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Torrillo & Associates Benefit Plan Audit Specialists

It’s Up to Plan Sponsors to Track Loans, Hardship Distributions

Recently, the IRS posted guidance for Plan sponsors on loans and hardship distributions.

Even if you use a third party administrator (TPA) to handle participant transactions, you're still ultimately responsible for the proper administration of your retirement plan. Make sure you're keeping up with the recordkeeping requirements.

Keep documentation for hardship distributions

The plan sponsor must obtain and keep hardship distribution records. Failure to have these records available for examination is a qualification failure that should be corrected using the Employee Plans Compliance Resolution System (EPCRS).

The plan sponsor should retain these records in paper or electronic format:

1. Documentation of the hardship request, review and approval;

2. Financial information and documentation that substantiates the employee's immediate and heavy financial need;

3. Documentation to support that the hardship distribution was properly made in accordance with the applicable plan provisions and the Internal Revenue Code; and

4. Proof of the actual distribution made and related Forms 1099-R.

It's not sufficient for plan participants to keep their own records of hardship distributions. Participants may leave employment or fail to keep copies of hardship documentation, making their records inaccessible in an IRS audit.

Also, electronic self-certification is not sufficient documentation of the nature of a participant's hardship. IRS audits show that some TPAs allow participants to electronically self-certify that they satisfy the criteria to receive a hardship distribution. While self-certification is permitted to show that a distribution was the sole way to alleviate a hardship, self-certification is not allowed to show the nature of a hardship. (See Treasury Regulation Sections 1.401(k)-1(d)(3)(iv)(C) and (D)). You must request and retain additional documentation to show the nature of the hardship.

Keep documentation on plan loans A plan sponsor should retain these records, in paper or electronic format, for each plan loan granted to a participant:

1. Evidence of the loan application, review and approval process;

2. An executed plan loan note;

3. If applicable, documentation verifying that the loan proceeds were used to purchase or construct a primary residence;

4. Evidence of loan repayments; and

5. Evidence of collection activities associated with loans in default and the related Forms 1099-R, if applicable.

If a participant requests a loan with a repayment period in excess of five years for the purpose of purchasing or constructing a primary residence, the plan sponsor must obtain documentation of the home purchase before the loan is approved. IRS audits have found that some plan administrators impermissibly allowed participants to selfcertify their eligibility for these loans.

Additional resources

http://www.irs.gov/pub/irs-tege/epn_2015_4.pdf

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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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