

# FAQ: Hardship Distribution Rules under the Bipartisan Budget Act of 2018 (BBA) – Plan Document Amendment

**Q: What is the BBA and how does it impact my retirement plan?**

A: The Bipartisan Budget Act of 2018 and its regulations (BBA) made a number of changes to the rules governing hardship distributions from 401(a)/401(k) and 403(b) retirement plans. Prior communications from Empower Retirement in late 2018 and 2019 covered these changes and the provisions that would apply to your plan, including defaults applied to Empower's recordkeeping platform and override options.

**Q: Do we need to amend our Plan Document for the BBA?**

A: Yes. If you are using our IRS pre-approved plan document, we have adopted the necessary plan document amendments addressing these changes as sponsor of the pre-approved plan document. The amendment for plans with hardship distributions reflect certain defaults.

- If you are using our defaults, you do not need to sign the amendment.
- If you elected to override any defaults, alternative elections have been selected within the amendment, and you must sign the amendment reflecting those elections.

**Q: Is a Summary of Material Modifications (SMM) required to update the Summary Plan Description (SPD)? When does it need to be provided to participants?**

A: Yes, if your plan allows hardship distributions. An SMM is required to communicate these changes to participants.

- Empower is providing you with an SMM that updates your existing SPD to reflect the new provisions under the BBA.
- If you elected to override any defaults, you are receiving an SMM that is adjusted to reflect the provisions you selected.
- For plans subject to ERISA, the SMM must be provided to participants by 210 days after the end of the plan year in which the changes are adopted. For a calendar year plan, that would be July 29, 2021.
- The SMM will also be attached to the SPD and made available to you on the Plan Service Center (PSC).
- **If your plan does not allow for hardship distributions, you do not need to provide the SMM because the amendment does not change the terms of the current SPD.**

**Disclaimer:** These materials do not constitute tax or legal advice upon which any party can rely. Plan sponsors should be advised to consult their own legal or tax advisors for questions on their specific situation.

- If you use a custom SPD, it is your obligation to determine whether the provided SMM is sufficient for your needs and revise as necessary prior to distribution. You will need to append the SMM to the SPD you maintain or update the SPD you maintain.

**Q: What about plans that don't include hardship distributions?**

A: Even if your plan does not offer hardship distributions, an amendment is needed to update the language in the basic plan document in accordance with legal requirements. This amendment has no elections and does not require a signature. You are not required to provide an SMM to your participants.

**Q: Can we provide an updated SPD instead of the SMM?**

A: Yes, you can provide an updated SPD, rather than an SMM, to participants. If your plan is later amended and you receive an updated SPD that reflects the BBA changes, it is sufficient to provide that updated SPD.

**Q: I have a profit-sharing-only plan. Is it a problem that my amendment and SMM reference elective deferrals?**

A: No. The plan document amendment and SMM are drafted to accommodate a variety of plan document types. Plans that include elective deferrals can no longer suspend elective deferrals following a hardship distribution. Merely including this language in the amendment and SMM does not add elective deferrals to a plan that does not otherwise allow for them.

**Q: I have a governmental plan. Do I have to distribute the SMM?**

A: Governmental employers are not required to maintain and provide an SPD or SMMs under federal requirements. However, Empower provided you with an optional Summary of Plan Provisions or Summary Plan Description with your Plan Document. If you previously provided that summary to plan participants, you should provide the SMM to current participants and distribute both the summary and the SMM to new participants.

**Q: What other required regulatory amendments may apply to my Plan Document in the future?**

A: An amendment for the BBA is the only required regulatory amendment at this time. Changes related to the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) will require regulatory amendments at a later time after additional guidance is issued. The deadline for the SECURE Act and CARES Act amendment is the last day of the plan year beginning on or after January 1, 2022 (2024 for Governmental Plans) and may be extended via future guidance.