

Retirement Plan Relief for Recent Disasters

Introduction

In response to **Hurricanes Harvey and Irma and now for Hurricane Maria and the California Wildfires**, the IRS, DOL and the Pension Benefit Guaranty (“PBGC”) have issued news releases, notices, and announcements which, when considered overall, provide consistent guidance for US qualified plans, that:

- Streamlines the loan procedures and liberalizes hardship¹ distribution rules for participants in 401(k) plans, 403(b) plans, and governmental 457(b) plans covering state and local government employees;
- Relaxes the procedural and the administrative rules that normally apply to retirement plan loans and hardship¹ distribution rules, so that eligible retirement plan participants are able to access their money more quickly with a minimum of red tape. The six month ban on 401(k) and 403(b) contributions that normally affects employees who take hardship¹ distributions does not apply;
- Permits a person who lives outside the disaster area the ability to take out a retirement plan loan or hardship¹ distribution and use it to assist a son, daughter, parent, grandparent or other dependent who lived or worked in the federally-designated disaster area on the specified *incident date*;

¹ Unforeseeable Emergency distribution for a 457(b) governmental plan.

- Postpones certain deadlines for tax returns (including the Form 5500) for *affected taxpayers* who reside or have a business in the *covered disaster area* (based on specified *incident dates*; and,
- Offers a temporary delay to adversely affected employers (and service providers acting on employer’s behalf) who were not able to forward participant contributions and/or loan repayments within the DOL’s prescribed timeframe. The DOL cautions that affected employers and service providers must act reasonably, prudently and in the interest of employees to comply with its deposit rules as soon as practical under the circumstances.

Note: The guidance described above differs from the Disaster Tax Relief and Airport and Airway Extension Act of 2017, P. L. 115-63 (the “Act”). While the additional relief provided by Congress under the Act is also voluntary, it only applies to Hurricanes Harvey, Irma and Maria. The Act does not apply to the California Wildfires. For details, go to:

<http://www.massmutual.com/retire/pdf/folder/regulatory/rs43221.pdf>

The relief applies to US qualified plans, including 401(a) plans, 401(k) plans, 403(b) plans and governmental 457(b) plans covering state and municipal employees.

Path to guidance

Once the President declares the existence of a major disaster, the Federal Emergency Management Agency (“FEMA”) then issues a disaster declaration identifying the federally designated disaster areas (a/k/a the *covered disaster area*). The IRS will issue guidance to *affected taxpayers* authorizing the postponement of certain items, a description of the storm-specific items and the duration of the postponement, as well as the location of the disaster area. The disaster area’s location will often change from the date when relief was initially issued. As a result, the FEMA and the IRS will update their web sites and guidance on an as-needed basis. The PBGC will issue additional guidance for defined benefit retirement plans subject to ERISA. The DOL works with the IRS as needed and may also provide additional relief for DOL-related retirement-actions (e.g., the timing of participant contributions withheld from pay.)

Keep the following links on your favorites list:

<https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>

<https://www.fema.gov/disasters>

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief>

<https://www.pbgc.gov/prac/other-guidance/dr/updates>

Hardship¹ Withdrawal and Participant Loan Relief

With IRS Announcements 2017-11, 2017-13 and 2017-15, employers sponsoring 401(k) plans and similar employer-sponsored retirement plans can elect to adopt the IRS relief to allow loans and

hardship¹ distributions to victims of Hurricanes Harvey, Irma, Maria and the California Wildfires (“**recent disasters**”) and members of their families. Since this relief is voluntary, a Plan Sponsor can decide to adopt both options (loans/hardships¹), one option only, or none.

Retirement plans can provide this relief to employees and former employees and certain members of their families who lived or worked in the disaster area localities affected by these recent disasters and designated for **individual assistance** by the FEMA.

This broad-based relief means that a retirement plan can allow a victim of the recent disasters to take a hardship¹ distribution or to borrow up to the specified statutory limits from the victim’s retirement plan. *It also means that a person who lives **outside** the disaster area can take out a retirement plan loan or hardship distribution and use it to assist a son, daughter, parent, grandparent, or other dependent that lived or worked in the disaster area.*

Plans will be allowed to make loans or hardship distributions before the plan is formally amended to provide for such features. Also, the plan can expand the reasons that normally apply to hardship¹ distributions – thus allowing them, for example, to be used for food and shelter. If a plan requires certain documentation before a distribution is made, the plan can defer the collection of documents, as permitted by the Announcements.

Things to keep in mind:

Geographic location: FEMA-designated and identified for **individual** assistance.

Who? Employees or former employees (or whose lineal ascendant or descendant, dependent or spouse) had a principal residence or whose place of employment was located in one the counties (or municipalities) in one of the designated areas on the *applicable date*.

When and for how long? The *applicable date* (**incident date**) and duration is determined by the disaster:

- **August 23, 2017 - January 31, 2018** for Hurricane Harvey
- **September 4, 2017 – January 31, 2018** for Hurricane Irma
- **September 17, 2017 – March 15, 2018** for Hurricane Maria
- **October 8, 2017 – March 15, 2018** for the California Wildfires.

Transactional relief The six-month ban on 401(k) and 403(b) contributions is **not** applicable to these disaster relief hardship withdrawals, even if such as suspension is usually required under a *safe harbor* standard definition of hardship withdrawals. Plan sponsors may rely upon representations from their employees as to the need and amount of a hardship withdrawal, unless the plan administrators had actual knowledge to the contrary.

It is not necessary for the plan document to specifically identify this disaster relief reason as an acceptable reason under the plan for a hardship withdrawal.

Note: Notwithstanding the exceptions just noted, the usual requirements for hardship withdrawals and those for participant loans apply. Tax treatment of loans and distributions remain unchanged. Ordinarily, retirement plan proceeds are tax-free if they are repaid over a period of five years or less. Hardship distributions are generally taxable and subject to a 10-percent early-withdrawal tax.

Procedural Relief The Announcements state that a retirement plan will not be treated as failing procedural requirements imposed by the plan for loans and hardship withdrawals solely due to the fact that they were not followed during the duration of the relief period. However, there is still a requirement for plan administrators to make a good-faith effort to comply with the existing loan and hardship distribution rules. .

The plan administrator must make a “reasonable attempt to assemble any foregone documentation ... as soon as practicable.”

MassMutual’s processing fees are waived

To ease the burden on plan participants impacted by these **recent disasters** MassMutual will be waiving its participant loan and/or participant hardship withdrawal¹ fees associated with these recent disasters.

For paper forms, please have the participant write the name of the disaster (e.g., California Wildfires)

When a participant submits a loan or hardship request electronically, the participant should call the MassMutual Participant Information Center to inform the MassMutual representative that he or she (or their eligible family member) resides in or works in a FEMA-designated disaster area and is requesting a loan and/or hardship¹ distribution. This will allow MassMutual to then waive processing fees for the electronic transaction.

Form 5500 Extension

Form 5500 extension for defined contribution and defined benefit plans

The IRS has provided an extension for affected taxpayers /individuals relating to 5500 filings that

were due between the applicable **incident date** and January 31, 2018 for the recent disasters

Affected individuals are individuals whose principal residence is located in a covered federal disaster area, any business entity or sole proprietor whose principal place of business is located in a covered disaster area or any business entity or sole proprietor who depends upon information necessary for filing from a service provider whose records are maintained in a covered disaster area.

Though not mentioned in the various news releases, it is expected that the IRS Form 8955-SSA and IRS Form 5558 would be included in this filing relief.

Sponsors will need to note the extension by checking Box D of the Form 5500/5500-SF and entering the name of the recent disaster.

PBGC Guidance for Defined Benefit Plans

The Pension Benefit Guaranty Corporation (“PBGC”) is waiving certain penalties and extending certain deadlines in response to the **recent disasters**. The Disaster Reliefs do not cover every situation in which PBGC relief may be warranted. It also does not grant specific disaster relief for all filings. For example, it does not provide relief for certain filings that involve particularly important or time sensitive information. To access the recent 2017 Disaster Relief announcements, click on this URL: <https://www.pbgc.gov/prac/other-guidance/dr/updates>

If you have questions about the information in this white paper or wondering what your next steps might be with respect to *Retirement Plan Relief for Recent Disasters* please contact your MassMutual representative

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