



Pension Analyst

# Compliance Bulletin

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## Additional expenses qualify for safe harbor hardship withdrawals

Sponsors of 401(k) and 403(b) plans may permit participants to take hardship withdrawals from their accounts if:

- The employee has an immediate and heavy financial need, and
- The hardship withdrawal would be necessary to satisfy the immediate and heavy financial need.

The 401(k) regulations provide safe harbor rules for determining if these conditions are satisfied. Two of the safe harbor situations deemed to satisfy the “immediate and heavy financial need” requirement include deductible medical expenses and deductible costs for repairing a principal residence.

On February 10, 2011, the IRS issued [Announcement 2011-14](#) concluding that breast pumps and other lactation supplies are deductible medical expenses. In addition, the IRS provided guidance in [Revenue Procedure 2010-36](#) concluding that amounts paid to repair damage to personal residences or household appliances resulting from corrosive drywall building materials are deductible costs for repairing a principal residence. “Corrosive drywall” means drywall that is identified as problem drywall according to [interim guidance](#) published by the Consumer Product Safety Commission and the Department of Housing and Urban Development.

As a result, sponsors of 401(k) and 403(b) plans that use the 401(k) safe harbor hardship withdrawal rules for determining if an employee has an immediate and heavy financial need (the “needs” safe harbor), will need to consider breast pumps and other lactation supplies as medical expenses that may be eligible for hardship withdrawal. In addition, amounts paid to repair damage to personal residences due to corrosive drywall building materials would be considered deductible costs for repairing a principal residence that also may qualify for hardship withdrawal.

### Plan operation

For sponsors of 401(k) or 403(b) plans that use the “needs” safe harbor for hardship withdrawal determinations and have elected to use Prudential Retirement’s Hardship Withdrawal Outsourcing Services, Prudential will immediately begin qualifying these expenses as those that meet the “needs” safe harbor for a hardship withdrawal.

Sponsors of 401(k) or 403(b) plans that use the “needs” safe harbor for hardship withdrawal determinations, but have *not* elected to use Prudential Retirement’s Hardship Withdrawal Outsourcing Services, should become familiar with this guidance to ensure they appropriately qualify such expenses.

### Plan documents

Most plan documents do not list the specific expenses eligible for hardship withdrawal but simply cross-reference the applicable regulations. In these situations, no plan amendment is needed to reflect this recent guidance. Prototype and volume submitter documents prepared by Prudential contain such cross references and should not require plan amendments. Plan sponsors that do not use Prudential’s document services, and are unsure of their document provisions or the need for plan amendments should contact their document services provider for assistance and additional information. If Prudential provides document services for your plan, contact your Prudential representative with questions.

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