

**HARDSHIP DISTRIBUTION
INTERIM AMENDMENT**

**ARTICLE I
PURPOSE OF INTERIM AMENDMENT**

- 1.01 Adoption by Pre-Approved Plan Provider.** Pursuant to Revenue Procedures 2015-36 and 2017-41 (as applicable) and Section 11.01(a) of the Plan, the Plan is being amended by the Pre-Approved Plan Provider on behalf of all adopting Employers. This Hardship Distribution Interim Amendment is intended to qualify as a good-faith amendment to document the Plan's compliance with the final regulations relating to Hardship distributions issued on September 23, 2019 (84 Fed. Reg. 49651) (hereinafter referred to as the Final Regulations). A copy of this amendment will be provided to all adopting Employers and made a part of their Plans.
- 1.02 Application.** This Hardship Distribution Interim Amendment supersedes any contrary provisions under the Plan. No signature is required by the Employer to adopt this Hardship Distribution Interim Amendment.

**ARTICLE II
AMENDMENTS RELATING TO THE FINAL REGULATIONS ON HARDSHIP DISTRIBUTIONS**

- 2.01 In General.** The Internal Revenue Service has issued Final Regulations that amend the rules relating to Hardship distributions from the Plan. These Final Regulations may affect certain Plan provisions. This Hardship Distribution Interim Amendment sets forth the provisions of the Final Regulations and their application to the Plan by amending Section 6.09(d) of the Plan. The Plan Administrator shall administer the provisions of this Hardship Distribution Interim Amendment consistent with a good-faith interpretation of the requirements of the Final Regulations as set forth under Treas. Reg. §§1.401(k)-1, 1.401(k)-3 and 1.401(m)-3, as amended.
- 2.02 Applicability Dates.** Except as otherwise provided in this Hardship Distribution Interim Amendment, the Final Regulations and this Hardship Distribution Interim Amendment apply to Hardship distributions made in Plan Years beginning after December 31, 2018. The Plan Administrator may adopt administrative procedures consistent with this Hardship Distribution Interim Amendment and the Final Regulations.
- (a) **Earlier application of certain provisions.** The Employer may have applied the prohibition on the suspension of Salary Deferrals and After-Tax Employee Contributions as of the first day of the first Plan Year beginning after December 31, 2018, even if the Hardship distribution was made in a prior year. In addition, the Employer may have operationally applied the revised deemed immediate and heavy financial need expenses under Section 6.09(d) of the Plan, as amended by this Hardship Distribution Interim Amendment, to distributions made on or after a date as early as January 1, 2018.
- (b) **Employee representation in 2019.** For Hardship distributions made before January 1, 2020, the Employer may disregard the rules relating to the employee representation, as described under Section 6.09(d)(ii)(B) of the Plan, as amended by this Hardship Distribution Interim Amendment.
- 2.03 Amendment of Section 6.09(d) of the Plan.** Section 6.09(d) of the Plan is deleted and replaced with the following:
- (e) **Hardship distribution.** A Hardship distribution of Employer Contributions and Salary Deferrals must meet the requirements of a deemed immediate and heavy financial need as described under subsection (1) below.
- (i) **Deemed immediate and heavy financial need.** A distribution is deemed to be made on account of an immediate and heavy financial need of the Employee if the distribution satisfies one of the following needs:
- (i) Expenses incurred or necessary for medical care (as described in Code §213(d)) of the Participant, the Participant's Spouse or dependents (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
- (ii) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (iii) Payment of tuition, related educational fees and room and board for up to the next 12 months of post-secondary education for the Participant, the Participant's Spouse, children or dependents;
- (iv) Payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;

- (v) Payments for funeral or burial expenses for the Participant's deceased parent, Spouse, child or dependent;
- (vi) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to Code §165(h)(5) and whether the loss exceeds 10% of adjusted gross income);
- (vii) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or
- (viii) For any other event that the IRS recognizes as a deemed immediate and heavy financial need Hardship distribution event under ruling, notice or other guidance of general applicability.

For purposes of determining eligibility for a Hardship distribution under this subsection (1), a dependent is determined under Code §152. However, the determination of dependent for purposes of tuition and related educational fees under subsection (iii) above will be made without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B) and the determination of dependent for purposes of funeral or burial expenses under subsection (v) above will be made without regard to Code §152(d)(1)(B).

A Participant must provide the Plan Administrator with a written request for a Hardship distribution. The Plan Administrator may require written documentation, as it deems necessary, to sufficiently document the existence of a proper Hardship event.

(2) **Distribution necessary to satisfy financial need.**

- (i) **Distribution may not exceed amount of need.** A distribution is treated as necessary to satisfy an immediate and heavy financial need of an Employee only to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
- (ii) **No alternative means reasonably available.** A distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee unless each of the following requirements is satisfied:
 - (A) The Employee has obtained all other currently available distributions (including distributions of ESOP dividends under Code §404(k), but not Hardship distributions) under the Plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer;
 - (B) The Employee has provided to the Plan Administrator a representation in writing (including the use of an electronic medium as defined in Treas. Reg. §1.401(a)-21(e)(3)), or in such other form as may be prescribed by the IRS, that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and
 - (C) The Plan Administrator does not have actual knowledge that is contrary to the representation.
- (iii) **No suspensions allowed for Hardship distributions made on or after January 1, 2020.** The Plan may not provide for a suspension of an Employee's Salary Deferrals or After-Tax Employee Contributions under any plan described in Code §§401(a) or 403(a), any Code §403(b) plan, or any eligible governmental plan described in Treas. Reg. §1.457-2(f) as a condition of obtaining a Hardship distribution for Hardship distributions made on or after January 1, 2020.

(3) **Amounts available for Hardship distributions.** A Participant may receive a Hardship distribution of any portion of his/her Pre-Tax Salary Deferral Account, Roth Deferral Account, Employer Contribution Account, After-Tax Employee Contributions, Rollover Contribution Account, Roth Rollover Contribution Account and In-Plan Roth Conversion Account. A Hardship distribution may include earnings on such Accounts, regardless of when amounts were allocated or earned.

(4) **Application of Hardship distributions rules with respect to primary beneficiaries.** The existence of an immediate and heavy financial need under subsections (1)(i) (medical expenses), (1)(iii) (educational

expenses) and (1)(v) (funeral expenses) above may be determined with respect to a primary beneficiary under the Plan. For this purpose, a primary beneficiary is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of a Participant's Account Balance upon the death of the Participant. Any Hardship distribution with respect to a primary beneficiary must satisfy all the other requirements applicable to Hardship distributions under subsection (d).

ARTICLE III
RELIEF FOR VICTIMS OF CERTAIN QUALIFIED NATURAL DISASTERS

- 3.01 Relief for Victims of Certain Qualified Natural Disasters.** Notwithstanding other provisions of the Plan, the Employer may operate the Plan to provide relief from certain qualification rules relating to Hardship distributions and loans for Participants who are victims of certain Qualified Natural Disasters, as set forth under applicable IRS or legislative guidance.
- 3.02 Qualified Natural Disasters.** For purposes of this section, Qualified Natural Disasters, in addition to the Qualified Natural Disasters listed under the 2017 Pre-Approved Defined Contribution Plan Interim Amendment previously adopted by the Pre-Approved Plan Provider, include Hurricane Michael and Hurricane Florence, as provided under the preamble to the Final Regulations.
- 3.03 General Rules.** If the Employer and the Plan Administrator make good-faith efforts to apply the Plan provisions in conformance with the relief provided under applicable guidance, the Plan will not be treated as failing to satisfy the requirements of the Code or regulations. In general, the following rules apply:
- (a) In order to make a loan or distribution (including a Hardship distribution), the Plan must provide for loans or distributions, as applicable.
 - (b) Participants (victims) for whom the relief is available are determined under the appropriate IRS or legislative guidance.
 - (c) The amount available for Hardship distribution is limited to the maximum amount that would be available for a Hardship distribution under the Plan. However, the relief provided applies to any Hardship distribution of the Participant and no post-distribution contribution restrictions apply.
 - (d) To qualify for relief under this section, a Hardship distribution must be made on account of a Hardship resulting from the applicable Qualified Natural Disaster and within the time frame provided under the applicable guidance relating to the Qualified Natural Disaster.
 - (e) The Plan will not be treated as failing to follow Plan procedural requirements for loans or distributions during the periods provided under guidance relating to the applicable Qualified Natural Disaster, which for Hurricane Michael and Hurricane Florence ended on March 15, 2019.

Summary of Changes in the Hardship Distribution Rules for the Abe Henke Solo 401(k) (“Plan”)

Due to recent legislative and regulatory changes, the Plan’s rules relating to Hardship distributions have been amended. These changes may affect your ability to receive Hardship distributions under the Plan. This Summary of Changes describes the recent Plan amendment and how the amendment may affect you.

SUSPENSION OF ABILITY TO MAKE SALARY DEFERRALS

You may no longer be suspended from making Salary Deferrals (or After-Tax Employee Contributions, if applicable) for any period of time after the receipt of a Hardship distribution made on or after January 1, 2020.

HARDSHIP DISTRIBUTION EVENTS

To receive a distribution on account of Hardship, you must demonstrate one of the following Hardship events.

- (1) You need the distribution to pay unpaid medical expenses for yourself, your spouse or any dependent.
- (2) You need the distribution to pay for the purchase of your principal residence. You must use the Hardship distribution for the *purchase* of your principal residence. You may not receive a Hardship distribution solely to make mortgage payments.
- (3) You need the distribution to pay tuition and related educational fees (including room and board) for the post-secondary education of yourself, your spouse, your children, or other dependent. You may take a Hardship distribution to cover up to 12 months of tuition and related fees.
- (4) You need the distribution to prevent your eviction or to prevent foreclosure on your mortgage. The eviction or foreclosure must be related to your principal residence.
- (5) You need the distribution to pay funeral or burial expenses for your deceased parent, spouse, child or dependent.
- (6) You need the distribution to pay expenses to repair damage to your principal residence (provided the expenses would qualify for a casualty loss deduction on your tax return, without regard to 10% adjusted gross income limit).
- (7) You need the distribution to pay expenses and losses (including loss of income) incurred due to federally-declared disaster. Your principal residence or principal place of employment at the time of the disaster must be located in the federally-declared disaster area.

FINANCIAL REPRESENTATION

To receive a Hardship distribution, you must represent, in writing, that you have insufficient cash or other liquid assets to satisfy your financial need.