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IRS Reinstates $6,900 HSA Contribution Limit for 2018

The IRS issued guidance late Thursday, April 27, 2018, that the $6,900 HSA contribution limit was reinstated for 2018. This changes the IRS guidance of March 2, 2018. The IRS had reduced the maximum contribution limit for a person who had Family HDHP coverage from $6,900 to $6,850. The IRS took this action as the IRS' initial conclusion was the law changes made by the Reconciliation Budget Act required this action. The Reconcilation Budget Act was to be effective for the U.S. government's fiscal year ending September 30, 2018. The law was changed to reduce the inflationary adjustment formulas. As a result of this change the revised formula showed a maximum contribution of $6,850 rather than $6,900 for the person who had Family HDHP coverage. The reduction in the contribution limit for a person with Family HDHP coverage from $6,900 to $6,850 was discussed in CWF's email as furnished on March 9, 2018.

We at CWF apologize, but we did not think the IRS would change its position on the Family HSA contribution limit being reduced to $6,850 from $6,900 and so we thought it best that the HSA owners withdraw their $50 excess contributions.

There was substantial public comment to the IRS and to the U.S. Treasury Department of the hardships that would be incurred to implement this relatively small change of $50. Commentators rightfully informed the IRS that the costs associated with modifying software, revising forms and having everyone who had already contributed $6,900 withdraw the $50 as an excess contribution greatly exceeded the benefit arising from the tax revenues to be realized by reducing this contribution limit by $50.

The IRS begrudgingly acknowledged that Code section 223(g)(1) does require the IRS to publish by June 1 of the preceding year (2017) the HSA contribution limits for the upcoming year (2018). It appears the IRS either forgot this statutory requirement or concluded without explaining why that this statutory law was overridden by the new Budget Act.

Last Thursday (April 26, 2018), the IRS issued in Rev. Proc. 2018-27 the following guidance and relief because it is the best interest of sound and efficient tax administration.

1. For 2018, taxpayers are permitted to use $6,900 as the maximum contribution for a person who has Family HDHP coverage.

2. A taxpayer who has already withdrawn $50 plus earnings as an excess contribution is authorized to repay by April 15, 2019, into their HSA the $50 plus earnings. The person may treat this distribution as a mistaken distribution pursuant to Q & A - 37 of Notice 2004-50. The distribution is not included in the individual's gross income, is not subject to the 20% tax and the repayment is not counted as a contribution towards the annual limit.

Such transactions are not to be reported by the HSA custodian on Form 1099-SA and Form 5498-SA and are not reported by the individual on Form 8889.

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An HSA custodian may accept such repayments, but it is not required to do so.

3. A taxpayer who has already withdrawn $50 plus earnings as an excess contribution is not required to repay the $50 plus earnings. The individual is allowed to continue to treat such withdrawal as the withdrawal of an excess HSA contribution.

4. The tax treatment discussed under paragraph 2 does not apply if it was the employer who contributed the excess $50 and the employer excludes from the employee's wages the $6,900. Such employer contributions could be a direct employer contribution or it could be made pursuant to a cafeteria plan election. In this situation, the withdrawal of the $50, unless used to pay a qualified medical expense, would need to be included in the person's income and would be subject to the 20% tax, if applicable.

In summary, the IRS certainly complicated HSA administration by retroactively applying the cost of living adjustment to those HSA owners who had Family HDHP coverage for 2018. The public expressed their concerns and unhappiness, and so the IRS decided to change their position a second time. The IRS appears to want to make the public happier. The IRS many times does not have this attitude. The IRS most of the time wants to maximize the collection of tax revenues.

IRS Initially Lowered HSA Limit to $6,850 From $6,900 on March 8, 2018 – CWF Issued Following e-guidance

The IRS announced the maximum 2018 contribution amount for an HSA owner with Family HDHP coverage has been lowered to $6,850 from $6,900 for those younger than age 55 and to $7,850 from $7,900 for those age 55 and older.

The Bipartisan Budget Act of 2018 as signed into law on February 9, 2018, modified the calculation formula for the annual cost of living adjustment. See Rev. Proc. 2018-18, page 400. Internal Revenue Bulletin 2018-10.

The IRS indicates the other 2018 HSA limits have not been changed. The maximum 2018 contribution amount for an HSA owner with Single HDHP coverage is unchanged at $3,450/$4,450. The minimum deductible limits and the maximum out of pocket limits also have not been changed.

The IRS has also announced that none of the 2018 IRA limits are changed on account of the changes made by the Bipartisan Budget Act of 2018.

IRS Extended Tax Filing Deadline to April 18, 2018. Does It Apply For IRA/HSA Contribution Purposes? CWF Issued the Following e-guidance

On April 17, 2018, at 8:18pm the IRS issued IRS Newswire 2018-100.

The IRS provides certain individuals with an additional day to file their 2017 federal income tax returns because on April 17th the IRS computers had issues.

If a person is filing their 2017 tax return electronically, the deadline is now midnight on Wednesday, April 18, 2018.

This initial IRS guidance does not address in any manner the making of IRA and/or HSA contributions for tax year 2017. The IRS will need to issue further guidance.

One would think if the IRS has revised the deadline for filing the 2017 federal tax return, such revision will also apply for purposes of making the 2017 IRA contribution and a 2017 HSA contribution.

Note it is likely that the IRS position will be - this change only applies to a person who files their 2017 federal income tax return electronically on April 18, 2018, and who makes an IRA contribution and/or HSA contribution on April 18, 2018. This change would not apply to a person filing a paper return or someone who filed their return on or after April 17, 2018.

The IRS will need to issue further guidance as to how an IRA/HSA custodian is to report such contributions for Form 5498 purposes.

You may have some customers who believe/argue the revision applies to all taxpayers. Such customers can explain this when they file their tax returns. An IRA custodian must follow IRS instructions.

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IRS Reconfirms the Proper Reporting By a Roth IRA Custodian of a Roth IRA Distribution - Determining If the 5-Year Rule Has Been Met.

Roth IRA owners and the tax accountants of such Roth IRA owners want to be furnished a Form 1099-R with the reason code "Q" in box 7. The Q is used to report a distribution which the Roth IRA custodian knows to be a qualified distribution (i.e. a tax-free distribution). The individual is not required to include this distribution in their income.

The withdrawal of income from a Roth IRA is a qualified distribution (and tax-free) if the individual has met the 5 year rule and the distribution is on account of being age 59 1/2 or older, being disabled, or if it qualifies as a first time home purchase or if it is made to a beneficiary.

What procedures are to be used by the Roth IRA custodian to determine if the individual has met the 5 year rule? Is the Roth IRA custodian only to consider for purposes of preparing the Form 1099-R the time the Roth IRA has been at its institution or may the Roth IRA custodian consider when the individual previously opened his or her Roth IRA with another Roth IRA custodian.

Many large Roth IRA custodians/trustees (e.g. Fidelity) wrongly believe they are permitted to report a Q even though the 5 year has not been met at their institution.

Many Roth IRA computer systems and many Roth IRA plan agreement forms will ask for the date when the individual first established his or her Roth IRA or the January 1st of the first year for which a Roth IRA contribution was made.

The IRS for a long time has had the reporting procedure - the Roth IRA custodian is not to insert a code "Q" in box 7 if the individual has not met the 5 year rule at its institution. For example, Jane Doe opened her Roth IRA with IRA custodian #4 in 2014 by transferring in her Roth IRA from Roth IRA custodian #3. She originally had opened her Roth IRA in 2004 with Roth IRA custodian #1. Jane Doe is now age 64. If she withdraws funds from her Roth IRA with Roth IRA custodian #4 in 2018, such custodian is to insert reason code (T) into box 7. Reason code (T) means, the Roth IRA custodian knows the distribution is a non-qualified distribution with an exception known. That is, the 10% tax is not owed if the distribution would be required to be included in income.

Jane Doe and/or her accountant are given the task of explaining on her tax return that her Roth IRA distribution is qualified (notwithstanding that the 1099-R has been prepared with a reason code T) because she has met the 5 year rule because she had made her first Roth IRA in 2004 (more than 5 years ago) with financial institution AAAA.

We recently called the IRS Martinsburg location and the IRS representative confirmed that the IRS has not changed its procedure on this issue.

The real world difficulty is, because some ROTH IRA custodians have been preparing their 1099-R forms incorrectly, that your customer may well believe it is your institution which is doing it incorrectly.

Remember, the IRS may assess two fines of $260 if the Form 1099-R is prepared with errors. The IRS should acknowledge their instructions on this subject need to be improved. This applies to the instructions for their print versions and for their e-versions. The IRS should revise its instructions to make very clear that for determining if code Q is to be used the Roth IRA custodian only considers the time the Roth IRA has been at its institution.

Real Life Discussion of Difficulties With Processing an IRA Transfer.

You called requesting assistance with respect to a person's request to transfer his IRA funds with ABC Bank to Charles Schwab & Co., Inc.

You sent me the transfer form sent to you by your IRA owner and/or Charles Schwab. The IRA owner wants his $5,369.13 of IRA funds "transferred" to Charles Schwab into a Rollover IRA account. Why into a rollover account?

The simple answer is - the Charles Schwab employee who completed this form did not understand the difference between a traditional IRA and a rollover IRA. There is a difference, but the form does not explain that differ-

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ence and it should. If it did, there is a greater chance the form would be completed correctly.

I have these additional comments and observations.

1. This Transfer form is to be used by a person to transfer non-IRA/pension funds and also IRA/pension funds. The word transfer encompasses moving tax preferred and also non-tax preferred accounts.

2. The terms transfer, rollover and direct rollover many times are used by individuals interchangeably and many times incorrectly. The individuals may be the IRA owners or they may be the personnel of financial institutions serving as the IRA custodian.

3. The tax ramifications of these three transactions are very different. In a transfer there is no taxable event because there is no distribution to the individual. In a rollover transaction there is a distribution and it will be taxable unless the person complies with the rollover rules.

4. There are two ways to move IRA funds. Method #1 is to have an IRA transfer. Method #2 is the IRA owner withdraws the IRA funds and then makes a rollover contribution. The tax rules do not authorize an IRA to be directly rolled over from one IRA to another IRA.

5. I have no idea why the Charles Schwab form indicates the account type is a rollover IRA. It was not a rollover IRA with ABC Bank and it is not being rolled over to Charles Schwab.

My guess is "Rollover IRA" has been redefined by Charles Schwab or some of its personnel to mean an IRA is being established by a person who is moving funds from an IRA already established with another IRA custodian. And it is confusing because the form not clearly indicate if the actual transaction is a rollover or a transfer. It must be one or the other. It can't be both.

6. The Charles Schwab form may gather the information which Charles Schwab wishes to obtain, but it is not very good in setting forth the information which the IRA custodian wishes to be provided in order for it to transfer the IRA funds to Charles Schwab.

The IRA custodian wants Charles Schwab to certify in writing that it is accepting the transferred account. Their form does this.

The IRA custodian wants Charles Schwab to acknowledge in writing that it understands that ABC Bank will not be preparing a Form 1099-R because the transaction is a transfer and that Charles Schwab will not report this contribution as a rollover contribution. How confident are you that Charles Schwab won't do this as they are calling it a rollover IRA?

The Charles Schwab form does not mention the RMD topic and it should. RMDs are ineligible to be rolled over. RMDs may be transferred.

An IRA custodian has the right to inform Charles Schwab and the IRA owner that a transfer will occur only if Charles Schwab and the IRA owner sign the IRA custodian's IRA transfer form and returns it. The IRA custodian has the right to require a "real" signature by a real person rather than their blanket signature approach.

In summary, you and other IRA personnel every day assist IRA owners with their IRA transactions. Many times your processing of an IRA transaction is not as simple as it could or should be because your customers and other IRA personnel and other IRA custodians do not clearly communicate what transaction is to be accomplished - a rollover or a transfer. These are two different transactions to be processed differently and with different tax consequences.

Why Does an IRA Accountholder Want to do a Qualified HSA Funding Distribution?

The federal income tax laws authorize an IRA accountholder to move IRA funds to an HSA on a tax-free basis. IRA funds are generally taxable when distributed. In 2018 it is permissible for an IRA accountholder, age 58, who also has family HDHP coverage and is otherwise eligible to make an annual HSA contribution, to move $7,900 from his or her IRA to an HSA. There is no taxation when this is done. If the individual then withdraws funds from the HSA to pay qualified medical expenses, that distribution is tax-free.

What guidance has the IRS issued on Qualified HSA Funding Distributions? The IRS issued Notice 2008-51 in June of 2008. The following rules apply to HSA funding distributions.

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1. This tax-free transfer counts against the individual's maximum annual HSA contribution for the tax year of the transfer/distribution. Thus, if the IRA distribution takes place in 2018, then the 2018 HSA contribution limit applies. The fact that this tax-free transfer counts against the contribution limit does not mean that the individual is able to claim a tax deduction for the transfer amount. He or she cannot. To allow a tax deduction, would be to allow a second tax benefit in addition to the tax-free treatment. This Notice makes clear that the maximum contribution amount includes any catch-up amount, if applicable. For example, in 2018, an IRA owner who is an eligible individual with family HDHP coverage at the time of the distribution and who is age 55 or over by the end of the year is allowed a qualified HSA funding distribution of $7,900 for 2018 ($6,900 plus $1,000). An IRA owner who is an eligible individual with self-only HDHP coverage, and who is age 55 or over December 31, 2018 is allowed a qualified HSA funding distribution of $4,450 for 2018 ($3,450 + $1,000).

The maximum amount which can be transferred tax-free is determined at the time of the transfer and not later in the year. A person who is covered under a HDHP in March of 2018 may transfer from an IRA to an HSA in March the "family" amount even though later in 2018 he switches to a "single" HDHP. The IRS has concluded that there will be no penalty for switching to the "single" coverage. The person is still allowed the benefit of transferring the family amount. See Example 5 as set forth below.

Example 5. Individual D, age 43, enrolls in family HDHP coverage on January 1, 2018, is otherwise an eligible individual on January 1, and remains an eligible individual through December 31, 2019. D owns an IRA with a balance of $17,500. A qualified HSA funding distribution of $6,900 is made from D's IRA trustee directly to D's HSA trustee on March 18, 2018. On June 1, D changes from family HDHP coverage to self-only HDHP coverage. The $6,900 distribution from the IRA is not included in D's gross income and is not subject to the additional tax under §72(t). The qualified HSA funding distribution of $6,900 equals D's maximum annual HSA contribution at the time the transfer occurred. D's testing period begins in March 2018 and ends on March 31, 2019.

2. This tax-free transfer (qualified HSA funding distribution) is a type of contribution. However, it is more like a rollover contribution than an annual contribution even though it counts against the annual contribution limit. Therefore, the IRS has concluded that the contribution relates to the tax year in which the transfer is actually made and that a person cannot use the special rule that a contribution is timely if made before the deadline for filing the individual's federal income tax return because the contribution is deemed made on the last day of the preceding tax year. That is, an individual cannot during the carryback period (January 1 to April 15) designate this special transfer as being for the prior tax year.

3. The transaction will be tax-free only if it is done by a direct transfer (i.e. HSA custodian to HSA custodian). As with the tax-free charitable distribution which can be accomplished only by a direct transfer, the IRS has determined that as long as the check is made payable to the HSA custodian or trustee, then the check may be given to the individual who then delivers the check to the HSA custodian or trustee.

4. A person is allowed only one tax-free transfer HSA funding distribution during his or her lifetime. One means one. Therefore, if a person has two or more IRAs and wants to use amounts in multiple IRAs to make the tax-free transfer, if eligible, the individual must first make an IRA to IRA or Roth IRA to Roth IRA transfer of the amounts to be distributed into a single IRA, and then make the one tax-free transfer. The IRS points out that a person who has both a traditional IRA and a Roth IRA will only be able to do the transfer from one or the other IRA.

5. There is the one special situation where the law expressly authorizes two tax-free transfers. An individual who makes a tax-free transfer from his traditional IRA or Roth IRA to his HSA while he is covered under a self-only HDHP is permitted a second tax free transfer if later in the same tax year he acquires family HDHP coverage. Both such transfers will count against the contribution limit for the year. Each such transfer will have its own testing period for recapture tax purposes. Set forth below is IRS Example #4.

Example 4. Individual C, age 38, enrolls in self only HDHP coverage on January 1, 2018, is otherwise an eligible individual on January 1, and remains an eligible individual through December 31, 2019. C owns an IRA with a balance of $12,550. A qualified HSA funding distribution of $3,450 is made from C's IRA trustee directly to C's HSA trustee on June 4, 2018.

On August 1, C enrolls in family HDHP coverage. A transfer of $3,450 is made from C's IRA trustee directly to C's HSA trustee on August 15, 2018.

The $3,450 and $3,450 distributions are qualified HSA funding distributions. The distributions from the IRA are not included in C's gross income and are not subject to the additional tax under §72(t). The qualified HSA funding distributions of $6,900 ($3,450 + $3,450) equal C's 2018 maximum annual HSA contribution. C's testing period for the first qualified HSA funding distribution begins in June 2018 and ends on June 30, 2019 and the testing period for the second qualified HSA funding distribution begins in August 2011 and ends on August 31, 2019.

6. An inheriting IRA beneficiary has the right to make a tax-free transfer of his or her inherited IRA interest to his or her own HSA. It is certainly not clear that Congress intended to allow a beneficiary to make a tax-free transfer from a decedent's IRA to his or her own HSA, but the IRS has authorized HSA Funding, such a transfer in this Notice. And it gets better. When a beneficiary transfers funds from his or her inherited IRA to an HSA, such a transfer will count to satisfy his or her IRA required distribution from the inherited IRA.

7. The IRS has adopted an approach allowing any traditional IRA and/or Roth IRA funds to be transferred to an HSA, including non-taxable basis. However, if a person chooses to transfer his or her basis from either a traditional IRA and/or Roth IRA, the individual will not be able to carry over this basis to his or her HSA. The IRS has adopted the position that the general HSA distribution rule will be applied even if a person has transferred IRA basis into his or her HSA. Example – an individual transfers $6,000 of nontaxable Roth IRA contributions and then later withdraws the $6,000 from the HSA and uses it for non-medical reasons. The individual will owe income tax on the $6,000 and also owe the 20% tax, if applicable.

8. Under current IRS reporting rules, the IRA custodian will report the IRA distribution as it reports any other IRA distribution. It will be reported as being taxable; it will be up to the individual to complete his or her tax return to show it as being nontaxable. The contribution made to the HSA is reported as an annual contribution.

9. A person who has established a substantially equal periodic payment schedule with respect to his or her IRA is eligible to make a tax-free transfer to his or her HSA. The amount transferred will not be taxed and will not be subject to the 20% additional tax. However, a determination will need to be made whether or not the qualified HSA funding distribution results in an impermissible modification. If there is an impermissible modification, then the recapture tax of Code section 72 applies to the previous payments. We believe an individual age 58 with a family HDHP who normally received his SEP distribution of $14,400 in October of each year by having it withdrawn and placed in his checking account could in 2018 instruct that he wanted the $14,400 handled as follows. $6,900 was to be transferred to his HSA and the remaining $7,500 placed in his checking account. In this example, the is no impermissible modification of the SEP schedule. However, there would be an impermissible modification of the schedule if he instructed to transfer $6,900 to his HSA in addition to his scheduled distribution of $14,400.

10. A literal reading of the law is that this type of tax free transfer may not be made from a SEP-IRA or SIMPLE-IRA to an HSA. As with the tax-free charitable distributions, the IRS played word games and changed the rule to be – a person will be able to take funds from their SEP-IRA or SIMPLE-IRA and transfer them to their HSA as long as such SEP or SIMPLE is not an "on-going" plan. That is, the transfer is permissible as long as the employer has not made an employer contribution for the plan year ending with or within the SEP-IRA or SIMPLE IRA owner's tax year.

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11. The traditional or Roth IRA custodian or trustee is allowed to rely upon the instructions of the IRA owner that he or she qualifies to do this tax-free transfer as long as such representations are reasonable. CWF Form #66 - HSA obtains this reasonable representation. Being a tax-free transfer, the IRS has ruled that the withholding rules do not apply because the IRA accountholder is deemed to have elected out of withholding.

12. The IRS has expressly stated that an employer has no responsibility to report whether an employee remains an eligible individual during a testing period. The IRS is silent as to whether or not the HSA custodian or trustee has any duty to do any special reporting regarding testing periods. One would think not, but it may be that the IRS was not ready to expressly state that an HSA custodian or trustee has no reporting duties with respect to the various testing periods.

End-of-Year Fair Market Values for IRAs for 2008 and 2015

The following charts show the fair market values for traditional IRAs, Roth IRAs, SEP-IRAs and SIMPLE-IRAs. These amounts do vary. They were certainly impacted by the economic recession of 2008. The annual percentages surprisingly stay quite constant:

End-of-Year Fair Market Value 2008

	Number of Taxpayers	FMV Amount	Percent
Traditional	43,054,097	$3,257,294,689	88.49%
SEP	3,726,835	$201,497,706	5.47%
SIMPLE	2,896,031	$45,634,790	1.24%
Roth	15,951,065	$176,638,800	4.80%
Total	54,497,580	$3,681,065,985	100.00%

End-of-Year Fair Market Value 2015

(Money amounts are in thousands)

	Number of Taxpayers	FMV Amount	Percent
Traditional	46,431,852	$6,386,702,402	85.41%
SEP	3,200,955	$364,263,654	4.87%
SIMPLE	2,891,931	$101,194,111	1.35%
Roth	19,248,044	$625,077,216	8.36%
Total	58,424,562	$7,477,255,383	100.00%

How Many Taxpayers are Eligible to Make an IRA Contribution?

	Total of All Taxpayers	With Pension Coverage/W-2	Eligible to Make IRA Contributions
2004	184,171,487	65,841,897	144,909,585
2005	186,842,027	67,103,467	146,951,623
2006	191,648,854	68,517,356	149,236,656
2007	197,043,837	70,177,976	154,454,419
2008	196,091,724	70,795,560	152,418,963
2015	204,711,820	73,709,381	157,373,737

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Total Annual IRA Contributions for 2015

	Number of Taxpayers	%	Amount	%	Average
Roth IRAs	6,363,335	48.93	$21,730,048,000	34.11	$3,430.60
Trad IRAs	4,305,106	33.10	$17,692,933,000	27.78	$4,109.76
SEP IRAs	1,093,512	8.41	$14,696,620,000	23.07	$13,439.83
SIMPLE IRAs	1,865,777	14.35	$9,579,025,000	15.04	$5,134.07
Total	13,006,314		$63,698,626,000	100.00	$4,897.52

Traditional IRAs

Number of Taxpayers	4,305,106
Amount	$17,692,933,000
Average contribution	$4,109.76
Number of Taxpayers	3,123,905

Making Deductible Contributions

Amount	$12,973,787.00
Average contribution	$4,153.07
Number of Taxpayers	1,181,201

Making Non-deductible Contributions

Amount	$4,719,146,000
Average Contribution	$3,995.21

Total IRA Rollover Contributions for 2015

	Number of Taxpayers	%	Amount	%	Average
Trad IRAs	4,736,589	94.75	$459,901,573,00099	99.32	$97,096
Roth IRAs	427,627	8.55	$8,377,438,000	1.7	$19,591
SEP IRAs	44,886	.90	$3,965,833,000	.84	$88,353
SIMPLE IRAs	10,523	.20	$336,702,000	.07	$31,997
Total	4,999,162	??	$472,581,546,000	100.00	$94,532

Total IRA Fair Market Values for 2015

	Number of Taxpayers	%	Amount	%	Average
Trad IRAs	46,431,852	0.0	$6,386,720,402,000	85.42	$137,550
Roth IRAs	19,248,044	0.0	$625,077,216,000	8.36	$32,475
SEP IRAs	3,200,955	0.0	$364,263,654,000	4.87	$82,558
SIMPLE IRAs	2,891,981	0.0	$101,194,111,000	1.35	$34,992
Total	58,424,562	0.0	$7,477,255,383,000	90.00	$127,981

More Hardship 401(k) Distributions

Some 401(k) participants may limit the amount they choose to defer because they are concerned if they have a financial emergency that they can't access their 401(k) funds. The general tax rule is - a person cannot access these funds while still employed unless the person is of normal retirement age. In order to encourage more elective deferrals the 401(k) industry has worked to change the law so individuals may qualify for more hardship distributions.

On February 9, 2018, the Bipartisan Budget Act of 2018 became law. These new laws were authorized.

1. Under current law a participant who takes a hardship distribution is ineligible to make current 401(k) elective contributions for 6 months. This law requires the IRS to issue guidance indicating participants do not become ineligible to make current elective deferrals on account of their hardship distribution. This new law applies to plan years beginning after December 31, 2018.

2. Under current law a participant is ineligible to take a hardship distribution if he or she is eligible to borrow funds under the plan's loan provisions but has not exercised such right. That is, a participant must first take a loan, if available, before qualifying for a hardship distribution. This requirement has been repealed. This new law applies to plan years beginning after December 31, 2018.

3. Under current law a participant who takes a hardship distribution from a 401(k) plan is restricted as to what funds may be withdrawn. In general, the individual is restricted to withdrawing their elective deferrals. Other amounts contributed by the employer are generally unavailable for a hardship distribution. This requirement is being changed. A participant who has been allocated an employer profit sharing contribution, a qualified non-elective contribution or a qualified matching contribution could withdraw such funds as long as the plan document would so authorize. This new law applies to plan years beginning after December 31, 2018.