

**MEMO# 30898**

October 4, 2017

# Legislation Enacted to Provide Tax Relief to Victims of Hurricanes Harvey, Irma, and Maria

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October 4, 2017 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Legislation Enacted to Provide Tax Relief to Victims of Hurricanes Harvey, Irma, and Maria

On September 29, 2017, President Trump signed the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (the “Act”),[\[1\]](#) which, among other things, provides for temporary tax relief for victims of Hurricanes Harvey, Irma, and Maria, including (1) tax-favored withdrawals from retirement plans; (2) re-contribution of withdrawals for cancelled home purchases; (3) liberalized plan loan rules; and (4) plan amendments to incorporate the relief. The relief mirrors prior legislation relating to major hurricanes occurring in 2005 (namely Hurricanes Katrina, Rita and Wilma). The IRS and DOL previously issued guidance providing limited loan and hardship distribution relief and extended taxpayer deadlines for victims of the recent hurricanes.[\[2\]](#)

## **Tax-Favored Withdrawals from Retirement Plans**

Section 502(a) of the Act provides that the 10 percent penalty tax applicable to certain early withdrawals under section 72(t) of the Internal Revenue Code shall not apply to any “qualified hurricane distribution.” This term includes any distribution made:

- from an IRA, a qualified plan, a section 403(a) plan, a section 403(b) arrangement, or an eligible deferred compensation plan under section 457(b) of the Code,
- on or after a specified date (August 23, 2017 in the case of Hurricane Harvey; September 4, 2017 in the case of Hurricane Irma; and September 16, 2017 in the case of Hurricane Maria) and before January 1, 2019;
- to an individual:
  - whose principal place of abode on August 23, 2017, is located in the Hurricane Harvey disaster area; and who has sustained an economic loss by reason of Hurricane Harvey;
  - whose principal place of abode on September 4, 2017, is located in the Hurricane Irma disaster area; and who has sustained an economic loss by reason of Hurricane Irma; or

- whose principal place of abode on September 16, 2017, is located in the Hurricane Maria disaster area; and who has sustained an economic loss by reason of Hurricane Maria.

An individual's penalty-free distributions under this provision generally are limited to \$100,000. Unless the taxpayer elects otherwise, any such amounts required to be included in gross income for the taxable year will be spread over a three-taxable-year period. The amounts will not be considered eligible rollover distributions for purposes of the mandatory withholding rules of section 3405 of the Code, and such distributions will be treated as meeting the distribution restrictions of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

This section of the Act also provides that an individual who receives a qualified hurricane distribution may contribute up to the full amount, within three years, to an eligible retirement plan to which a rollover contribution could be made. Such a contribution generally will be treated as a rollover, or, in the case of repayments of distributions from IRAs, as a direct trustee to trustee transfer.

### **Re-contributions of Withdrawals for Home Purchases**

Section 502(b) of the Act addresses taxpayers who took hardship distributions from their 401(k) plans or 403(b) arrangements, or distributions from their IRAs, for the purpose of purchasing or constructing a principal residence in one of the hurricane disaster areas. This provision allows such taxpayers to contribute all or part of the amount to a retirement plan to which a rollover is permitted if the residence was not purchased or constructed on account of Hurricane Harvey, Irma, or Maria. To qualify for re-contribution, the distribution must have been received after February 28, 2017, and before September 21, 2017. The re-contribution must be made during the period beginning on August 23, 2017, and ending on February 28, 2018. Recontributed amounts generally will be treated as rollovers, and the recontributed portion of the distribution will not be included in income.

### **Loans from Qualified Plans**

Section 502(c) of the Act amends the plan loan rules in Code section 72(p) with respect to an individual whose principal place of abode on the date specified for each hurricane<sup>[3]</sup> is located in that particular hurricane disaster area, who has sustained an economic loss by reason of that hurricane, and who receives a plan loan after the date of enactment and before January 1, 2019. For such individuals, the dollar limit on plan loans under section 72(p)(2)(A) is increased from \$50,000 to \$100,000, and the entire present value of the nonforfeitable accrued benefit is available for the loan.

In addition, for plan loans outstanding on or after the specified date for each hurricane,<sup>[4]</sup> an individual can delay any repayment for one year if the payment due date occurs during the period beginning on the specified date, and ending on December 31, 2018. Subsequent payments must be adjusted to reflect the delayed due date. The delay period must be disregarded for purposes of determining the five-year repayment period and the term of the loan under section 72(p)(2).

### **Plan Amendments**

Section 502(d) of the Act provides that plan amendments to reflect the Act's provisions may be made on or before the last day of the first plan year beginning on or after January 1, 2019,<sup>[5]</sup> or a later date as prescribed by the Secretary of the Treasury. Pending such amendments, the plan must be operated as if the amendments were in effect.

Elena Barone Chism  
Associate General Counsel - Retirement Policy

**endnotes**

[1] A copy of the enrolled bill, as passed by the House of Representatives and the Senate, is available at <https://www.congress.gov/115/bills/hr3823/BILLS-115hr3823enr.pdf>.

[2] See ICI Memorandum No. 30881, dated September 21, 2017, available here: [https://www.ici.org/my\\_ici/memorandum/memo30881](https://www.ici.org/my_ici/memorandum/memo30881).

[3] The specified date is August 23, 2017 for Hurricane Harvey, September 4, 2017 for Hurricane Irma, and September 16, 2017 for Hurricane Maria.

[4] Id.

[5] The Act specifies a later plan amendment deadline for governmental plans.

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