



Spencer Walters and Ben Grosz quoted in recent PlanSponsor article "Plan Distribution Options Can Help Participants Recover From Disasters Like Debby"

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August 20, 2024

Ben Grosz, a tax and ERISA attorney at Ivins, Philips & Barker, adds that even though the special disaster distributions could be legally added to plans after Congress passed SECURE 2.0 in December 2022, recordkeepers were slow to make this plan design option available. As a result, Grosz says it has taken plan sponsors more than a year before they have been able to offer the provision in their plans.

Grosz says Fidelity is one example of a recordkeeper that has rolled the provision out in recent months and made it available for plans with which it works. Spencer Walters, a partner in Ivins, Philips & Barker, says if a plan sponsor wants to add this provision, it needs to find out what its recordkeeper is able to provide, as some have rolled it out and other are still in the process of doing so.

Walters says plan sponsors also should consider the fact that adding the special distribution provision is likely going to be permanent.

"If you do add [the provision], the IRS hasn't said you can take it away," says Walters. "Ordinarily, when you add a distribution like this to your plan, it's there forever. So as an employer, you have to plan for that accordingly, [as] it would become a protected benefit for participants that you wouldn't be able to take away."

Additionally, Walters says employers may want to update their communications and summary plan descriptions for participants to add language specifying the availability of this provision.



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"Even if you're not offering it, your participants would want to know that they, individually, could get the tax benefit of this type of provision," Walters says.

Walters says the new disaster relief distribution and loan rules under SECURE 2.0 are meant to provide more simplicity and flexibility to participants who need to tap into their retirement savings.

"I think this is part of a broader trend of getting the balance right for 401(k) plans so that people are encouraged to contribute to their retirement savings, knowing that if an emergency arises and they need access to the money, they can get access [to it]," he says. "In the past, that's been a difficult thing for policymakers to balance, but this is a little bit more reassuring to participants."