



IRS Issues Relief for Victims of Hurricane Harvey

The type of relief is nearly identical to that issued last year for Hurricane Matthew and the storms in Louisiana.

Introduction

The Internal Revenue Service (“IRS”) has issued a relief announcement for those plans and participants impacted by Hurricane Harvey, whose disastrous effects were distributed across several counties in Texas in the last days of August and the beginning of September, 2017.

The type of relief that the IRS describes in its *Announcement 2017-11*, [Relief for Victims of Hurricane Harvey](#), is virtually identical to that issued for Hurricane Mathew and the Louisiana Storms in 2016, and so it is relief that is fairly familiar. This hurricane disaster relief applies to

401(a) plans, 401(k) plans, 403(b) plans and governmental 457(b) plans covering state and municipal employees who were adversely affected by the hurricane. A copy of this guidance is located at the IRS website: <https://www.irs.gov/pub/irs-drop/a-17-11.pdf>.

Let us cover the relief in more detail, first by discussing who could be affected and what the relief allows them to do, according to the recent *IRS Announcement*. In a following section, we will describe additional IRS, DOL (Department of Labor) and PBGC (Pension Benefit Guaranty Corporation) relief which was not described in this *Announcement 2017-11* but which nevertheless

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provides other sources of relief for both defined contribution and defined benefit plans which generally becomes available when a hurricane disaster strikes.

Hardship Withdrawal and Participant Loan Relief Under *Announcement 2017-11*

This relief is focused on employees or former employees whose principal residence on August 23, 2017 was located in one of the counties adversely affected by Hurricane Harvey and identified for individual assistance by the Federal Emergency Management Agency (“FEMA”). These counties were still being added at the date of this paper’s publication and can be accessed at the following website, which is kept up to date:
<https://www.fema.gov/disasters>.

There are really four parts to understanding this hurricane disaster relief. The first is identifying the geographic locations for which the disaster relief is meant to cover. The second is identifying the persons covered by the relief. The third is understanding the time period the relief is meant to cover. The fourth, and final, is describing the relief itself. This information is outlined below. The IRS website provides additional detail at
<https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>.

- 1. Geographic Locations (Disaster Areas).**

These are the counties in Texas (and possibly other states) which have been designated as being identified for individual assistance by FEMA due to the conditions caused by Hurricane Harvey.

These areas are identified in News Releases issued by the agencies, including in this case in particular, by FEMA and the IRS at the website indicated below. These areas are likely to expand and may include areas in Louisiana or other areas in Texas. As of the date of publication they included several counties. The IRS has more detailed information about the counties impacted at this website as well as a link to FEMA (Federal Emergency Management Agency) here:

<https://www.irs.gov/newsroom/retirement-plans-can-make-loans-hardship-distributions-to-victims-of-hurricane-harvey>

- 2. Persons Covered by the Relief.**

These are the people for whom the relief is made available. These include an employee or former employee whose principal residence on the applicable date, which was August 23, 2017 in the initial guidance, was located in one of the counties identified for individual assistance (i.e., a ‘disaster area’), or whose place of employment was located in one of these counties on that date.

- 3. Duration of the Relief**

This is a period of time that is meant to approximate the duration of the disastrous consequences of the hurricane, and whose end reflects a deadline when the relief stops. It generally starts on the date the

disaster is recognized as ‘beginning’ according to FEMA, and ends on a date that signals the ‘end’ of the emergency period, when the temporary suspension of the regular rules and the time extensions must end. In the context of the relief we are about to describe in the following section, this period encompasses the dates August 23, 2017 through January 31, 2018. The IRS announced that there may be more counties designated as disaster areas and in that case these periods of duration may start and/or end on later dates for those counties.

4. **Description of the Relief Under Announcement 2017-11: ‘Transactional’ and Procedural**

The two types of relief offered are covered in detail in the next two sections.

‘Transactional’ Relief

In general, the substance of the relief described in *Announcement 2017-11* provides the ability of the plan sponsor to offer either (or both) participant plan loans or hardship withdrawals (which for these purposes includes unforeseeable emergency withdrawals in a governmental 457(b) plan) to employees or former employees who are persons covered by the relief (as defined above) during the duration of the relief (also defined above). Note that the standard six-month contribution suspension period is not applicable to these ‘disaster relief’ hardship withdrawals even if such a suspension is usually required under a ‘safe harbor’ standard definition of hardship withdrawals in many salary

deferral plan documents. Plan administrators may rely upon representations from their employees as to the need and amount of a hardship withdrawal unless the plan administrator has actual knowledge to the contrary, according to the *Announcement*.

Notwithstanding any current plan document provisions, the fact that the hardship withdrawal is being made in connection with the hurricane disaster relief means that it is not necessary for the current plan document to specifically enumerate this ‘disaster relief’ reason as one of those that are an acceptable reason under the plan for a hardship withdrawal. This relaxation of plan document terms is part of the relief. In other respects, such as the prohibitions against withdrawing earnings or safe harbor contributions in a hardship withdrawal, all the usual requirements for hardship withdrawals will apply to this special type of withdrawal.

Similarly, participant loans under these relief provisions must follow the usual rules under Treasury Section 72(p), and are limited in terms of maximum loan amount and maximum payback periods, subject to the requirement to use a reasonable interest rate, and also subject to the requirement that they need to meet the minimum vested balance requirements as security for the loan.

Again, keep in mind that these loans or hardship withdrawals related to disaster relief do not need to be currently offered under the plan document, provided the plan is amended before the end of the first plan year that begins after December 31, 2017

to include these provisions. It is also important to keep in mind that the plan sponsor does not need to offer hardship withdrawals or loans if it does not want to – these relief provisions are entirely optional. If it does offer this relief, the loans or hardship withdrawals can only be made during the duration of the relief period as defined above.

To ease the burden on plan participants impacted by Hurricane Harvey, MassMutual will be waiving its processing fees associated with the processing of participant loans and/or participant hardship withdrawals (unforeseeable events for 457(b) plans) associated with Hurricane Harvey. We are requesting that plan participants certify that the participant or the person for whom the participant is requesting this money (spouse, dependent, son, daughter, father, mother, or grandparents) either resides or works in a FEMA-designated county impacted by Hurricane Harvey. The Harvey Certification Form should be completed by the plan participant and submitted with the hardship or loan request form to ensure any fees are waived. Here is the link to this Harvey Certification Form: <http://www.massmutual.com/retire/pdf/folder/regulatory/rs43038.pdf>

Procedural Relief

Announcement 2017-11 also defines procedural relief, by which a retirement plan will NOT be treated as failing procedural requirements imposed by the terms of the plan for loans or hardship withdrawals solely due to the fact that these requirements were *not* followed during the duration of the relief period. This is true provided that the

plan administrator “makes a good-faith diligent effort under the circumstances to comply with those requirements”. However, the plan administrator must make a “reasonable attempt to assemble any foregone documentation” in that event, “as soon as practicable.” The only example of this offered in the *Announcement 2017-11* is of a plan whose normal procedure is to obtain a copy of a death certificate as evidence for an employee’s claim that he does not need to obtain spousal consent for a plan loan or distribution. The plan will not be disqualified in this instance for failing to operate in accordance with its terms if it makes the loan or distribution to an affected individual “if it is reasonable to believe, under the circumstances” that the spouse is deceased, the loan or distribution is made during the appropriate relief period to an appropriate employee, and the plan administrator makes reasonable efforts to obtain the death certificate as soon as practicable.”

Plan sponsors are cautioned to consider with their own legal advisor whether and which plan procedures (if any) should be temporarily suspended and what efforts should be made to retrieve any documentation that is normally required, but the *Announcement 2017-11* warns that (as an example) the normal spousal consent rules will continue to apply.

Other Forms of Disaster Relief for Hurricane Harvey Victims

Form 5500 deadlines may be extended for ‘affected taxpayers’ (defined below), which encompass plans which need to file during the relief period. In

general, affected taxpayers who are unable to obtain on a timely basis information necessary for completing forms from a bank, insurance company, or any other service provider will be allowed to postpone the filing. ‘Affected taxpayers’ 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 whose principal place of business whose records are necessary to meet the Form 5500 reporting requirements are maintained in a covered disaster area.

Unless the IRS extends the due date further, most of these Form 5500 filing extensions will be for Form 5500 filings otherwise due between August 23, 2017 and before January 31, 2018. If the original due date for the filing precedes the first day of the postponement period but the extended due date is within that postponement period, the filing will be timely if made before the end of the postponement period. If an extension that would otherwise be available is later than the end of the postponement period, the extended due date is the latest allowable date for the filing.

Note that as of the date of this writing, the IRS continues to add new disaster areas and that some of these may cover different ‘postponement’ dates. The IRS website referenced above will track any additions to the disaster areas and deadlines.

Special Defined Benefit Plan Relief

The Form 5500 extensions described above are also available for defined benefit plans. In addition, the Pension Benefit Guaranty Corporation (“PBGC”) has indicated that designated persons (generally, any person responsible for filing before a PBGC deadline) that include a plan administrator or plan sponsor that is located in the disaster area or who cannot reasonably obtain information or other assistance needed to meet a deadline from a bank, service provider or other person whose operations were directly affected by Hurricane Harvey, can obtain relief. Generally, the PBGC relief extends PBGC deadlines to January 31, 2018 for annual premium filings and certain plan termination filings (for plans terminating in a standard termination) if the deadlines for those filings would otherwise have fallen during the eligibility period defined for the Form 5500 relief.

For annual premium filings where the sponsor takes advantage of the extended deadline, penalties will be waived but late interest charges will still apply. Standard termination deadlines that are extended include the deadline for filing of the standard termination notice; the deadline for distribution of plan assets; and the deadline for filing the post-distribution certifications. Note that other PBGC standard termination required actions whose deadlines are defined by law to be the same as those that have been extended by the relief will also be extended (e.g., participant notices of plan benefits, which are required to be provided on or before the filing of the standard termination notice). A distress termination notice filing deadline that falls during the designated period may also be

extended under these guidelines, but the PBGC should be consulted regarding case-by-case relief for other distress termination requirements.

More information is available in Disaster Relief Number 17-09 (DRN 17-09). The PBGC website also contains more information:

<https://www.pbgc.gov/prac/other-guidance/dr/dr17-09>.

Summing Up

Plan Sponsors who have participants who are directly affected by Hurricane Harvey or whose participants may be related to persons who have been adversely affected by it may consider offering some or all features of this available relief to their plan participants or may instead want to take advantage of some of the extensions available to meet their plan responsibilities and objectives.

MassMutual is working to provide plan sponsors with the means to practically offer this hardship withdrawal and participant loan relief to their participants. If you have further questions or wish to take advantage of this relief for your plan, please contact your MassMutual representative.

MassMutual Regulatory Advisory Services

If you have questions about the information in this white paper or wondering what your “next steps” might be with respect to **IRS Issues Relief for Victims of Hurricane Harvey**, please contact your MassMutual representative.

This document is for informational purposes only and should not be construed as legal and/or tax advice. Please consult with your own legal counsel and other experienced advisors regarding the application of the matters described herein to your specific circumstances.