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PENSION ANALYST

Important information—Plan administration and operation

Prudential
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Hurricane Florence and Hurricane Michael affect retirement plan administration

Who's affected

This information applies to sponsors of qualified pension, profit sharing and stock bonus plans, including 401(k) plans, multiemployer plans, governmental plans and church plans. It also applies to ERISA 403(b) plans, non-ERISA 403(b) plans, and governmental section 457(b) plans. In certain circumstances, plan sponsors and participants who were not directly impacted by Hurricane Florence or Hurricane Michael may still be eligible for special relief, as described in this publication.

Background and summary

The arrival of Hurricane Florence in September and Hurricane Michael in October significantly affected individuals and businesses in several states. Recognizing this impact, the Internal Revenue Service (IRS), Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC) have granted extensions of certain deadlines for both plan sponsors and participants directly affected by these disasters.

The IRS proposed hardship withdrawal rules extend the disaster relief included in Announcement 2017-15 to victims of Hurricane Florence and Hurricane Michael. This Announcement includes special rules for sponsors of qualified plans, 403(b) plans, and governmental 457(b) plans, who want to offer hardship distributions or plan loans to employees and former employees who live or work in affected areas, or whose family members were directly affected by these disasters.

The hardship and plan loan relief provided by the IRS for victims of Hurricane Florence and Hurricane Michael is identical to the IRS hardship and loan relief provided for Hurricane Harvey and Hurricane Irma and, more recently, Hurricane Maria and the 2017 California Wildfires.

Action and next steps

Plan sponsors should review the information in this publication to determine potential impacts to their plans. If you need more information regarding the various extensions or special plan loan and hardship distribution opportunities, please contact your Prudential Retirement representative.

In this issue

Directly-affected plans and participants

IRS relief

The IRS announced extensions of certain tax filing and payment deadlines for qualified defined benefit plans, defined contribution plans, IRAs, and certain annuity contracts. Deadlines were extended for certain filers in the disaster areas whose Form 5500 filings were due on or after the following dates:

- Hurricane Florence
  - North Carolina – September 7, 2018; and
  - South Carolina and Virginia – September 8, 2018;
- Hurricane Michael
  - Florida – October 7, 2018;
  - Georgia – October 9, 2018; and
  - Alabama – October 10, 2018.

The extended deadline for Hurricane Florence is January 31, 2019; for Hurricane Michael, the extended deadline is February 28, 2019.

Filers that are entitled to the relief should check Part I, Box D on the Form 5500, or Part 1 on the Form 5500-EZ and include the appropriate statement as described in the Instructions to the applicable form. The related Summary Annual Report (SAR) distribution deadline is automatically extended for affected plans.

This extended filing deadline applies to plan administrators, employers, and other entities that are located in the "covered disaster areas." Filers located outside the disaster areas may also receive relief, but will need to call the IRS disaster hotline to request relief.

The IRS also gives affected taxpayers until January 31, 2019 for Hurricane Florence and February 28, 2018 for Hurricane Michael to perform other time sensitive actions. For more information regarding these time sensitive actions, see IRS Revenue Procedure 2018-58.

PBGC relief

The PBGC has extended a number of deadlines that apply to a "designated person." A "designated person" is any person responsible for meeting a PBGC deadline who:

- Is located in a disaster area; or
- Cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank, or other person whose operations are directly affected by the disaster.

For disaster areas, certain PBGC deadlines were extended to January 31, 2019 for Hurricane Florence and February 28, 2019 for Hurricane Michael. Details of the PBGC relief available to taxpayers is included in our August 2018 Pension Analyst, PBGC streamlines disaster relief.

DOL relief

The DOL has indicated that they will not treat a plan as failing to follow requirements for loans or distributions, if the failure is attributable to Hurricane Florence or Hurricane Michael, provided the plan makes a good-faith effort to comply with the requirements and makes a reasonable attempt to obtain missing documentation as soon as practicable.

In addition, the DOL will not enforce the standard contribution timing requirements with respect to employee contributions or loan repayments that are temporarily delayed due to Hurricane Florence or Hurricane Michael. Such delays may have affected either plan sponsors or their service providers (e.g., payroll processing services). Affected plan sponsors and service providers must still act reasonably, prudently and in the interest of participants to remit these contributions as soon as practical under these circumstances

The DOL has also recognized that plans affected by Hurricane Florence or Hurricane Michael may not have been able to provide the Sarbanes-Oxley 30-day advance notice to participants and beneficiaries whose rights under the plan were temporarily limited by a black-out period. These plans would be subject to the exception that is provided for events that are beyond the reasonable control of the plan administrator.

All plans and participants

IRS plan distribution relief

In Announcement 2017-15, the IRS has provided special rules, allowing qualified plans (including 401(k) plans) and 403(b) plans to make loans and hardship distributions to “Hurricane Florence victims” or “Hurricane Michael victims.” Under these rules, governmental section 457(b) plans may make unforeseeable emergency distributions to “Hurricane Florence victims” or “Hurricane Michael victims.”

For these purposes, “Hurricane Florence victims” and “Hurricane Michael victims” include employees or former employees:

- Whose principal residence on the “Incident Date” was located in one of the areas identified for individual assistance by the Federal Emergency Management Association (FEMA) because of the devastation caused by these disasters;
- Whose place of employment was located in one of these areas on the Incident Date; or
- Whose lineal ascendant (parent, grandparent, etc.) or lineal descendant (child, grandchild, etc.), dependent, or spouse had a principal place of residence or employment in one of these areas on the Incident Date.

‘Incident Dates,” as specified by the FEMA, are listed below.

- Hurricane Florence
    - North Carolina – September 7, 2018; and
    - South Carolina and Virginia – September 8, 2018;
- Hurricane Michael
    - Florida – October 7, 2018;
    - Georgia – October 9, 2018; and
    - Alabama – October 10, 2018.

Plans sponsored by employers that have no business operations in the affected areas are still eligible for this plan distribution relief, if they have employees or former employees who were affected or who have affected lineal ascendants or descendants.

If additional areas are identified by FEMA for individual assistance because of damage related to these disasters, 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 the Incident Date for special loan and hardship distribution purposes. Please check the FEMA website for updates.

In general

These disaster-related loans and hardship distributions must be made on or after the Incident Date and no later than March 15, 2019.

Under these special rules, loans and hardship distributions may be made before plan documents or annuity contracts are formally amended to permit them. However, the necessary amendments must be adopted in accordance with the amendment deadline under the IRS proposed hardship withdrawal rules. We expect further clarification on this deadline with the issuance of final regulations.

Plan administrators must only make good-faith efforts to comply with the standard plan requirements for supporting documentation when granting disaster-related hardship distributions and loans. However, they must make reasonable attempts to assemble the required documentation as soon as possible. For example, plan administrators may initially rely on the employee's representation of the amount needed to satisfy the hardship, as long as they make reasonable attempts to obtain the documentation that would normally be required. The “good-faith” rule also applies to the need to obtain spousal consent to loans or distribution when an employee claims the spouse is deceased but a death certificate is not available, as long as it is reasonable to believe that the spouse is deceased and reasonable efforts are later made to obtain the death certificate.

Hardship/Unforeseeable emergency distributions

Under these special rules, distributions may be made for any disaster-related hardship (e.g., food, shelter, and clothing), not just those hardship reasons listed in existing regulations (i.e., casualty losses, funeral expenses). In addition, the standard six-month suspension of elective deferral contributions following hardship distributions, applicable under some 401(k) plans, does not apply in these situations.

These disaster-related hardship distributions are subject to the standard 10% early distribution federal income tax penalty.

Prudential Retirement’s Response

Checks that were in the mail to plan participants and beneficiaries in the affected areas when the disasters hit are being handled by the U. S. Postal Service’s “recycling” program, which attempts to deliver undeliverable mail as delivery services are restored to affected Zip Codes and address changes are received. We will send future payments to the addresses we have on file, until participants notify us of address changes or changes to direct deposit.

If you want to make Hurricane Florence or Hurricane Michael hardship distributions or loans available from your plan, please contact your Prudential Retirement representative, so that we can make sure these transactions are handled appropriately. In addition, if we provide document services for your plan and your plan requires an amendment to address these transactions, we will prepare the appropriate plan amendments before the deadline.

The IRS distribution and loan relief does not provide specific guidance for handling situations where a plan administrator’s authorization is required but the plan administrator cannot be located, or where a participant’s spouse’s consent is required but it has not yet been determined if the spouse is deceased or simply has not yet been located. We will work individually with plan sponsors and participants to address these types of situations as they arise, to ensure that while participants’ needs are met, their plans’ tax-favored status is not jeopardized.

Pension Analyst by Prudential Retirement
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