

Update on the Hills

2018 Changes

The Tax Cut and Jobs Act extends the period a participant may roll over a qualified plan loan offset amount from a 401(k) or 403(b) plan account to an ineligible retirement plan that accepts the rollover until the due date (with extensions) for filing the participant's federal income tax return. This applies only to plan loan offset amounts resulting solely from the participant's separation from service or the termination of the plan. The effective date of this change is for loan offsets treated as distributions in tax years after December 31, 2017. 1099R's for loan offset amounts processed will automatically be produced with the new code M appended to the IRS Distribution Code to reflect a qualified loan offset.



The Tax Cuts and Jobs Act of 2017 and the Bipartisan Budget Act of 2018

2018 Interim Amendments

What does the 2018 Pre-Approved Defined Contribution Plan Interim Amendment cover?

The 2018 Pre-Approved Defined Contribution Plan Interim Amendment covers several changes or provides clarification to certain Plan provisions. The Interim Amendment includes amendments relating to the following:

- **Amendment relating to rollovers of Qualified Loan Offset Amounts**

Under the Tax Cuts and Jobs Act of 2017, effective after December 31, 2017, the period during which a Qualified Plan Loan Offset Amount may be contributed to the Plan as a Rollover Contribution was extended from 60 days after the date of the offset to the due date (including extensions) for filing the individual's Federal income tax return for the taxable year in which the Plan loan offset occurs. For this purpose, a Qualified Plan Loan Offset Amount is a Plan loan offset amount that is treated as distributed from a tax-qualified retirement plan described in Code §401(a) or Code §403(a), an annuity contract described in Code §403(b), or a governmental plan under Code §457(b) solely by reason of termination of the Plan or failure to meet the repayment terms of the loan because of severance from employment.

- **Amendment relating to the acceptance of rollover contributions (clarification)**

Under Revenue Procedure 2016-47, the Plan can now accept late rollover contributions from individuals who self-certify they qualify for a waiver of the 60-day rollover requirement if:

- The individual making the rollover contribution can provide an appropriate certification for the late rollover contribution, and
- The Plan Administrator does not have actual knowledge contradicting the certification.

Required Actions

The Interim Amendment has no elective choices for the employer to select, so no signature is required by adopting employers.

Instead, HPA (as prototype/volume submitter plan sponsor) only need to adopt the amendment on behalf of our clients by **December 31, 2018**. We have placed the "Adoption of Interim Amendment by Pre-Approved Plan Sponsor" which you will use to document your adoption of the 2018 Pre-Approved Defined Contribution Plan Interim Amendment in your SmartVault located at www.hillspallc.com



2018 Interim Amendment Requirements

The interim Amendment has no elective choices for the employer to select, so **no signature is required**. HPA has adopted the amendment on behalf of our clients.

Amendment relating to special disaster-related rules

The Disaster Tax Relief and Airport and Airway Extension Act of 2017, the Tax Cuts and Jobs Act of 2017, and the Bipartisan Budget Act of 2018 included special disaster-related rules allowing plans to state that the Employer may operate the Plan to provide relief from certain qualification rules relating to hardship distributions and loans for Participants who are victims of certain qualified natural disasters. The special disaster-related rules include eligibility for Qualified Disaster Distributions, repayment of Qualified Disaster Distributions, recontributions of withdrawals for home purchases and special loan rules.

When should a Pre-Approved Plan Sponsor adopt the 2018 Pre-Approved Defined Contribution Plan Interim Amendment?

A pre-approved plan sponsor should adopt the 2018 Pre-Approved Defined Contribution Plan Interim Amendment by the end of the plan year for which it applies. This means that plans using the calendar year as the plan year should adopt the 2018 Pre-Approved Defined Contribution Plan Interim Amendment by December 31, 2018. While HPA does not anticipate additional interim amendments to the pre-approved defined contribution plans for this year, please understand that future changes could necessitate another interim amendment.

Hardship Withdrawal Relief under the Bipartisan Budget Act of 2018



On February 9, 2018, the Bipartisan Budget Act of 2018 (H.R. 1892) (the “Act”) was signed into law. Among other items, the Act contains several provisions that affect Section 401(k) and 403(b) retirement plans, including changes that will relax certain rules for participant hardship withdrawals for plan years beginning on or after January 1, 2019 by:

- (1) removing the requirement that participants taking hardship withdrawals must have their retirement plan contributions suspended for six months following the withdrawal;
- (2) eliminating the requirement that participants must first take all available plan loans prior to taking a hardship withdrawal;
- (3) with respect to Section 401(k) plans and Section 403(b)(1) and 403(b)(9) plans in a noncustodial annuity arrangement¹, removing restrictions on hardship withdrawals from safe harbor contributions, qualified non-elective contributions (QNECs) and qualified matching contributions (QMACs); and
- (4) with respect to Section 401(k) plans only, removing restrictions previously applicable to any earnings on elective deferrals credited in 1989 or later.

Proposed Treasury/IRS Regulations Regarding Hardship Withdrawals

On November 9, 2018, the U.S. Department of the Treasury and the IRS issued proposed rules regarding hardship distributions to conform the IRS’s regulations and to incorporate other related changes and guidance. If adopted substantially as proposed, the IRS’s rules would provide direction on certain aspects of the Act for which plan sponsors and their service providers have been awaiting guidance. While the Proposed Regulations are generally applicable for the 2019 plan year, they allow many of the rules to be retroactively applied or not applied until the 2020 plan year. The following changes include:

- (1) On or before January 1, 2020, Section 401(k) and 403(b) plans must eliminate any six month suspension period applied to participant contributions following a hardship distribution;
- (2) Section 401(k) and 403(b) plans have the option to eliminate the requirement that a non-taxable retirement plan loan be taken prior to requesting a hardship distribution;
- (3) Section 403(b) plans are not permitted to include earnings on elective deferrals in hardship distributions;
- (4) Section 401(k) plans have the option to include earnings in the amounts available for hardship distributions;



Implementing the new rules to hardship distributions

To assist our clients, HPA has developed the attached Hardship Distribution Operational Checklist. The Checklist is intended to document employer decision with respect to the operation of its plan prior to the adoption of a plan amendment reflecting changes to the hardship distribution regulations. Most of the rules become operationally effective for the 2019 plan year. HPA will provide a 2019 interim Amendment reflecting the Proposed Regulations (or final regulations, if issued) in 2019.

- (5) *Section 401(k) and 403(b) plans have the option beginning in 2018 to include expenses due to a federally declared disaster as an added available reason under the IRS's list of safe harbor hardship withdrawal reasons (see, 26 CFR § 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations);*
- (6) *Section 401(k) and 403(b) plans will need to change their process for determining whether a distribution is necessary to satisfy a financial need beginning no later than January 1, 2020. The proposed regulations eliminate the rules permitting the determination of whether a distribution is necessary to satisfy a financial need to be based on all the relevant facts and circumstances, and replaces this with a participant certification requirement;*
- (7) *Section 401(k) and 403(b) plans have additional relief under Announcement 2017-15 (regarding hardship distributions and loans), which has been extended to similarly situated victims of Hurricanes Florence and Michael, except that the "Incident Dates" (i.e., start dates) are as specified by FEMA and the relief is available through March 15, 2019; and*
- (8) *Section 401(k) and 403(b) plans have the option for 2018 to disregard the change made to Code section 165 under the Tax Cuts and Jobs Act of 2017, which required that the loss be incurred due to a federally declared disaster. For 2019 forward, the proposed regulations eliminate this requirement for a hardship distribution.*

NEXT STEPS

Because there are alternative means of complying with and implementing the new hardship distribution rules, we encourage you to use the Hardship Distribution Operational Checklist to memorialize your operational decisions.

An adopting employer's plan amendment will need to conform to operational decisions made and the Hardship Distribution Operational Checklist will be useful for this purpose. We are providing the Checklist in Word format so that you may modify it, if desired. The Checklist also is available on the HPA website at www.hillspallc.com, Resources, Forms & Links.

Please submit the completed Form to HPA by January 15, 2019.

Hardship Distribution Operational Checklist

Here are some important points to keep in mind as you make decisions relating to the Proposed Regulations.

- 1. While the rules generally become “operationally” effective for plan years beginning on or after January 1, 2019, you may wish to delay changes to its plan’s current hardship distribution rules with respect to available sources until some later date, such as the 2020 plan year.*
- 2. A plan sponsor must carefully consider its decision to implement or not implement optional Proposed Regulation changes, especially in regard to the sources available for hardship distribution. Granting access to additional accounts may ultimately reduce the retirement savings for plan participants.*
- 3. Before a plan sponsor changes its plan rules on hardship distributions, practitioners will need to ensure that administrative systems are updated to accommodate these changes. The timing of the availability of this administrative functionality may prevent plan sponsors from immediately implementing the new rules.*
- 4. HPA’s Document vendor generally tries to draft interim amendments in a manner that avoids the need for plan sponsor-level elections. However, while our vendor plans to use “default” selections in its 2019 interim amendment, it is likely that many adopting employers will take different approaches to implementation of the Proposed Regulations.*

Therefore, you, as the plan sponsor will be documenting these changes by completing the Hardship Distribution Operational Checklist. The Hardship Distribution Operational Checklist is provided with the understanding that HPA is not providing legal, accounting or other professional advice. You should review the Checklist and related HPA communications with your legal and tax professionals.

