



Hardship Withdrawals

A hardship withdrawal is considered an in-service distribution from a retirement plan. The plan must allow for the distribution and the plan document will indicate the sources of contributions (employer and/or employee contributions) available. The plan document will also indicate if the 'safe harbor' definition of hardship is used or if the plan administrator determines if a request qualifies as a hardship. Nearly all plans follow the IRS safe harbor definition.

The Safe Harbor Definition is as follows:

- Expenses for medical care as defined under Section 213(d);
- Costs directly related to the purchase of a principal residence for the employee;
- Qualified Education Expenses as defined under IRC Regulation Section 1.401(k)-1;
- Payments necessary to prevent eviction or foreclosure from the Employee's principal residence;
- Payment for burial or funeral expenses of the Employee's Deceased parents, spouse, children or dependents;
- Expenses for the repair of damage to the Employee's principal residence as defined under Code Section 155.

Various regulations also limit the availability of hardship withdrawals as noted below:

1. Mutual funds do not allow for a hardship distribution of employer funds. Only employee elective deferrals are available for hardship distributions, if allowed by the plan.
2. Hardship distributions from annuities changed effective 1-1-2009. For contracts ISSUED prior to 2009, both employer and employee contributions are available for hardship distribution, if allowed by the plan.
3. For contracts issued ON OR AFTER 1-1-2009, the language changed (the word hardship was removed from the regulation) but remains general enough to be interpreted as allowing hardship distributions. For accumulations held in an annuity, a hardship distribution is generally available from both employee and employer contributions if allowed by the plan.
4. If annuity accumulations are moved from an annuity to a mutual fund, the mutual fund regulations apply. If transferred back to an annuity, it does not regain annuity status for a hardship withdrawal.

The Bipartisan Budget Act of 2018 also impacted the administration of hardship distributions in 401(k) and 403(b) plans that use the safe harbor definition noted above. Prior to 2019, a hardship withdrawal required use of any loan options prior to a hardship withdrawal. In this case, only employee contributions are available.

Additionally, a hardship withdrawal required suspension of employee elective deferrals for 6 months. Both of these requirements were removed and any suspension in place as of 1-1-2019 could be terminated.

Lastly, the act also allows for access to earnings in a 401(k) plan at some date (to be determined) in 2019. Prior to this change, only contributions (no earnings) were available for hardship distributions. Earnings continue to be restricted for hardship withdrawals from a 403(b) Plan.

Note that any hardship withdrawal is subject to taxation and if taken before age 59 ½ will also be subject to a 10% tax penalty. Participants making a withdrawal are encouraged to seek the advice of a tax professional.