

Retirement Plan Relief for Hurricane Harvey Victims

Hardship Distributions and Loans

On August 30, the IRS issued Announcement 2017-11 which provides relief to taxpayers adversely impacted by Hurricane Harvey who have funds in qualified retirement plans they would like to access. The relief aims to make it easier for affected individuals to obtain a plan loan or hardship distribution by relaxing some of the verification procedures for qualified plans and IRAs.

The relief applies to hardship distributions or loans made on account of Hurricane Harvey to employees or former employees on or after August 23, 2017, and no later than January 31, 2018. Participants in 401(k), 403(b) and 457(b) plans and IRAs are eligible for the relief. In some cases, defined benefit pension plans or money purchase plans that include separate accounts holding either employee contributions or rollover amounts may also be eligible.

Distributions made during the relief period will be deemed a hardship distribution if, on August 23, the individual (a) resides in the Hurricane Harvey designated federal disaster area, (b) has a place of employment in the disaster area or (c) has family members (lineal ascendants or descendants, dependents or a spouse) who reside or work in the disaster area. See Texas Counties Declared Federal Disaster Areas for a list of the counties in the designated federal disaster area. Plan administrators may rely on the representations of the employee or former employee as to the need for and amount of a hardship distribution unless the plan administrator has actual knowledge to the contrary.

Certain documentation requirements for plan loans and hardship distributions may be temporarily suspended as long as an effort is made to comply with the requirements as soon as practicable. For example, if spousal consent is required for a plan loan and a death certificate is required if the participant claims their spouse is deceased, the plan may provide the loan without the death certificate as long as the plan administrator makes reasonable efforts to obtain the death certificate as soon as practicable.

Plans may provide hardship distributions and plan loans even if the plan document does not include a hardship distribution or loan provision, so long as the plan is amended no later than the end of the first plan year beginning after December 31, 2017 (i.e., December 31, 2018, for a plan with a calendar year-end) to allow for plan loans and/or hardship distributions. Additionally, the prohibition from making contributions to a 401(k) plan for at least six months following a hardship distribution is waived for impacted participants.

The IRS emphasized that the tax rules regarding plan loans and distributions remain unchanged. The normal spousal consent rules continue to apply and, unless a distribution consists of already-taxed amounts, the distribution must be included in gross income and is generally subject to the 10% additional tax under IRC Sec. 72(t).

The DOL has also issued guidance for retirement plans and service providers affected by Hurricane Harvey. In a news release, the DOL indicates that they are working with the IRS to relax enforcement of certain requirements, such as verification procedures for plan loans and distributions, depositing participant contributions and loan repayments and providing blackout notices if the failure to comply is attributable to the effects of Hurricane Harvey ([News Release 17-1216-NAT](#)).

Plan Funding Relief

In addition to the plan distribution and loan relief, IRS Notice 2017-49 provides plan funding relief to employers that sponsor a defined benefit plan that have been adversely impacted by Hurricane Harvey. The guidance provides that for any affected defined benefit plan (as defined in the notice) with a minimum required contribution due date under IRC Sec. 430(j)(1) that falls within the period beginning on August 23, 2017, and ending on January 31, 2018, the due date for making the minimum required contribution for the affected plan is postponed to January 31, 2018. Certain other funding and notice deadlines for defined benefit plans that fall within the relief period are also extended to January 31, 2018.