

MEMO# 30241

September 13, 2016

IRS Provides Relief for Plan Loans and Hardship Distributions and Extends Certain Deadlines for Taxpayers Affected by Storms and Flooding in Louisiana; DOL Provides Related Compliance Guidance

[30241]

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TO: PENSION MEMBERS No. 29-16

OPERATIONS MEMBERS No. 27-16

TRANSFER AGENT ADVISORY COMMITTEE No. 46-16 RE: IRS PROVIDES RELIEF FOR PLAN LOANS AND HARDSHIP DISTRIBUTIONS AND EXTENDS CERTAIN DEADLINES FOR TAXPAYERS AFFECTED BY STORMS AND FLOODING IN LOUISIANA; DOL PROVIDES RELATED COMPLIANCE GUIDANCE

On August 30, 2016, the Internal Revenue Service (IRS) released Announcement 2016-30, [\[1\]](#) to provide relief under the Internal Revenue Code (Code) with respect to hardship distributions and loans from plans under sections 401(a), 403(a), 403(b), and 457(b) [\[2\]](#) of the Code for taxpayers adversely affected by the storms and flooding that began on August 11, 2016 in Louisiana. The announcement also provides relief from procedural requirements for plan distributions (including distributions from IRAs) and loans. The Department of Labor also issued compliance guidance providing related relief.

In addition, on August 15, 2016, IRS announced that it had extended certain deadlines (including the deadline for filing Form 5500) for taxpayers impacted by the Louisiana storms. [\[3\]](#) As you may recall, the IRS issued similar relief in the aftermath of Hurricanes Sandy and Katrina, as well as other previous disasters.

Announcement 2016-30 - Plan Loans and Hardship Distributions

The relief in Announcement 2016-30 covers an employee or former employee:

- whose principal residence on August 11, 2016, was located in one of the parishes in Louisiana that have been identified as part of a covered disaster area because of the

storms;

- whose place of employment was located in one of the designated parishes on that date; or
- whose lineal ascendant or descendant, dependent or spouse had a principal place of residence or place of employment in one of the designated parishes on that date.

The relief provided by Announcement 2016-30 permits a plan that does not currently provide for loans or hardship distributions to nonetheless make loans or hardship distributions, as long as the plan is amended by the end of the first plan year beginning after December 31, 2016. [\[4\]](#)

The relief also allows a plan to disregard its normal procedural requirements imposed by the terms of the plan for loans and distributions taken between August 11, 2016 and January 17, 2017. However, the plan administrator must make “a good-faith diligent effort under the circumstances to comply with those requirements” and, as soon as practicable, “must make a reasonable attempt to assemble any forgone documentation.” [\[5\]](#)

With respect to hardship distributions, the relief covers a hardship distribution taken to alleviate a need that arose from the storms and that is taken between August 11, 2016 and January 17, 2017. The plan administrator may rely on employee representations (including from a former employee) regarding the reason for and the amount of the distribution, unless the plan administrator has actual knowledge to the contrary. The reason for the need includes any hardship and is not limited to the types of hardship described in the regulations. Plans do not need to restrict employees from making contributions to the plan following a hardship distribution.

Relief from Certain Taxpayer Deadlines

Pursuant to section 7508A of the Code, the IRS granted extensions of certain deadlines for taxpayers affected by the storms. [\[6\]](#) Treasury Regulation section 301.7508A-1 and Revenue Procedure 2007-56 [\[7\]](#) provide lists of time sensitive acts, the performance of which may be postponed under Code section 7508A. These acts include the making of payments to retirement plans and IRAs, plan loan repayments under Code section 72(p), substantially equal periodic payments under Code section 72(t), and required minimum distributions under Code section 401(a)(9). The IRS postponed the deadlines for performing these acts until January 17, 2017, if the last day to perform the act would otherwise fall within the period beginning August 11, 2016 and ending on or before January 17, 2017.

The IRS also granted a filing extension for Form 5500 series returns until January 17, 2017 for those filings required to be filed between August 11, 2016 and January 17, 2017. Revenue Procedure 2007-56 provides that whatever postponement of the Form 5500 series due date is permitted by the IRS under Code section 7508A will also be permitted by the Department of Labor for similarly situated plan administrators and direct filing entities.

Eligible Taxpayers

Taxpayers eligible for the extended deadlines include the following:

- Any individual whose principal residence, and any business entity whose principal place of business, is (or was on the applicable date,) located in a covered disaster area;
- Any individual whose principal residence, and any business entity whose principle place of business, is not located in a covered disaster area, but whose records necessary to meeting a filing or payment deadline are maintained in a covered

disaster area;

- All workers assisting in the relief activities in a covered disaster area, if affiliated with a recognized government or philanthropic organization;
- Any estate or trust that has tax records necessary to meet a filing or payment deadline in a covered disaster area; and
- Individuals visiting a covered disaster area who were killed or injured as a result of the disaster.

The IRS automatically identifies taxpayers located in the covered disaster area and applies automatic filing relief. However, affected taxpayers who reside or have a business located outside of the covered disaster area must call the IRS disaster hotline at 866-562-5227 to request the tax relief.

Department of Labor News Release

In a news release issued on September 13, 2016, the Department of Labor also provided compliance guidance applicable to victims of the Louisiana storms. [8] DOL indicated that it will not treat any person as having violated Title I of ERISA solely because that person relied on the relief provided under Announcement 2016-30. Furthermore, DOL will not, solely on the basis of a failure attributable to the Louisiana storms, seek to bring enforcement action under Title I with respect to temporary delays in the forwarding of participant payments and withholdings to a plan. Such relief applies to the extent that the affected employers and service providers act reasonably, prudently and in the interest of employees to comply as soon as practical under the circumstances.

The guidance addresses the 30-day advance notice requirement applicable to blackout periods under section 101(i) of ERISA. The regulations under this section provide an exception from the advance notice requirement for events beyond the control of the plan administrator, as determined by a fiduciary in writing. [9] For plans affected by the Louisiana storms, DOL will not allege a violation of the blackout notice requirements solely on the basis that the fiduciary did not make a written determination.

Covered Disaster Areas

Covered disaster areas include the following parishes in Louisiana: Acadia, Ascension, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. James, St. Landry, St. Martin, St. Tammany, Tangipahoa, Washington, West Baton Rouge, West Feliciana, and Vermilion. [10]

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endnotes

[1] The announcement is available here: <https://www.irs.gov/pub/irs-drop/a-16-30.pdf>. An IRS news release on this guidance, IR-2016-115, is available here: <https://www.irs.gov/uac/retirement-plans-can-make-loans-and-hardship-distributions-to-louisiana-flood-victims>.

[2] With respect to 457(b) plans, the relief applies to distributions made on account of an unforeseeable emergency.

[3] See generally, IRS News Release IR-2016-105, available at:
<https://www.irs.gov/uac/irs-provides-tax-relief-to-louisiana-storm-victims>.

[4] For hardship distributions, this relief allows hardship distributions that would otherwise be permitted under current law. For example, the relief does not apply to a plan type for which hardship distributions are not permitted (generally, defined benefit plans cannot make hardship distributions) or to amounts that would not be eligible for hardship distribution (earnings on elective contributions may not be distributed on account of hardship). Plan loans must meet the requirements of section 72(p) of the Internal Revenue Code.

[5] This relief also applies to distributions made from IRAs. Note that generally, IRA owners are permitted to take a distribution at any time.

[6] Section 7508A authorizes the Secretary of the Treasury to postpone the deadlines for certain requirements for taxpayers determined to be affected by a presidentially declared emergency.

[7] Revenue Procedure 2007-56 is available here: www.irs.gov/irb/2007-34_IRB/ar13.html.

[8] The DOL News Release is available here:
<https://www.dol.gov/newsroom/releases/ebsa/ebsa20160912>.

[9] 29 CFR § 2520.101-3(b)(2)(ii)(B).

[10] See generally,
<https://www.irs.gov/uac/tax-relief-for-victims-of-severe-storms-flooding-in-louisiana>.