



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR EMPLOYEE PLANS (EP) EXAMINATIONS EMPLOYEES

FROM: Thomas J. Petit /s/ *Thomas J. Petit*
Acting Director, EP Examinations

SUBJECT: Substantiation Guidelines for Safe-Harbor Hardship Distributions
from Section 403(b) Plans

This memorandum sets forth substantiation guidelines for EP Examinations employees examining whether a section 403(b) plan safe-harbor hardship distribution is “deemed to be on account of an immediate and heavy financial need” pursuant to § 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations. Section 1.403(b)-6(d)(2) of the Income Tax Regulations provides that a hardship distribution for purposes of a section 403(b) plan has the same meaning as a distribution on account of hardship under § 1.401(k)-1(d)(3) and is subject to the rules and restrictions set forth in § 1.401(k)-1(d)(3) of the Income Tax Regulations. This memorandum does not address substantiation of non-safe-harbor distributions made from a section 403(b) plan pursuant to § 1.401(k)-1(d)(3)(iii)(A) of the Income Tax Regulations.

This is not a pronouncement of law and is not subject to use, citation, or reliance as such. Nothing herein shall affect the operation of any other provision of the Internal Revenue Code, regulations, or guidance thereunder.

Background

On February 23, 2017, Employee Plans (EP) issued [Substantiation Guidelines for Safe-Harbor Distributions from Section 401\(k\) Plans](#) (the “401(k) Memorandum”) to EP Examinations employees which provided that a summary of information provided by a participant to the employer or a third-party administrator could be used to substantiate a safe-harbor hardship distribution deemed to be on account of an immediate and heavy financial need. An attachment to the 401(k) Memorandum (the “Attachment”) provided a list of information that was required for the summary of information for each of the deemed hardship events pursuant to § 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations. Additionally, the Attachment provided that the employer or third-party

administrator needed to provide certain notifications to the participant prior to making a hardship distribution.

Because § 1.403(b)-6(d)(2) of the Income Tax Regulations provides that a hardship distribution for purposes of a section 403(b) plan has the same meaning as a distribution on account of hardship under § 1.401(k)-1(d)(3) and is subject to the rules and restrictions set forth in § 1.401(k)-1(d)(3) of the Income Tax Regulations, the 401(k) Memorandum and Attachment are also applicable to hardship distributions from section 403(b) plans that are “deemed to be on account of an immediate and heavy financial need” under § 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations

Administrative Guidelines

If, during an examination of a section 403(b) plan, you are reviewing hardship distributions to determine whether they are made on account of a deemed immediate and heavy financial need, you should follow the steps set forth in the [401 Memorandum](#). If you determine that all applicable requirements in the 401(k) Memorandum are satisfied, the section 403(b) plan should be treated as satisfying the substantiation requirements for making hardship distributions deemed to be on account of an immediate and heavy financial need.

Effect on Other Documents

This guidance will be incorporated into IRM 4.72.13 by March 7, 2019.

Effective Date

This memo is effective upon the date of issuance, and should be applied to examinations open on the effective date.

For questions regarding this memo, contact Steven Shearer at (615) 250-5069.

Distribution:

<https://www.irs.gov/uac/part-4-examining-process-continued>

Attachment I

HARDSHIP SUBSTANTIATION INFORMATION AND NOTIFICATIONS FOR SUMMARY OF SOURCE DOCUMENTS

I. Notifications that the Employer/Administrator Must Provide to the Employee

- The hardship distribution is taxable and additional taxes could apply.
- The amount of the distribution cannot exceed the immediate and heavy financial need.
- Hardship distributions cannot be made from earnings on elective contributions or from QNEC or QMAC accounts, if applicable.
- The recipient agrees to preserve source documents and to make them available at any time, upon request, to the employer or administrator.

II. General Information for All Hardship Requests

- Participant's name
- Total cost of the event causing hardship (for example, total cost of medical care, total cost of funeral/burial expenses, payment needed to avoid foreclosure or eviction)
- Amount of distribution requested
- Certification by the participant that the information provided is true and accurate

III. Specific Information on Deemed Hardships

A. Medical Care

- Who incurred the medical expenses (name)?
- What is the relationship to the participant (self, spouse, dependent, or primary beneficiary under the plan)?
- What was the purpose of the medical care (not the actual condition but the general category of expense, for example, diagnosis, treatment, prevention, associated transportation, long-term care)?
- Name and address of the service provider (hospital, doctor/dentist/chiropractor/other, pharmacy)
- Amount of medical expenses not covered by insurance

B. Purchase of Principal Residence

- Will this be the participant's principal residence?
- Address of the residence
- Purchase price of the principal residence
- Types of costs and expenses covered (down-payment, closing costs and/or title fees)
- Name and address of the lender

- Date of the purchase/sale agreement
- Expected date of closing

C. Educational Payments

- Who are the educational payments for (name)?
- What is the relationship to the participant (self, spouse, child, dependent, or primary beneficiary under the plan)?
- Name and address of the educational institution
- Categories of educational payments involved (post-high school tuition, related fees, room and board)
- Period covered by the educational payments (beginning/end dates of up to 12 months)

D. Foreclosure/Eviction from Your Principal Residence

- Is this the participant's principal residence?
- Address of the residence
- Type of event (foreclosure or eviction)
- Name and address of the party that issued the foreclosure or eviction notice
- Date of the notice of foreclosure or eviction
- Due date of the payment to avoid foreclosure or eviction

E. Funeral and Burial Expenses

- Name of the deceased
- Relationship to the participant (parent, spouse, child, dependent, or primary beneficiary under the plan)
- Date of death
- Name and address of the service provider (cemetery, funeral home, etc.)

F. Repairs for Damage to Principal Residence

- Is this the participant's principal residence?
- Address of the residence that sustained damage
- Briefly describe the cause of the casualty loss (fire, flooding, type of weather-related damage, etc.), including the date of the casualty loss
- Briefly describe the repairs, including the date(s) of repair (in process or completed)