MEMORANDUM

TO: RETIREMENT PLAN CLIENTS

FROM: HEALEY & ASSOCIATES, INC RETIREMENT PLANNING DIVISION

SUBJECT: HARDSHIP WITHDRAWALS UNDER THE BIPARTISAN BUDGET ACT OF 2018

DATE: 10/15/2019

The Bipartisan Budget Act of 2018; signed into law in February 2018, made significant changes to the 401(k) and 403(b) plan Hardship withdrawal rules. The new rules summarized below will provide a basic understanding of the new provisions to our staff, plan sponsors and administrators

1. The Bipartisan Budget Act of 2018 abolished the requirement that participants be prohibited from making contributions to any Employer plans for 6 months after taking a hardship withdrawal.
2. All plans must require that all other available distributions under employer plans are taken first. But loans are no longer required to be taken before hardship withdrawal.
3. Participants applying for hardship withdrawal must state in writing or by electronic means that she/he doesn't have cash or other legal assets to satisfy the immediate and heavy financial hardship. Under the new rules, the Plan Administrator can rely on the participant's statement, unless the plan administrator has actual knowledge to the contrary.
4. 401(k) plans previously could not distribute investment earnings accrued on salary deferrals to the participants account after 1988. The Bipartisan Budget Act 2018 allows the distribution of investment earnings on salary deferrals from 401(k) plans. For 403(b) plans this is still a prohibited transaction.
5. Under the new rules, 401(k) plans can (but are not required to) distribute Safe harbor match or Non-Elective Contributions; Qualified Non-Elective Contributions (QNEC) and Qualified Matching Contributions (QMAC) in a hardship withdrawal with applicable gain. This provision is not applicable to 403(b) plans invested in custodial accounts.
6. The new rule modified the existing safe harbor list of qualified expenses. Any expenses or losses due to federally declared disaster is deemed as immediate and heavy financial need under the new act.
7. The new rule also adds a provision that the hardship rules apply to the primary beneficiary of the plan as an individual that has the qualifying expense.

These rules are in effect as of January 1, 2020; any hardships issuer prior to then will default to the existing hardship regulations.

Note: The Legislative intent behind the above changes is to provide plan sponsors and participants more flexibility and administrative ease. But there is some concern of a premature depletion of the retirement savings. 401(k) or 403(b) plans are not required to offer hardship withdrawals, but if they do, these specific rules must be followed non-discriminately.

Plan amendment: IRS and the Treasury department expect that plan sponsors will need to amend their plan's hardship distribution rules reflecting the new changes by January 1, 2020. Such amendments must be effective for distributions beginning not later than January 1, 2020.