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Using DGEM to Create Hardship Distribution Interim Amendments

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Plan Amendments for Hardship Distribution Regulations

- IRS issued final hardship distribution regulations on September 23, 2019 (See ASC Alert 19-02)
- The regulations require that plans be amended to reflect the regulations
- Pre-approved plans must adopt a hardship distribution interim amendment
- Revenue Procedure 2020-9 extends the interim amendment deadline to December 31, 2021 (See ASC Alert 19-03)
- ASC released the Hardship Distribution Interim Amendment package in DGEM in December 2019 (See December DGEM Update)



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What Does the Hardship Distribution Interim Amendment Cover?

- The Hardship Distribution Interim Amendment covers changes made by the final hardship distribution regulations. Among the changes are:
 - Deemed (safe harbor) list of hardship expenses
 - Adds “primary beneficiary under the plan” as an individual for whom qualifying medical, educational, and funeral expenses may be incurred
 - Modifies the expense listed in Treas. Reg. §1.401(k)-1(d)(3)(iii)(B)(6) relating to damage to a principal residence that would qualify for a casualty deduction under Code §165
 - Adds a new type of expense to the deemed list, relating to expenses incurred as a result of certain disasters



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What Does the Hardship Distribution Interim Amendment Cover?

- The Hardship Distribution Interim Amendment covers changes made by the final hardship distribution regulations. Among the changes are:
 - Revised requirements for showing that a hardship distribution is necessary to satisfy the financial need, including:
 - Eliminating the requirement to suspend elective deferrals and after-tax contributions after receiving a hardship distribution;
 - Making optional the condition to obtain plan loans before receiving a hardship distribution; and
 - Establishing one general standard for establishing the financial need.
 - Adding to the permissible amounts available for hardship distributions, including QNEC accounts, QMACs accounts, safe harbor contributions accounts (plus earnings), regardless of when contributed or earned
 - Relief provisions for victims of Hurricanes Michael and Florence



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What Documents Are Included in the Plan Provider Package?

- Plan Provider Package is on the DGEM Download page
 - *2 Plan Documents > Interim Plan Amendments > Hardship Distribution Interim Amendments*
- Plan Provider Q&A
- Adoption of Pre-Approved Defined Contribution Plan Hardship Distribution Interim Amendment by Pre-Approved Plan Provider
- Hardship Distribution Interim Amendment
- Sample letter for adopting Employers
- Adoption of Pre-Approved Defined Contribution Plan Hardship Distribution Interim Amendment by Pre-Approved Plan Provider (Owners Only)
- Hardship Distribution Interim Amendment (Owners Only)
- Sample letter for adopting Employers (Owners Only)

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How is the Hardship Distribution Interim Amendment Structured?

- The Hardship Distribution Interim Amendment is the same for:
 - ASC Defined Contribution Volume Submitter Plan
 - ASC Defined Contribution Prototype Plan
 - ASC Governmental Defined Contribution Volume Submitter Plan
- The Hardship Distribution Interim Amendment includes revisions to the ASC Defined Contribution basic plan documents (BPDs) as well as separate elective provisions
 - The BPD revisions are contained in Articles I through III, which amend the hardship distribution provisions in the BPD, including replacing current Plan Section 8.10(e) (Section 7.10(e) of the Governmental Plan)
 - The elective provisions set forth different design approaches
 - An adopting Employer will only need to sign the elective provisions if it wishes to select options that are different from the “Default” elections of the Pre-Approved Plan Provider

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How is the Hardship Distribution Interim Amendment Structured?

- A different Hardship Distribution Interim Amendment applies to the Owners-Only Defined Contribution Volume Submitter Plan
- The Hardship Distribution Interim Amendment for the Owners-Only Plan includes no elective provisions and only amends the BPD
- Only needs to be adopted by the Pre-Approved Plan Provider and not the adopting Employer
- The Hardship Distribution Interim Amendment for the Owners-Only Plan was drafted to adopt the provisions of the Final Regulations at the earliest permissible date
- The Plan Administrator may adopt administrative procedures to apply later effective dates consistent with the Hardship Distribution Interim Amendment and the Final Regulations, if applicable



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When Should Pre-Approved Plan Providers Adopt the Hardship Distribution Interim Amendment?

- Under Rev. Proc. 2020-09, the deadline for Pre-Approved Defined Contribution Plan Providers and adopting Employers to adopt the Hardship Distribution Interim Amendment has been extended to December 31, 2021, regardless of the Employer's tax year
- ASC recommends that Providers adopt the Interim Amendment, along with their Defaults well before the deadline to ensure sufficient time to communicate the changes to your adopting Employers and for the Employers to make alternative elections, if desired



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What is the Process for Adopting the Interim Amendment?

- ASC drafted the Hardship Distribution Interim Amendment to make the adoption of the amendment as easy as possible for both the Pre-Approved Plan Provider and adopting Employers
- Unlike other recent interim amendments, adopting Employers may need to execute the Hardship Distribution Interim Amendment, if the Employer wishes to choose options other than the “Default” options selected by the Pre-Approved Plan Provider
- If you sponsor Pre-Approved Defined Contribution Plan documents, and the Owners Only Plan, you will need to adopt both versions of the Hardship Distribution Interim Amendments



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What is the Process for Adopting the Interim Amendment?

- Step 1 Review the provisions of the attached Hardship Distribution Interim Amendment(s)
- Step 2 Using the fillable Word form provided in the Plan Provider Package, under the Elective Provisions of the Hardship Distribution Interim Amendment, select your “Default” choices by checking the appropriate options under the “Provider Default” column
- Step 3 Print out the Hardship Distribution Interim Amendment with your Default selections and then execute the attached Adoption of Pre-Approved Plan Hardship Distribution Interim Amendment by Pre-Approved Plan Provider (“Adoption of Interim Amendment”). Associate the Hardship Distribution Interim Amendment with the applicable ASC pre-approved plan(s) that you sponsor. You should retain the signed Adoption of Interim Amendment page with your permanent plan document records
- Step 4 Using DGEM’s Hardship Interim Amendment Wizard, create Hardship Distribution Interim Amendments for all employers that have adopted an ASC Defined Contribution Plan



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What is the Process for Adopting the Interim Amendment?

- Step 5 Provide the appropriate Hardship Distribution Interim Amendment to all adopting Employers of the pre-approved defined contribution plans that you sponsor (Sample cover letter provided)
- Only adopting Employers that allow for hardship distributions in their plans need to review the Elective Provisions (with Defaults) of the Hardship Distribution Interim Amendment
 - If an adopting Employer accepts your Default provisions, no signature is needed by the adopting Employer
 - If the adopting Employer does not want to use your Defaults, the adopting Employer must complete the Elective Provisions, sign and return a signed copy of the Hardship Distribution Interim Amendment to you
 - Upon your receipt of a modified Hardship Distribution Interim Amendment, you will need to edit the "Hardship IA" checklist you created in DGEM so that it reflects the correct Employer elections, generate a new Hardship Distribution Interim Amendment and send the new SMM to the Employer
 - Plans that do not provide for Hardship Distributions should receive a copy of the Hardship Distribution Interim Amendment with no Elective Provisions selected
 - The Hardship Distribution Interim Amendment must be provided to your adopting Employers within a reasonable period of time after you formally adopt it

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What is the Process for Adopting the Interim Amendment?

- Process for ASC Owners-Only Defined Contribution Volume Submitter Plan
 - Provider-level amendment only with no elective choices for the employer to select
 - No signature is required by adopting Employers
 - Pre-Approved Plan Provider only needs to adopt the amendment on behalf of your adopting Employers using the "Adoption of Interim Amendment"
 - Provide the Hardship Distribution Interim Amendment to all adopting employers within a reasonable period of time after you formally adopt it
 - Adopting Employers need only to associate the Hardship Distribution Interim Amendment with their current document
 - No formal adoption of the amendment by the employer is required

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What is the Process for Adopting the Interim Amendment?

[Owners-Only Plan]

- Step 1 Review the provisions of the attached Hardship Distribution Interim Amendment so that you are familiar with the changes and clarifications it makes to the pe-approved plans that you sponsor
- Step 2 Execute the attached "Adoption of Interim Amendment" and associate the Hardship Distribution Interim Amendment with the ASC Owners-Only Defined Contribution Volume Submitter Plan that you sponsor. You should retain the signed Adoption Interim Amendment page with your permanent plan document records
- Step 3 Within a reasonable period of time after you execute the Adoption of Hardship Distribution Interim Amendment by Pre-Approved Plan Provider, provide the amendment to all adopting Employers of your ASC Owners-Only Defined Contribution Volume Submitter Plan. (Sample letter provided)

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Other Q&As

- **Do we need to send the Hardship Distribution Interim Amendment to employers that sponsor plans that do not currently permit Hardship Distributions?**
 - As a word-for-word adopter of an ASC plan, your firm, as a Pre-Approved Plan Provider, must adopt the Hardship Distribution Interim Amendment on behalf of all of your Defined Contribution plans, whether or not the plan actually permits Hardship Distributions, and the Hardship Distribution Interim Amendment will also need to be provided to all employers that have adopted those plans

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Other Q&As

- **How should the Hardship Distribution Interim Amendment be handled for new plans? Will the snap-on amendment be required for those plans or will the Elective Provisions be added to the PPA DC Plan Checklists? Will the amendments to the Basic Plan Document (BPD) be added to the BPD on the DGEM Download Page?**
 - We will be expanding the checklist for PPA DC plans to include the Elective Provisions from the Hardship Distribution Interim Amendment in the near future. When that has been done, the Hardship Distribution Interim Amendment will automatically be included in new, restated and amended plans and the separate snap-on amendment will no longer be needed. Until then, you will need to continue to create the Hardship Distribution Interim Amendment using the Wizard.
 - When the checklist is expanded, the BPD-specific provisions of the Hardship Distribution Interim Amendment will also be attached to the BPD on the DGEM Download Page

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Other Q&As

- **Will plan participants need to be provided with a Summary of Material Modifications (SMM) for the Hardship Distribution Interim Amendment?**
 - The DGEM system will generate a Summary of Material Modification (SMM) to reflect the changes made by the Hardship Distribution Interim Amendment, including the elective provisions selected
 - Only plans that provide for Hardship Distributions will need to distribute the SMM to plan participants
 - The SMM will be automatically suppressed for plans that do not currently permit Hardship Distributions

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Hardship Distribution Interim Amendment - 403(b) Plans

- Final hardship distribution regulations GENERALLY apply to 403(b) plans
- However, the statutory requirement that 403(b) plans may not distribute earnings on elective deferrals, as required under Code §403(b)(11), continues to apply
- Preamble confirms that the ability for 403(b) plans to make hardship distributions from the QNEC, QMAC and safe harbor plan sources is limited to annuity contracts under Code §403(b)(1) and does not apply to custodial accounts under Code §403(b)(7)
 - Hardship is not a permissible distribution event for amounts in 403(b) custodial accounts, except for elective deferrals (not including earnings)

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Final Regulations - 403(b) Plans

- 403(b) plan interim amendments
 - Rev. Proc. 2019-39 generally requires amendments to reflect the final hardship distribution regulations by December 31, 2021
 - Date in final regulations - March 31, 2020 – does not apply
 - Separate hardship distribution interim amendment package will be available in the near future

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THANKS FOR ATTENDING!!!

