IRS Relaxes Rules for Plan Loans and Hardship Distributions for Hurricane Harvey and Hurricane Irma Victims

The IRS announced (through the two announcements 2017-11 and 2017-13) relief for victims of Hurricane Harvey, which struck Texas and surrounding areas in August 2017, and victims of Hurricane Irma, which struck Florida and other areas in September 2017, allowing participants to more easily take a plan loan or a hardship distribution from qualified retirement plans.

The IRS will permit 401(k) plans, 403(b) plans, and certain other qualified plans to make plan loans through more streamlined procedures and hardship distributions under liberalized rules to participants and their family members[1] who on August 23, 2017 had a principal residence or place of employment in disaster areas that were impacted by Hurricane Harvey and who on September 4, 2017 had a principal residence or place of employment in disaster areas that were impacted by Hurricane Irma, so long as those disaster areas were among those listed as eligible for individual FEMA assistance.[2] A complete list of eligible disaster areas for which individual assistance is available can be found at FEMA's website (https://www.fema.gov/disasters).

Hurricane-Related Plan Loans

For plan loans related to Hurricane Harvey and Hurricane Irma that are taken by a plan participant after August 23, 2017 and September 4, 2017 (respectively) and through January 31, 2018:

- Plans are allowed to make plan loans to participants before the plan document is formally amended to provide for such a feature, so long as the plan is amended before the end of the first plan year commencing in 2018.

- A plan loan may be made even if the plan administrator has not assembled all of the required documentation for the loan, so long as the administrator acted diligently and in good-faith under the circumstances and makes reasonable efforts to assemble the missing documentation after the loan is made.

Hurricane-Related Hardship Distributions

For hardship distributions related to Hurricane Harvey and Hurricane Irma that are taken by a plan participant after August 23, 2017 and September 4, 2017 (respectively) and through January 31, 2018:

- Plans are allowed to make these hardship distributions to participants before the plan document is formally amended to provide for such a feature, so long as the plan is amended before the end of the first plan year commencing in 2018.

- Any hardship arising from these hurricanes are treated as an "unforeseeable emergency" meaning plans are allowed to disregard the normal "unforeseeable emergency" rules (which normally limit the permitted events that give rise to taking a hardship distribution) and to waive certain documentation requirements that are

1 Family members include spouses, children, parents, grandparents or other dependents.
2 Where the "incident period" related to individual FEMA assistance was set by FEMA as commencing on later dates (such as for St. John and St. Thomas, U.S. Virgin Islands, certain counties in Puerto Rico and certain counties in Georgia, related to Hurricane Irma) that later date is to be used for those impacted plan participants.

normally required to substantiate a hardship; for example, pursuant to this relief, these hurricane-related hardship distributions can be used for food and shelter and for the needs of certain close family members who are victims of the hurricanes (but who are not plan beneficiaries).

- Plans can waive the normal 6 month prohibition from making plan contributions after taking a hardship distribution, in the case of these hurricane-related hardship distributions.

Normal Tax Treatment Applies

However, the employers and participants should be reminded that the tax treatment of loans and hardship distributions from qualified plans remain unchanged. For example, generally, plan loans must satisfy the requirements of Section 72(p) of the Internal Revenue Code (including dollar limits and repayment periods) to avoid treatment as a taxable deemed distribution and hardship distributions are generally taxable and subject to a 10% early withdrawal tax. Spousal consent requirements, where applicable, continue to apply.

Form 5500 Extension

Separately, the IRS also issued relief for the filing of most tax returns, including Form 5500 series returns, for taxpayers and employers based in Hurricane Harvey and Hurricane Irma disaster areas, extending the deadline for the filing of any Form 5500 series return (that had an original due date, including any extensions, that fell in between August 23, 2017 and January 31, 2018) to January 31, 2018.

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