



January 15, 2020

New Hardship Withdrawal Rules

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On February 9, 2018, Congress passed the Bipartisan Budget Act of 2018 (BBA 2018). The primary impact on 401(k) plans is that the rules governing hardship withdrawals have been relaxed in three significant ways:

1. Hardship withdrawals can now be taken from earnings on deferrals as well as QNEC, QMAC and safe harbor sources;
2. The requirement to take a 401(k) loan prior to taking a hardship withdrawal is removed; and
3. The 6-month deferral suspension requirement is removed.

We initially described the impact of BBA 2018 in our [Legislative Updates](#) article from April 13, 2018. However, the U.S. Department of the Treasury and the Internal Revenue Service did not issue final regulations until September 23, 2019. They had a few items to “clean-up” due to the language in BBA 2018 and the Tax Cuts and Jobs Act of 2017. It wasn’t until the final regulations were released that plan document providers could begin to determine how to create amendments to incorporate these changes.

Plan document providers (like Benchmark RPS) have been given until the plan sponsor’s tax return due date for the tax year that includes January 1, 2020, to amend the plan documents to incorporate these changes. In other words, for our clients that file their taxes based on the calendar year, the deadline for amending the plan document may be as late as October 15, 2021.

The plan document amendment language has been approved and we did not want to delay amending the plans of our affected clients. We have prepared amendments that will be released to our secure web portal on January 17, 2020. We have made elections in these amendments that are appropriate and consistent with the plan’s prior hardship provisions. There are six items contained in the amendment as outlined below:

1. **Deferral Earnings** – No election is required. This item changes the language in the plan that permits employees to take hardship withdrawals from earnings in the employee deferral account.
2. **Safe Harbor Contributions/QNECs/QMACs** – There will be no election for plans that permit hardship withdrawals from employer contribution sources. If the plan does not permit hardship withdrawals from employer contributions the second election will be checked to continue disallowing hardship withdrawals from these sources.
3. **Amount Necessary to Satisfy Need Requirement** - No election is required. This clarifies the “Needs” test for determining whether or not an employee qualifies to take a hardship withdrawal.
4. **Six-Month Suspension** – No election is required. This item changes the language in the plan to eliminate the six-month salary deferral suspension that was previously required for employees that had taken hardship withdrawals.
5. **Loan Requirement** – No election is required. This item changes the language in the plan to eliminate the requirement that employees take 401(k) loans prior to taking hardship withdrawals.
6. **Safe Harbor Financial Needs** - No election is required. This expands the language in the plan document to state that when a hardship withdrawal is taken to repair damage to a home from a natural disaster, it does not need to be a federally-declared disaster.

The plan document amendment package will contain a consent page, the plan amendment, and a Summary of Material Modifications (SMM). We will provide additional information and instructions via email when this documentation is released. We urge all of our clients and their advisors to contact us if there are any questions or concerns regarding this or any other retirement plan topic.