

**MEMO# 30881**

September 21, 2017

## **IRS and DOL Issue Relief for Victims of Hurricanes Harvey and Irma**

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September 21, 2017 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS and DOL Issue Relief for Victims of Hurricanes Harvey and Irma

The Internal Revenue Service (IRS) on September 12, 2017 issued Announcement 2017-13<sup>[1]</sup> providing relief for 401(k) and similar employer-sponsored retirement plans making loans and hardship distributions to victims of Hurricane Irma. Similar relief was provided on August 30, 2017 to victims of Hurricane Harvey.<sup>[2]</sup>

Participants in 401(k), 403(b), and 457(b) plans may be eligible to use streamlined loan procedures and liberalized hardship distribution rules, as described below.<sup>[3]</sup> Retirement plans can provide this relief to employees and former employees whose principal residence or place of employment was located in a disaster area affected by Hurricane Irma or Hurricane Harvey and designated for individual assistance by the Federal Emergency Management Agency (FEMA).<sup>[4]</sup> The relief is also available for employees and former employees whose family member lives or works in such a designated area.<sup>[5]</sup> To be eligible, the loan or hardship distribution must be made on or after specified dates (August 23, 2017 in the case of Hurricane Harvey and September 4, 2017<sup>[6]</sup> in the case of Hurricane Irma) and no later than January 31, 2018.

The relief allows plans to make loans or hardship distributions before the plan is formally amended to provide for such features.<sup>[7]</sup> But plan loans must meet the requirements of section 72(p) of the Internal Revenue Code and, in the case of hardship distributions, the distribution must 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).

For hardship distributions, the relief allows plan administrators to 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 applicable regulations. In addition, the otherwise applicable six-

month suspension of 401(k) and 403(b) contributions after a hardship distribution will not apply.

The IRS noted that the relief does not change the current tax treatment of loans and hardship distributions. In this respect, retirement plan loan proceeds generally are not taxable if they are repaid over a period of five years or less. Hardship distributions, on the other hand, generally are taxable and may be subject to a 10-percent early-withdrawal penalty. There have been several calls for legislation providing relief from early-withdrawal penalties for victims of Hurricane Irma and Hurricane Harvey, which was done in the case of Hurricane Katrina when President Bush signed into law the Katrina Emergency Tax Relief Act of 2005 (KETRA).

## **IRS Relief from Certain Taxpayer Deadlines**

Pursuant to section 7508A of the Code, the IRS granted extensions of certain deadlines for taxpayers affected by Hurricanes Harvey and Irma.[\[8\]](#) Treasury Regulation section 301.7508A-1 and Revenue Procedure 2007-56[\[9\]](#) 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 31, 2018, if the last day to perform the act would otherwise fall within the period beginning August 23, 2017 (with respect to Hurricane Harvey) or September 4, 2017 (with respect to Hurricane Irma's Florida victims)[\[10\]](#) and ending on or before January 31, 2018.

The IRS also granted a filing extension for Form 5500 series returns until January 31, 2018 for those filings required to be filed between August 23, 2017 (with respect to Hurricane Harvey) or September 4, 2017 (with respect to Hurricane Irma's Florida victims)[\[11\]](#) and January 31, 2018.[\[12\]](#) 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.

## **DOL Relief for Plans and Plan Participants Affected by Hurricanes Harvey and Irma**

In news releases issued on August 30, 2017 and September 15, 2017, the Department of Labor provided compliance guidance applicable to victims of Hurricanes Harvey and Irma.<sup>[13]</sup> DOL's announcement follows guidance issued by the IRS described above. IRS's guidance, Announcements 2017-11 and 2017-13, provides relief with respect to hardship distributions and plan loans for taxpayers adversely affected by Hurricanes Harvey and Irma. The IRS Announcements indicate that DOL will not treat any person as having violated Title I of ERISA solely because that person relied on the relief provided under Announcements 2017-11 and 2017-13. The DOL news releases indicate that DOL will not, solely on the basis of a failure attributable to Hurricanes Harvey or Irma, seek to bring enforcement action under Title I with respect to temporary delays in the forwarding of participant payments and withholdings (such as contributions and plan loan repayments) 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 DOL news releases address 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.<sup>[14]</sup> For plans affected by Hurricanes Harvey or Irma, DOL will not allege a violation of the blackout notice requirements solely on the basis that the fiduciary did not make a written determination.

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### **endnotes**

<sup>[1]</sup> IRS Announcement 2017-13 *is available at* <https://www.irs.gov/pub/irs-drop/a-17-13.pdf>.

<sup>[2]</sup> See IRS Announcement 2017-11, *available at* <https://www.irs.gov/pub/irs-drop/a-17-11.pdf>.

<sup>[3]</sup> The relief is for plans under sections 401(a), 403(a), 403(b), and 457(b). With respect to 457(b) plans, the relief applies to distributions made on account of an unforeseeable emergency.

<sup>[4]</sup> The counties identified for assistance can be found at <https://www.fema.gov/disasters>. The counties identified with respect to Hurricane Irma include all 67 counties of Florida and all 159 counties of Georgia. The guidance requires that the individual's principal residence or place of employment was in a designated county on August 23, 2017 in the case of Hurricane Harvey, September 4, 2017 in the case of Florida victims of Hurricane Irma, and

September 7, 2017 in the case of Georgia victims of Hurricane Irma.

[5] The family member must be a lineal ascendant or descendant, dependent or spouse.

[6] The period begins on September 7, 2017 for victims of Hurricane Irma in Georgia.

[7] Such plans must be amended to provide for loans or hardship distributions no later than the end of the first plan year beginning after December 31, 2017.

[8] 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.

[9] 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).

[10] This period begins on September 7, 2017 for victims of Hurricane Irma in Georgia.

[11] This period begins on September 7, 2017 for victims of Hurricane Irma in Georgia.

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

[13] The DOL news release issued regarding Hurricane Harvey is available here: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20170830>. The DOL news release issued regarding Hurricane Irma is available here: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20170915>. DOL also issued a set of Frequently Asked Questions for participants and beneficiaries who were affected by Hurricanes Harvey and Irma, which is available here: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/or-participants-and-beneficiaries-following-hurricanes-harvey-and-irma.pdf>.

[14] 29 CFR § 2520.101-3(b)(2)(ii)(B).