

subsection (d)). A Hardship distribution is not available with respect to QNECs, QMACs, or Safe Harbor Contributions.

(d) **Hardship distribution.** The Employer may elect under AA §10 of the Profit Sharing or Profit Sharing/401(k) Plan Adoption Agreement to authorize an in-service distribution upon the occurrence of a Hardship event. A Hardship distribution of Salary Deferrals must meet the requirements of a safe harbor Hardship as described under subsection (1) below. For other contribution types (except QNECs, QMACs, and Safe Harbor Contributions), the Employer may elect to apply the safe harbor Hardship rules under subsection (1) or the non-safe harbor Hardship provisions under subsection (2) below. A Hardship distribution is not available for QNECs, QMACs or Safe Harbor Contributions.

(1) **Safe harbor Hardship distribution.** To qualify for a safe harbor Hardship, a Participant must demonstrate an immediate and heavy financial need, as described in subsection (i), and the distribution must be necessary to satisfy such need, as described in subsection (ii).

(i) **Immediate and heavy financial need.** To be considered an immediate and heavy financial need, the Hardship distribution must be made to satisfy one of the following financial needs:

- (A) to pay 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);
- (B) for the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (C) for payment of tuition and related educational fees (including room and board) for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents;
- (D) to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;
- (E) to pay funeral or burial expenses for the Participant's deceased parent, spouse, child or dependent;
- (F) to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165 (determined without regard to whether the loss exceeds the 10% of adjusted gross income limit); or
- (G) for any other event that the IRS recognizes as a safe harbor Hardship distribution event under ruling, notice or other guidance of general applicability.

The payment of funeral or burial expenses under subsection (E) and the payment of expenses to repair damage to a principal residence under subsection (F) only apply to Plan Years beginning on or after January 1, 2006. For purposes of determining eligibility of a Hardship distribution under this subsection (i), a dependent is determined under Code §152. However, for taxable years beginning on or after January 1, 2005, the determination of dependent for purposes of tuition and education fees under subsection (C) 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 (E) 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.

(ii) **Distribution necessary to satisfy need.** A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant if:

- (A) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);
- (B) The Participant has obtained all available distributions, other than Hardship distributions, and all nontaxable loans under the Plan and all plans maintained by the Employer;