

Employee Benefits and Compensation

September 2017

Special Rules for Plans due to Hurricane Irma

On September 12, 2017, the Internal Revenue Service (IRS) issued Announcement 2017-13, which provides guidance on the ability of qualified plans to provide plan loans and hardship distributions to people in Florida affected by Hurricane Irma. This comes not long after the IRS issued similar guidance to those victims affected by Hurricane Harvey.

IRS ANNOUNCEMENT 2017-13

1. Who Does This Relief Cover?

Qualified plans will be permitted to make loans or hardship distributions to victims of Hurricane Irma who, as of September 4, 2017, had one of the following:

- principal residence in one of the counties identified for individual assistance by FEMA
- place of employment in one of those counties identified by FEMA
- lineal ascendant or descendant, dependent, or spouse with a principal residence or place of employment in one of the counties identified by FEMA

If additional counties are later identified by FEMA, the relief will extend to those counties as of the date FEMA specifies as the incident period. **Hardships resulting from Hurricane Irma must be made on or after September 4, 2017 (or other such "incident date" as to be determined by FEMA applicable to added affected counties) and no later than January 31, 2018. The tax treatment of loans and hardship distributions taken under these rules is the same as any other loan or hardship withdrawal.**

2. What Is Required of the Plan Administrator?

A plan administrator is permitted to rely on a representation by an employee or former employee as to the need and amount of a hardship distribution unless the plan administrator has actual knowledge to the contrary. A plan can ignore the reasons that normally apply to hardship distributions allowing, for example, such distributions to be used for food and shelter. The distribution is treated like any other hardship under the Code and applicable regulations, including the maximum amounts available for such distributions.

3. Compliance with Plan Terms and Supporting Documentation

If plan terms require certain procedural requirements to be followed with respect to plan loans or hardship distributions and the plan administrator does not impose such procedural requirements to

those seeking relief pursuant to this announcement, the plan administrator will not be found to be out of compliance with plan terms if that person makes a good faith, diligent effort to comply with such requirements as soon as practicable under the circumstances to assemble any forgone documentation.

The announcement provides the example of a spousal consent requirement for a plan loan or hardship distribution whereby the plan terms require a death certificate if the employee claims the employee's spouse is deceased. The plan will not be disqualified for failure to obtain the death certificate if the plan reasonably believes that the spouse is deceased, the loan or hardship distribution is made within the timeframes provided for relief under this announcement, and the plan administrator makes reasonable efforts to obtain the death certificate as soon as practicable.

4. Special Implementation Rules

Unlike regular hardship withdrawal rules, in addition to the rule that the reasons for a hardship withdrawal do not have to meet the requirements generally applicable to hardship withdrawals, there is also no requirement that contributions have to be suspended for six months if a hardship withdrawal is received.

DOL COMPLIANCE GUIDANCE

The DOL has not yet issued guidance or compliance procedures for those affected by Hurricane Irma. However, it seems likely that the DOL will issue similar compliance guidelines as it did for those affected by Hurricane Harvey.

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