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Final Regulations Remove Longstanding Default Pension Withholding Provisions, but Delay New Form W-4P

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The Tax Cuts and Jobs Act of 2017 amended long-standing periodic pension default withholding where a Form W-4P (or its substitute) is not received from the payee. Effective January 1, 2018, the Act replaced the “married with three exemptions” default provision under Code section 3405(a)(4) with “under rules prescribed by the Secretary.”

Proposed regulations issued early this year take a similar position and replace the married with three exemption references in the regulations (Q&As a-10, b-3, and b-4 in Treas. Reg. § 35.3405-1T) with “determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner.” (85 Fed. Reg. 31714 (May 27, 2020)). The proposed regulations also updated the provisions for when the Form W-4P becomes effective, to be aligned with the Form W-4 process and the applicable IRS guidance (see Publication 505, generally effective 30 days after it is submitted). These changes are effective for payments made after December 31, 2020.

The [final regulations, released on September 28](#), adopt the proposed regulations, with no changes (85 Fed. Reg. 61813 (Oct. 1, 2020)). Two commentators requested a flat 10% withholding for periodic payments, while the IRS indicated that the comments remain under consideration for when the IRS forms and other guidance are issued to set the default rate. However, such an approach may be difficult in light of the statute treating the periodic payments as wages, and the initial draft of the 2021 Form W-4P (which will be revised) used “single with no adjustments” as the default withholding.

IRS Notice 2020-3, issued earlier this year, indicated that the 2021 Form W-4P may undergo major revisions consistent with the Form W-4, and the married with three exemptions default may no longer apply. A draft 2021 Form W-4P was released in July that includes such major revisions. However, the [IRS announced](#) that this draft form will not be used for 2021; instead, a form similar to the 2020 Form W-4P will be used for 2021, including retaining married with three withholding allowances as the default.

This is good news for plan sponsors and recordkeepers, as it gives sufficient time to implement and communicate any major withholding changes to plan participants in the future, and does not impose new rules or require additional systems programming

during the pandemic. And pensioners will still be able to use the [W-4 estimator](#) to help adjust their pension withholding rate to the desired level.

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