

ADMINISTERING HARDSHIP WITHDRAWALS

Items for Consideration



PLAN PROVISIONS

The plan document will indicate whether hardship withdrawals are allowed, the frequency and the minimum amount that can be withdrawn. The plan document should also indicate whether the safe harbor or facts and circumstances tests are used for the reason for the hardship and for proving the participant has no other means to satisfy the hardship.

- Does your plan document allow for hardship withdrawals?
- What are the restrictions on those withdrawals, if any, in terms of timing or amount?
- Does your plan use the safe harbor or facts and circumstances test for determining the reason a participant can request a hardship?
- Does your plan use the safe harbor or facts and circumstances test for determining the amount that can be withdrawn?

FACTS AND CIRCUMSTANCES TESTING

If your plan uses facts and circumstances testing, then someone must evaluate each request, review the available information and make a determination. It would be best practice to record the decisions to ensure that two participants with the same basic request are treated the same way, even if the two requests occur months or years apart.

- Who reviews requests?
- What is the process used to review such a request?
- Is the process in writing?
- Is there a library of prior decisions that can be used for reference?

DOCUMENTATION SUPPORTING THE REQUEST

Regardless of which testing method is used to determine if a hardship exists, documentation should be maintained proving the participant had a valid reason and was requesting a reasonable amount.

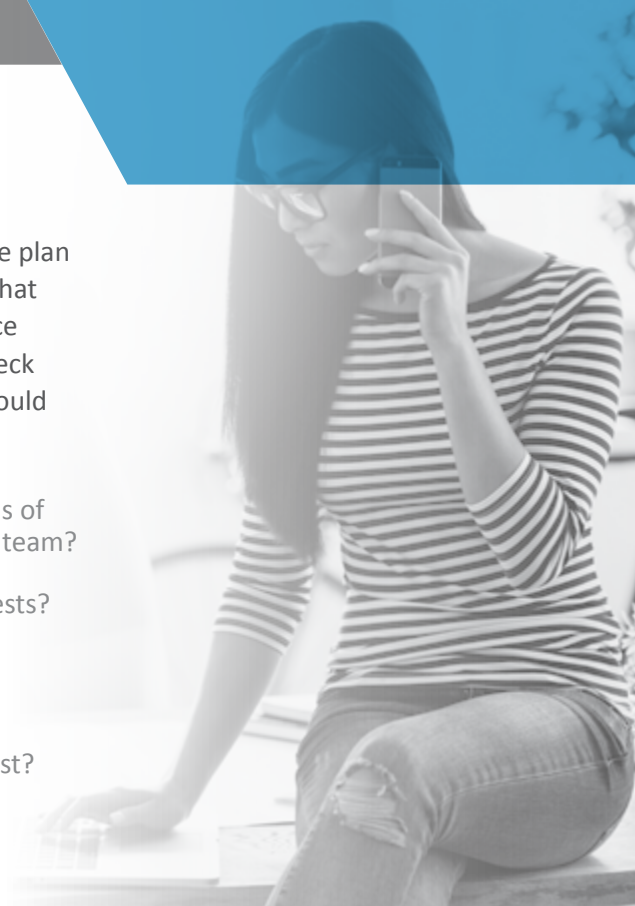
- Is documentation of a hardship asked for from the participant?
- Who is asking for that documentation?
- Who retains the records for future use in the event of an audit?
- If the records are maintained by a member of your service provider team, will you be able to access the records at a later date if needed?

Please see the final page of this document for important information about suggested use.

APPROVAL OR DENIAL

Someone must ensure that the hardship request falls within the terms of the plan document, that proper supporting documentation has been provided, and that the facts and circumstances evaluation, if needed, has been completed. Once everything is in order, the hardship should be formally approved and the check issued to the participant. If the hardship is denied, some communication should be made to the participant denying the request.

- Who is responsible for ensuring that the request falls within the terms of the plan document, you or another member of your service provider team?
- Who is responsible for officially approving hardship withdrawal requests?
- Is there a formal process that must be followed prior to approval being given?
- Who is responsible for officially denying a hardship withdrawal request?
- How is such a denial communicated to the participant?



SUSPENSIONS AND LOANS

If your plan uses the safe harbor test to determine if the participant has the means to otherwise satisfy the hardship, the safe harbor test requires you do two things: suspend 401(k) deferrals for a period of time and force the participant to take a loan first, in most circumstances. The plan document will tell you the period for which 401(k) deferrals are suspended. It may also tell you if 401(k) deferrals are supposed to restart automatically once the suspension period is over or if the participant has to take action to restart their deferrals.

- Who is responsible for ensuring participants take all available plan loans prior to taking a hardship withdrawal?
- Who is responsible to determine when 401(k) deferrals must be suspended?
- If your plan automatically restarts deferrals, who monitors when deferrals must be restarted to notify the payroll department?
- If your plan requires the participant to take action to restart their deferrals, who notifies the participant when it is time for them to take action and what action is required?

LIABILITY

Issuing money improperly to a participant can cause unpleasant tax consequences for the participant as well as penalties for you. It's even possible that your organization might have to make the participant's account whole if you give out a hardship incorrectly and the participant can't repay.

- Who is liable for overseeing the hardship withdrawal process?
- Who is liable for ensuring that facts and circumstances decisions are made and made timely?
- Who is liable if proper documentation is not provided?
- Who is liable if deferrals aren't suspended or loans aren't taken first in safe harbor situations?
- Who is liable if an incorrect or improper amount is given to the participant?

Please see the final page of this document for important information about suggested use.

IMPORTANT INFORMATION ABOUT USING THIS DOCUMENT

The answers to the questions in this questionnaire could, and very well might be, used against you in a DOL audit or a lawsuit. **We do NOT recommend that you complete and retain this questionnaire without first reviewing the answers with ERISA legal counsel.** The intention is to provide you with questions to discuss internally rather than to create a paper trail that can be used against you.

Depending on your particular situation, there may be other items you should consider. Larger entities will have plan document issues with regard to mergers and acquisitions which are not covered by this questionnaire. There may be administrative policies that exist outside of the plan documents that help govern how the plan works that are not addressed here. This questionnaire is not intended to be exhaustive.