

**MEMO# 30355**

October 27, 2016

# **IRS Provides Relief for Plan Loans and Hardship Distributions and Extends Certain Deadlines for Taxpayers Affected by Hurricane Matthew**

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TO: PENSION MEMBERS No. 35-16

OPERATIONS MEMBERS No. 35-16

TRANSFER AGENT ADVISORY COMMITTEE No. 56-16 RE: IRS PROVIDES RELIEF FOR PLAN LOANS AND HARDSHIP DISTRIBUTIONS AND EXTENDS CERTAIN DEADLINES FOR TAXPAYERS AFFECTED BY HURRICANE MATTHEW

On October 21, 2016, the Internal Revenue Service (IRS) released Announcement 2016-39,[\[1\]](#) 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 Hurricane Matthew. The announcement also provides relief from procedural requirements for plan distributions (including distributions from IRAs) and loans.

In addition, on October 11, 2016, the IRS announced that it had extended certain deadlines (including the deadline for filing Form 5500) for taxpayers impacted by Hurricane Matthew.[\[3\]](#) As you may recall, the IRS issued similar relief in the aftermath of Hurricanes Sandy and Katrina, as well as other previous disasters.

## **Announcement 2016-39 - Plan Loans and Hardship Distributions**

The relief in Announcement 2016-39 covers an employee or former employee:

- Whose principal residence on October 4, 2016 (October 3, 2016 for Florida), was located in one of the counties 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 counties 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 counties on that date.

The relief provided by Announcement 2016-39 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 October 4, 2016 (October 3, 2016 for Florida) and March 15, 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 on account of a need resulting from Hurricane Matthew and that is taken between October 4, 2016 (October 3, 2016 for Florida) and March 15, 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.

Announcement 2016-39 states that the Department of Labor has advised the IRS and Treasury that it will not treat any person as having violated the provisions of Title I of ERISA solely because that person complied with the provisions of the Announcement.

## **Relief from Certain Taxpayer Deadlines**

Pursuant to section 7508A of the Code, the IRS granted extensions of certain deadlines for taxpayers affected by Hurricane Matthew.[\[6\]](#) 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 March 15, 2017, if the last day to perform the act would otherwise fall within the period beginning October 4, 2016 and ending on or before March 15, 2017.

The IRS also granted a filing extension for Form 5500 series returns until March 15, 2017 for those filings required to be filed between October 4, 2016 and March 15, 2017.[\[8\]](#) 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.

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.

## **Covered Disaster Areas**

Covered disaster areas include the following counties:

**North Carolina:** Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington, Wayne and Wilson counties.

**South Carolina:** Beaufort, Berkeley, Charleston, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Horry, Jasper, Marion, Orangeburg and Williamsburg counties.

**Georgia:** Bryan, Camden, Chatham, Glynn, Liberty and McIntosh counties.

**Florida:** Brevard, Duval, Flagler, Indian River, Nassau, St. Johns, St. Lucie and Volusia counties.<sup>[9]</sup>

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### **endnotes**

[1] The announcement is available here: <https://www.irs.gov/pub/irs-drop/a-16-39.pdf>. An IRS news release on this guidance, IR-2016-138, is available here: <https://www.irs.gov/uac/newsroom/retirement-plans-can-make-loans-hardship-distributions-to-victims-of-hurricane-matthew>.

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

[3] An announcement of the expansion of this relief to additional areas was released on October 17, 2016. See *generally*, IRS

News Release IR-2016-135, available at: <https://www.irs.gov/uac/newsroom/irs-gives-expanded-tax-relief-to-victims-of-hurricane-matthew-parts-of-four-states-eligible-extension-filers-have-until-march-15-to-file>.

[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](http://www.irs.gov/irb/2007-34_IRB/ar13.html).

[8] Note that for plans whose plan year is the calendar year, the normal deadline including the 2 ½ month extension is October 15.

[9] See generally, <https://www.irs.gov/uac/newsroom/irs-gives-expanded-tax-relief-to-victims-of-hurricane-matthew-the-parts-of-four-states-eligible-extension-filers-have-until-march-15-to-file>.