



News Release

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Retirement Plans Can Make Loans, Hardship Distributions to Victims of Hurricane Harvey

IR-2017-138, Aug. 30, 2017

WASHINGTON —The Internal Revenue Service today announced that 401(k)s and similar employer-sponsored retirement plans can make loans and hardship distributions to victims of Hurricane Harvey and members of their families. This is similar to relief provided last year to [Louisiana](#) flood victims and victims of [Hurricane Matthew](#).

Participants in 401(k) plans, employees of public schools and tax-exempt organizations with 403(b) tax-sheltered annuities, as well as state and local government employees with 457(b) deferred-compensation plans may be eligible to take advantage of these streamlined loan procedures and liberalized hardship distribution rules. Though IRA participants are barred from taking out loans, they may be eligible to receive distributions under liberalized procedures.

Retirement plans can provide this relief to employees and certain members of their families who live or work in disaster area localities affected by Hurricane Harvey and designated for individual assistance by the Federal Emergency Management Agency (FEMA). Currently, parts of Texas qualify for individual assistance. For a complete list of eligible counties, visit <https://www.fema.gov/disasters>. To qualify for this relief, hardship withdrawals must be made by Jan. 31, 2018.

The IRS is also relaxing procedural and administrative rules that normally apply to retirement plan loans and hardship distributions. As a result, eligible retirement plan participants will be able to access their money more quickly with a minimum of red tape. In addition, the six-month ban on 401(k) and 403(b) contributions that normally affects employees who take hardship distributions will not apply.

This broad-based relief means that a retirement plan can allow a victim of Hurricane Harvey to take a hardship distribution or 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 who 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. In addition, the plan can ignore the reasons that

normally apply to hardship 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 relax this requirement as described in Announcement 2017-11.

The IRS emphasized that the tax treatment of loans and distributions remains unchanged. Ordinarily, retirement plan loan proceeds are tax-free if they are repaid over a period of five years or less. Under current law, hardship distributions are generally taxable and subject to a 10-percent early-withdrawal tax.

Further details are in Announcement 2017-11, posted today on IRS.gov. More information about other tax relief related to Hurricane Harvey can be found on the IRS [disaster relief](#) page. For information on government-wide relief efforts, visit www.U.S.A.gov/hurricane-harvey.

Relief for Victims of Hurricane Harvey

Announcement 2017-11

Purpose

This announcement provides relief to taxpayers who have been adversely affected by Hurricane Harvey and who have retirement assets in qualified employer plans that they would like to use to alleviate hardships caused by Hurricane Harvey. In addition, this announcement provides relief from certain verification procedures that may be required under retirement plans with respect to loans and hardship distributions. The relief provided under this announcement is in addition to the relief already provided by the Service pursuant to News Release IR-2017-135 under § 7508A of the Internal Revenue Code (“Code”) for victims of Hurricane Harvey. (For a listing of employee benefit-related acts and deadlines that, under the News Release, were postponed until January 31, 2018, in response to Hurricane Harvey, see the regulations under § 7508A and Section 8 of Rev. Proc. 2007-56, 2007-2 C.B. 388.)

Background

The laws relating to qualified employer plans impose various limitations on the permissibility of loans and distributions from those plans. For example, § 401(k)(2)(B)(i) of the Code provides that in the case of a § 401(k) plan that is part of a profit-sharing or stock bonus plan, elective deferrals may be distributed only in certain situations, one of which is on account of hardship. Section 403(b)(11) provides similar rules with respect to elective deferrals under a § 403(b) plan. Section 457(d)(1)(A) provides that a plan described in § 457(b) may not permit distributions before the occurrence of certain enumerated events, one being when the participant is faced with an unforeseeable emergency. Certain other types of plans or accounts are not permitted to make in-service distributions (distributions to a participant who is still an employee) even if there is a hardship. For example, in-service hardship distributions are generally not permitted from pension plans or from accounts holding qualified nonelective contributions (“QNECs”) described in § 401(m)(4)(C) or qualified matching contributions (“QMACs”) described in § 401(k)(3)(D)(ii)(I). However, Rev. Rul. 2004-12, 2004-2 C.B. 478, holds that if amounts attributable to rollover contributions are separately accounted for within a plan, those amounts may be distributed at any time, pursuant to the employee’s request. Section 72(p) imposes certain requirements relating to plan loans. Unless those requirements are satisfied, a loan is treated as a distribution under the plan.

In order to make a loan or distribution (including a hardship distribution), a plan must contain language authorizing the loan or distribution. Also, except to the extent a distribution consists of already-taxed amounts, the distribution will be includible in gross income and generally subject to the 10-percent additional tax under § 72(t). Similar rules relating to income inclusion and taxation apply to a distribution from an IRA.

Plan provisions and regulations under certain Code sections establish verification procedures that a plan must follow before loans or distributions can be made from the plan. For example, the regulations under § 401(k) set forth certain criteria an employee must meet in order to receive a hardship distribution. A plan may contain procedures designed to confirm that the criteria have been satisfied.

Relief

As described below, a qualified employer plan will not be treated as failing to satisfy any requirement under the Code or regulations merely because the plan makes a loan, or a hardship distribution for a need arising from Hurricane Harvey, to an employee or former employee whose principal residence on August 23, 2017, was located in one of the Texas counties identified for individual assistance by the Federal Emergency Management Agency (“FEMA”) because of the devastation caused by Hurricane Harvey or whose place of employment was located in one of these counties on that applicable date or whose lineal ascendant or descendant, dependent, or spouse had a principal residence or place of employment in one of these counties on that date. The counties identified for individual assistance by FEMA can be found on FEMA’s website at <https://www.fema.gov/disasters>. If additional areas in Texas or other states are identified by FEMA for individual assistance because of damage related to Hurricane Harvey, the relief provided in this announcement will also apply, from the date specified by FEMA as the beginning of the incident period, and that date should be substituted for references to August 23, 2017, in this announcement. Plan administrators may rely upon representations from the employee or former employee as to the need for and amount of a hardship distribution, unless the plan administrator has actual knowledge to the contrary, and the distribution is treated as a hardship distribution for all purposes under the Code and regulations.

For purposes of this announcement, a “qualified employer plan” means a plan or contract meeting the requirements of § 401(a), 403(a) or 403(b), and, for purposes of the hardship relief, that could, if it contained enabling language, make hardship distributions. For purposes of this paragraph, a “qualified employer plan” also means a plan described in § 457(b) maintained by an eligible employer described in § 457(e)(1)(A), and any hardship arising from Hurricane Harvey is treated as an “unforeseeable emergency” for purposes of distributions from such plans. For example, a profit-sharing or stock bonus plan that currently does not provide for hardship or other in-service distributions may nevertheless make hardship distributions related to Hurricane Harvey pursuant to this announcement, except from QNEC or QMAC accounts or from earnings on elective contributions (see below for plan amendment requirements). A defined benefit or money purchase plan, which generally cannot make in-service hardship distributions, may not make hardship distributions pursuant to this announcement, other than from a separate account, if any, within the plan containing either employee contributions or rollover amounts.

The amount available for hardship distribution is limited to the maximum amount that would be permitted to be available for a hardship distribution under the plan under

the Code and regulations. However, the relief provided by this announcement applies to any hardship of the employee, not just the types enumerated in the regulations, and no post-distribution contribution restrictions are required. For example, regulations under § 401(k) provide safe harbor hardship distribution standards under which a hardship is deemed to exist only for certain enumerated events, and, after receipt of the hardship amount, the employee is prohibited from making contributions for at least 6 months. Plans need not follow these rules with respect to hardship distributions for which relief is provided under this announcement.

To make a loan or hardship distribution pursuant to the relief provided in this announcement, a qualified employer plan that does not provide for them 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. To qualify for the relief under this announcement, a hardship distribution must be made on account of a hardship resulting from Hurricane Harvey and be made on or after August 23, 2017, and no later than January 31, 2018. Plan loans made pursuant to this announcement must satisfy the requirements of § 72(p).

In addition, a retirement plan will not be treated as failing to follow procedural requirements for plan loans (in the case of retirement plans other than IRAs) or distributions (in the case of all retirement plans, including IRAs) imposed by the terms of the plan merely because those requirements are disregarded for any period beginning on or after August 23, 2017, and continuing through January 31, 2018, with respect to loans or distributions to individuals described in the first paragraph under “Relief”, above, provided the plan administrator (or financial institution in the case of distributions from IRAs) makes a good-faith diligent effort under the circumstances to comply with those requirements. However, as soon as practicable, the plan administrator (or financial institution in the case of IRAs) must make a reasonable attempt to assemble any forgone documentation. For example, if spousal consent is required for a plan loan or distribution and the plan terms require production of a death certificate if the employee claims his or her spouse is deceased, the plan will not be disqualified for failure to operate in accordance with its terms if it makes a loan or distribution to an individual described in the first paragraph under “Relief” in the absence of a death certificate if it is reasonable to believe, under the circumstances, that the spouse is deceased, the loan or distribution is made no later than January 31, 2018, and the plan administrator makes reasonable efforts to obtain the death certificate as soon as practicable. For purposes of this announcement, “retirement plan” has the same meaning as “eligible retirement plan” under § 402(c)(8)(B).

Taxpayers are reminded that in general the normal spousal consent rules continue to apply, and, except to the extent the distribution consists of already-taxed amounts, any distribution made pursuant to the relief provided in this announcement will be includible in gross income and generally subject to the 10-percent additional tax under § 72(t).

The Department of Labor has advised Treasury and the IRS that it will not treat any person as having violated the provisions of Title I of the Employee Retirement Income Security Act solely because that person complied with the provisions of this announcement.

**IRS NOTICE OF DISASTER DECLARATION FROM THE
FEDERAL EMERGENCY MANAGEMENT AGENCY
[FEMA-4332-DR]
(Counties Added for Individual and Public Assistance)**

DATE: August 30, 2017

DECLARED: August 25, 2017

STATE: Texas

NUMBER: FEMA-4332-DR-**Amendment (1)**

INCIDENT: Hurricane Harvey

INCIDENT PERIOD: August 23, 2017, and continuing

FEDERAL COORDINATING OFFICER: Kevin L. Hannes

DESIGNATIONS AND TYPES OF ASSISTANCE:

INDIVIDUAL ASSISTANCE (Assistance to individuals and households):

Aransas, Bee, Brazoria, Calhoun, Chambers, **Colorado, Fayette**, Fort Bend, Galveston, Goliad, **Hardin**, Harris, Jackson, **Jasper, Jefferson**, Kleberg, Liberty, Matagorda, **Montgomery, Newton**, Nueces, **Orange**, Refugio, **Sabine, San Jacinto**, San Patricio, Victoria, **Waller**, and Wharton Counties.

PUBLIC ASSISTANCE (Assistance for emergency work and the repair or replacement of disaster-damaged facilities):

Aransas, Bee, Bexar, Brazoria, Calhoun, Chambers, **Colorado, Dallas, Fayette**, Fort Bend, Galveston, Goliad, **Hardin**, Harris, Jackson, **Jasper, Jefferson**, Kleberg, Liberty, Matagorda, **Montgomery, Newton**, Nueces, **Orange**, Refugio, **Sabine, San Jacinto**, San Patricio, **Tarrant, Travis**, Victoria, **Waller**, and Wharton Counties.

HAZARD MITIGATION GRANT PROGRAM (Assistance for actions taken to prevent or reduce long term risk to life and property from natural hazards)

All counties in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

OTHER: Additional designations may be made at a later date if requested by the state and warranted by the results of further damage assessments.