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Hardship Distributions Made Easier

Some employers who sponsor 401(k) or 403(b) retirement plans have provisions in their plan documents that allow participants to make withdrawals from their retirement plan accounts. One type of withdrawal is called a hardship distribution and is intended to be available to participants, under certain conditions, to help them manage a financial difficulty. The IRS issued final regulations on September 19, 2019 for employers to follow when reviewing participants' hardship distribution requests.

Hardship distribution overview and the new rules

Retirement plan participants generally are prohibited from taking plan distributions unless certain events occur—such as separation from service or attainment of age 59½. However, employers are permitted to design retirement plans to allow participants experiencing certain financial difficulties to take hardship distributions.

Before receiving a hardship distribution, a participant traditionally must meet two conditions. First, the participant must have an "immediate and heavy financial need." Second, the distribution must be necessary to satisfy that financial need.

The new rules are meant to make the hardship request and review process easier for employers and plan participants by:

- Broadening the money sources that can be used to fund hardship deferrals
- Not requiring that a participant take out a plan loan before applying for a hardship distribution

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We're Becoming FuturePlan by Ascensus

In 2017, Ascensus began expanding its TPA line of business by acquiring quality-focused local TPA firms from coast to coast. As a result of this expansion, we now have more than 1,300 associates serving more than 47,000 plans under the name FuturePlan.

Because we've been mindfully merging new firms into our company to help ensure ongoing quality and smooth service for clients and advisors, the FuturePlan name is being rolled out gradually. You'll continue to see our new name appear more frequently and in more places – in some cases alongside the name of the TPA firm that's been servicing your retirement plan.

We'll share updates about additional changes as they're planned and look forward to continuing to help you achieve your retirement goals for years to come.

For more information about FuturePlan, visit futureplan.com.



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- Eliminating the previous six month suspension of employee elective deferrals after taking a hardship distribution

Timing considerations: Applicability of new regulations, amendment deadlines, and notice requirements

If your retirement plan has historically included hardship distributions in its plan document or you plan to amend your plan to start including them, you should become familiar with the final regulations' requirements and the need for future amendments.

Applicability of new regulations

The new hardship distribution rules apply to distributions taken on or after January 1, 2020, but employers may choose to apply the rules to distributions taken in plan years beginning after December 31, 2018.

The regulations *allow* employers to stop the 6-month suspension of employee contributions following hardship distributions taken in plan years after December 31, 2018. Employers had the option to apply this rule as of the first day of the first plan year beginning after December 31, 2018, even if the hardship distribution was taken in the prior plan year (e.g., in October 2018.) This suspension of employee deferrals **must** stop for distributions taken on or after January 1, 2020.

The final regulations also allow for the expansion of 401(k) money sources to fund hardship distributions to include Qualified Non-Elective Contributions (QNECs), Qualified Matching contributions (QMACs), employer Safe Harbor contributions, and earnings on all of these amounts.

The new rules relating to hardship distributions also apply to 403(b) plans. However:

- Earnings on 403(b) elective deferrals continue to be ineligible for hardship distribution.
- QNECs, QMACS and other employer contributions continue to be unavailable in 403(b)(7) custodial accounts.

Amendment deadlines

Employers will have to amend their plans to reflect the new hardship rules.

- **Preapproved Plans:** The deadline for hardship amendments for preapproved qualified retirement plans (e.g., 401(k) plans) is the tax return due date (including extensions) of the tax year within which the hardship rules are required to be effective for the plan.
- **Individually designed plans (IDPs):** The amendment deadline for IDPs is December 31 of the second year following the year that the IRS includes the hardship regulations in its Required Amendment List. We expect that list to be released in 2019, and so the deadline would be December 31, 2021.
- **403(b) plans:** The amendment deadline for nongovernmental preapproved plans is the end of the calendar year after the calendar year in which the change in requirements is effective with respect to a plan (December 31, 2021 for hardship distribution amendment purposes).

Based on ongoing discussions with the IRS, industry groups are optimistic it will adopt a common amendment deadline for all retirement plans—one that is later than the current preapproved plan deadline—which will make complying with the process easier. We'll monitor developments and provide updates accordingly.

Notice requirements

The final regulations indicate that employers with ADP and/or ACP safe harbor plans must provide safe harbor notices that contain the hardship withdrawal provisions. If an employer's current notice doesn't contain the new provisions, then the employer may need to provide an updated notice to eligible participants and provide participants with an opportunity to change their deferral election.

Hardship regulations: What they mean for participants

The final hardship regulations don't generally change how employers determine whether participants have an immediate and heavy financial need.

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The final regulations do change how employers determine if a distribution is necessary to satisfy the financial need. Now, employers must follow a three-part standard when determining if a participant has met this requirement:

1. The proposed hardship distribution is not in excess of the need.
2. Before taking the hardship distribution, the retirement plan participant must have obtained other available distributions.
3. The retirement plan participant must represent that (s)he has insufficient cash of other liquid assets “reasonably available” to satisfy the financial need.

“Immediate and heavy financial need” safe harbor provisions

The final regulations make the following changes to the “immediate and heavy financial need” safe harbor provisions.

Federal disaster declarations

The final regulations add a new hardship distribution category or “expenses and losses—including loss of income—incurred by the employee” in FEMA-declared disasters. Employers may apply this safe harbor to distributions taken on or after January 1, 2018. According to the IRS, this safe harbor expense differs from its previous disaster relief in three ways:

1. The disaster category applies only to the participant’s losses and expenses (not to the losses and expenses of the participant’s relatives or dependents).
2. Participants don’t have a specific deadline by which to take a hardship distribution.
3. Although the IRS doesn’t have the authority to relax certain procedural requirements, employers may be more flexible when processing hardship distributions following a disaster. An employer that chooses to wait until a disaster occurs to allow disaster-related distributions must generally amend its plan by the end of the plan year in which the amendment first applies.

This additional “disaster” category is meant to end any uncertainty about accessing plan assets following a major disaster. As a result, the IRS and Treasury Department don’t believe that future disaster-related announcements will be needed.

Repairing damage to principal residence

The Tax Cuts and Jobs Act of 2017 (TCJA) eliminated an income tax deduction for certain personal casualty losses for tax years 2018 through 2025 unless the losses were part of a federally declared disaster. As a result, the availability of the safe harbor for repairing “casualty” damage to a principal residence was severely limited. The final regulations remove the limitation imposed by TCJA for hardship distribution purposes—such that the “disaster” limitation no longer applies, thereby restoring the broad usefulness of this safe harbor.

Primary beneficiary safe harbor

This change aligns the regulations with an earlier law change that—plan permitting—includes the hardship of an employee’s primary beneficiary for medical, educational, or funeral expenses.

Determining if a distribution is necessary to satisfy a financial need – New general standard established

The final regulations create a general standard for determining whether a hardship distribution is necessary to satisfy a financial need. Under this new standard, a hardship distribution must not exceed a participant’s need (including amounts to pay penalties and federal, state, or local income taxes), and the participant must not have any other way of meeting that need. To show no other means are available to meet the financial need, the participant must:

1. take all other available distributions, but not necessarily loans, from the plan and from all deferred compensation plans of the employer, and
2. represent that they have insufficient funds “reasonably available” to satisfy the financial need.

Furthermore, the plan administrator cannot have actual knowledge that the participant’s representation is false.

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The final regulations clarify that a participant can represent that she has insufficient funds even if they do have cash or other assets on hand—as long as they’re planning to use those assets on other future expenses (e.g., rent). The final regulations also clarify that, in addition to a written representation, a participant can make a verbal representation through a recorded phone call.

In addition, the employer may, at its option, impose additional operational requirements to process a hardship distribution, such as setting a non-discriminatory minimum dollar amount.

When determining if a participant has an immediate and heavy financial need, the final regulations clarify that employers may make available some, but not all, of the safe harbor expenses. The regulations also make clear that employers don’t need to include all categories of individuals (e.g., primary beneficiaries) when determining who has a safe harbor expense.

Next steps

Now that the final regulations have been released, employers should become familiar with the revised hardship requirements and expect future amendments and related participant notices during the middle of the 2020 calendar year. Please contact your plan consultant with questions about the new hardship requirements and how they apply to your plan. ■

Reminder: Cost-of-Living Adjusted (COLA) Plan Limits for 2020

On November 6, 2019, the IRS followed its established fourth quarter practice and announced the contribution and benefit limits for qualified plans and related retirement arrangements effective in 2020. This announcement was documented as IRS Notice 2019-59.

The new 2020 limits provide opportunities for both retirement plan sponsors and their employees. The 2020 cost-of-living adjusted limits are as follows.

2020 Cost-Of-Living Adjustments for Qualified Plans and Related Arrangements

	2020	2019
Employee Deferral Limit 401(k)/403(b)/457 Plans	\$19,500	\$19,000
Catch-up (age 50+) Deferral 401(k)/403(b)/457 Plans	\$6,500	\$6,000
Defined Contribution Maximum Annual Additions	\$57,000	\$56,000
Defined Benefit Maximum Annual Benefit	\$230,000	\$225,000
Maximum Compensation-Qualified Retirement Plans	\$285,000	\$280,000
Definition of Highly Compensated Employees (HCEs)	\$130,000	\$125,000
FICA Taxable Wage Base (TWB)	\$137,700	\$132,900
SEP Minimum Compensation	\$600	\$600
SIMPLE Retirement Accounts Deferral Limit	\$13,500	\$13,000
Catch-up Deferral Limit for SIMPLE Accounts	\$3,000	\$3,000
Key Employee/Officer Compensation Threshold	\$185,000	\$180,000
Traditional IRA Contribution Limit	\$6,000	\$6,000
Qualified Longevity Annuity Contract (QLAC)	\$135,000	\$130,000
ESOP amount to determine lengthening of the 5-year Distribution Period ¹	\$230,000	\$225,000
ESOP Maximum Balance Subject to the 5-year Distribution Rule ²	\$1,150,000	\$1,130,000

¹ The dollar amount used to determine the lengthening of the 5-year distribution period is increased from \$225,000 to \$230,000.

² 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from \$1,130,000 to \$1,150,000.

Additional helpful information

- The term “annual additions” generally means the sum for any year of employer contributions, employee contributions, and forfeitures.
- For plans that include salary deferral features, individuals who are age 50 and older by the end of the calendar year may make catch-up contributions in addition to the annual addition limit (if catch-up contributions are permitted under the plan).

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Notes for off-calendar plan years

- Deferral limits are on a calendar year basis, regardless of plan year.
- Use the taxable wage base (TWB) in effect at the beginning of the plan year.
- Use the annual compensation limit in effect at the beginning of the plan year.
- Use the annual additions limit in effect at the end of the plan year.

Please contact your plan consultant with questions about how the 2020 COLA limits relate to your plan. ■

Compliance Reminders 1Q2020

The following list highlights some important compliance dates for retirement plan administrators. The deadlines cited below relate to calendar year plans, unless otherwise specified. Please contact your consultant with questions about compliance dates for *your* plan.

January 2020

January 15

Minimum funding requirements for defined benefit, money purchase, and target benefit plan years ended April 30, 2019 must be met by January 15 in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

Minimum funding requirement for 2019 fourth quarter contribution installment payment (if funding shortfall for the prior year).

Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed January 15, 2020.

Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ended March 31, 2019.

January 31

Form 1099 – Forms are due to plan participants to report 2019 distributions.

Form 945 – Deadline to IRS to report federal income tax withholding from plan distributions (if taxes are due).

Form 5500 Series/8955-SSA – Forms are due for the plan year ended June 30, 2019 that aren't on extension.

February 2020

February 10

Form 945 – Deadline to IRS to report federal income tax withholding from plan distributions (if taxes were paid timely).

February 14

Participant Statements are due 45 days after end of the quarter.

February 17

Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed February 17, 2020.

Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending April 30, 2019.

February 29

Form 5500 Series/8955-SSA – Forms are due for the plan year ending July 31, 2019 that aren't on extension.

March 2020

March 15

Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended June 30, 2019 must be met by March 15 to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

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Calendar year 401(k) plans must process corrective distributions for failed nondiscrimination tests to avoid a 10% excise tax. (Certain automatic enrollment plans have until June 30.)

March 16

Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed March 16, 2020.

Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending May 31, 2019.

March 30

Employee Stock Ownership (“ESOP”) eligible participants should return “diversification” forms so elections can be processed prior to the June deadline.

March 31

Deadline for the pension plan’s enrolled actuary to prepare the funding adequacy related **AFTAP calculation** to avoid a presumed 10% funding adjustment.

Form 5500 Series/8955-SSA – Forms are due for the plan year ending August 31, 2019 that aren’t on extension. Deadline to restate/sign your **Section 403(b) pre-approved retirement plan document**.

April 2020

April 1

Initial required minimum distribution (RMD) for those terminated participants or 5% owners who have attained age 70½ or older during 2019. ■

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Our Legacy of Leadership

Each of these leading TPA firms became part of FuturePlan by Ascensus so that we can deliver unmatched levels of service, innovation, and expertise to an ever-growing client base from coast to coast. By joining forces, we've become the nation's largest retirement TPA while preserving the strength and warmth of our local relationships.



Employers

 tpa.ascensus.com

Sales

 FuturePlan
by Ascensus

 futureplan.com

 sales@futureplan.com

 866-929-2525

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