repair a primary residence, even if that repair would not otherwise qualify for a casualty loss deduction

Parting Comments

Plan Sponsors must generally update their retirement plans by December 31, 2019 (technically, by the last day of the first plan year starting on or after January 1, 2019) if they implemented any of these changes. Once you determine whether your plan requires amendments, contact your plan drafter as soon as possible.

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