

## Final Regulations Issued for Hardship Distributions From Qualified Retirement Plans



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As we wrote in November 2018 (available at: <https://www.pepperlaw.com/publications/proposed-irs-regulations-for-hardship-distributions-offer-welcome-guidance-2018-11-30/>), the Treasury Department issued proposed regulations that significantly relaxed many rules governing hardship distributions from qualified plans, including eliminating requirements that employee contributions be suspended following a hardship distribution and that loans be taken before taking a hardship distribution and expanding the source of contributions available for withdrawal.

The Treasury Department published final regulations (available at: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-20511.pdf>) on September 23, 2019 that, as noted in the final regulations, “are substantially similar to the proposed regulations”

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and confirm that “plans that complied with the proposed regulations will satisfy the final regulations.” There are, however, a few noteworthy clarifications in the final regulations, including:

- Unless they have actual knowledge to the contrary, a plan administrator may continue to rely on an employee’s representation that the hardship distribution is necessary to meet a qualifying expense and that he or she has insufficient cash or other liquid assets to satisfy the qualifying expense. The final regulations also clarify that a verbal representation via telephone is an acceptable medium for receiving the employee representation if the call is recorded.
- Concerning an employee’s representation that he or she has insufficient cash or other liquid assets to satisfy the qualifying expense, the IRS clarified that standard could be met even though the employee may have available funds, provided those funds are earmarked for payment of another near-term obligation, such as rent.
- The regulations add to the list of safe-harbor hardship expenses any losses (including lost income) or expenses incurred due to a federally declared disaster if the employee’s principal residence or principal place of employment is in an area designated by FEMA as eligible for individual assistance. This is similar to the IRS’s past practice of granting relief for hardship distributions following natural disasters, and only applies to expenses and losses of an employee whose principal residence or place of employment was within the area designated for individual relief.

Although operational changes are required sooner, individually designed plans are generally not required to be amended for the final regulations until December 31, 2021. Sponsors that have adopted preapproved plans may have an earlier amendment deadline, but it will be no earlier than the latest date for the sponsor to file its corporate tax return for its 2020 tax year. The amendment deadline for section 403(b) plans is March 30, 2020; however, the IRS is considering providing for a later deadline.

While plans that complied with the proposed regulations will satisfy the final regulations, we suggest that plan sponsors review their previous actions to confirm compliance with the final regulations and address any worthwhile clarifications or additions contemplated under the final regulations.