

Publications

View from Groom: 401(k)/403(b) Hardship Substantiation Made Easier for Plan Sponsors and Recordkeepers

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Historically, making sure that the plan sponsor (or the recordkeeper) obtained sufficient documentation from a participant to support an in-service distribution of 401(k) and 403(b) amounts was no easy task, for the participant or the plan sponsor. Maintaining these voluminous plan records in the event of an IRS audit was also not a welcomed endeavor, but an important one as failure to demonstrate an immediate and heavy financial need raises plan qualification concerns (and potential IRS sanctions on audit if the documentation is incomplete or insufficient).

To address these concerns, the IRS recently modified Internal Revenue Manual, IRM 4.72.2 and 4.72.13, to set forth two permissible methods to document a “safe harbor” hardship distribution. These two methods are described below, effective as of February 23, 2017 for 401(k) plans and March 7, 2017 for 403(b) plans (including IRS audits that are open as of such dates). One method preserves the traditional source document review and retention, while the other embraces a stream-lined approach using a combination of participant notice, obtaining a summary document, and having the participant retain the underlying source documents. Please see the attached article for further information.