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Changes to Hardship Distribution Rules Take Full Effect in 2020

Fiduciaries of 401(k) or 403(b) plans that permit employees to obtain hardship distributions should confirm that plan operations comply with the new final regulations for hardship distributions. Under the new rules, which generally make it easier for employees to obtain hardship distributions, 401(k) and 403(b) plans offering hardship distributions must implement certain operational changes by January 1, 2020. The regulations also introduced optional changes that could be implemented in 2019 or 2020. According to newly issued guidance under IRS Revenue Procedures 2019-39 and 2020-9, plan sponsors will generally need to amend the plans' hardship distribution provisions by December 31, 2021. This deadline applies to mandatory changes and optional changes and to individually designed and pre-approved plans.

The following summarizes the optional and mandatory operational changes to hardship distributions that became effective in 2019 and 2020:

	Changes in 2019	Changes in 2020
Eligible Expenses	In addition to the previously eligible expenses, any or all of the following may be considered eligible expenses: • Expenses and losses (including loss of income) incurred by an employee on account of a federally declared disaster if the employee's principal residence or principal place of employment was in the designated disaster area at the time of the disaster. • Cost of repairing an employee's principal residence that qualifies as a casualty deduction (regardless of a federal disaster).[1] • Qualifying medical, educational, and funeral expenses of a primary beneficiary. (Similar expenses for the employee, spouse, dependents, and certain family members already were and continue to be eligible expenses.)	(Same as 2019)

[1] Under the Bipartisan Budget Act of 2018, it appeared that casualty losses would be eligible for hardship distributions only if they were in a federal disaster area, but the November 14, 2018 Treasury regulations clarified that this is not the case.

	Changes in 2019	Changes in 2020
Method of Establishing Necessity	Plans must: • Determine whether a hardship distribution is necessary based on the facts and circumstances, or • Require participants to make a written or recorded representation of necessity.	Plans must require participants to make a written or recorded representation of necessity.
Exhaustion of Loans	Plans may require participants to exhaust loans available under the plan and other plans maintained by the employer.	(Same as 2019)
Suspension of Elective Deferrals	Plans may suspend a participant's elective deferrals for 6 months after a hardship distribution. Plans may lift suspensions that began in 2018.	Plans other than 409A plans must not suspend a participant's elective deferrals after a hardship distribution. Plans may lift suspensions that began in 2019.
Sources of Hardship Distributions	• 401(k) plans may permit hardship distributions to be made from any or all of the following sources: elective deferrals, qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), safe harbor contributions, and related earnings. • 403(b) plans may permit hardship distributions from any or all of the same sources as 401(k) plans other than QNECs, QMACs, and safe harbor contributions in a custodial account (and related earnings) and earnings on elective deferrals.	(Same as 2019)