PA Retirement Solutions, Inc.
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Bipartisan Budget Act of 2018:
Hardship Withdrawals

WHAT IS THIS?

Earlier this year the President signed into law certain changes that affect hardship withdrawals from retirement plans. Later in the year (November 6th), the IRS issued proposed regulations to comply with the Act by Congress, along with a 60-day public comment period. While the proposed changes will not be finalized by the IRS until sometime after the comment period ends (who knows when that will be), retirement plans are permitted to rely on the proposed regs as of the first day of the plan year that begins on or after January 1, 2019. Non-calendar year plans will have a later effective date for these provisions to take effect. We are working quickly to prepare for these changes in conjunction with our record keeper partners.

WHAT CHANGED?

There were significant changes to the way hardship withdrawals are administered. These changes are simplifying certain rules, while also lifting certain restrictions that may have limited the amount available to a participant for hardship withdrawal. ***Please note, these changes only apply to plans that permit hardship withdrawals. A plan is not required by law to permit hardship withdrawals.***

1. **6-Month Deferral Suspension Eliminated** – Prior to this change, Plan Administrators were required to suspend deferral contributions for a participant for a period of 6 months from the date a hardship withdrawal was taken. This suspension requirement has been eliminated. The IRS has given each plan discretion on how to handle participants who are currently in a suspension period as of 1/1/19. PA Retirement Solutions has decided to make it its default to lift the suspension for all participants in all plans as of 1/1/19. If you have any participants in a current suspension period as of 1/1/19, please resume their previous deferral election or automatic enrollment deduction (if the participant was contributing due to an automatic enrollment provision at the time the hardship was taken). This includes participants who were deferring due to an automatic enrollment feature. If your plan includes an annual auto escalation feature and the participant is scheduled for an increase this January 1st, please make sure this is handled properly as well.

2. **Loan Not Required First –** Previously, if a retirement plan permitted both hardship withdrawals AND loans, the law required the participant to take a loan FIRST. This could be bypassed if the Plan Administrator determined the loan would place the participant into further hardship, although this was only used in limited circumstances. This requirement has been eliminated. Although plans are no longer required to force a participant to take a loan before taking a

hardship withdrawal (as of 1/1/19), participants must continue to exhaust all other distribution options available under the plan prior to taking the hardship withdrawal (i.e. 59-1/2 in-service withdrawal, withdrawal of rollover accounts, etc.).

3. **Deferral Earnings Now Eligible for Hardship -** Hardship withdrawals are now permitted to be taken from the ***earnings*** portion of the elective deferral account. Previously, only the principal amount that has been contributed to date (less any prior hardships taken) was eligible for hardship withdrawal. This required Plan Administrators to keep accurate records of lifetime deferral contributions as well as lifetime hardship withdrawals, which proved to be difficult as plans historically moved from one record keeper to another. This restriction has been eliminated and participants may now take hardship withdrawals from 100% of their elective deferral account.

4. **QNEC/Safe Harbor Now Eligible for Hardship –** Similar to the deferral earnings restriction above, hardship withdrawals were previously not permitted to be taken from Qualified Non-Elective Contributions (QNEC). Under the IRS regulations, this included Safe Harbor accounts. This restriction has been eliminated and participants may take hardship from All Accounts available under the plan.
   **Your plan document must stipulate which accounts are available for Hardship.
   1. If your current Adoption Agreement permits hardship withdrawals from "All Accounts", your plan will automatically permit hardship from these additional accounts now permitted under the law.
   2. If your current Adoption Agreement permits hardship withdrawals from certain specified accounts, the QNEC/Safe Harbor sources will NOT be automatically added to your plan.

DO I HAVE TO AMEND OUR PLAN TO COMPLY WITH THESE NEW RULES?
The short answer to this question is yes, but not by January 1, 2019. Retirement plan document providers are not drafting amendments until the IRS finalizes the regulations, which could be as late as the summer of 2019. This does not prohibit plans from taking advantage of the new rules. We will contact our clients as soon as the amendment is ready. If you are on PARS' Document Maintenance Program (DMP), there will be no charge for this amendment.

AS PLAN SPONSOR, WHAT DO I HAVE TO DO NOW?
If you have any internal written plan procedures in place affecting hardship withdrawals, you should update those procedures now. In particular, we recommend updating any procedures that may have outlined the 6-month suspension and "Loan First" rule. You are not required to formally notify your

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employees of these changes at this time. However, you will be required to distribute a Summary of Material Modifications (SMM) once your plan document has been amended later in 2019.

WHAT DO I DO WITH A PARTICIPANT WHO IS CURRENTLY IN SUSPENSION PERIOD

If you have a participant who took a hardship withdrawal in the second half of 2018 they will most likely still be in their suspension period as of January 1, 2019. **You should remove the suspension and resume their prior deferral immediately as of the first pay in January 2019.**

Please contact our office if you wish to discuss this information in more detail. This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. This is not meant to be an all-inclusive summary of the hardship withdrawal rules, but merely highlight certain changes. The reader must consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.

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