October 2017

PENSION ANALYST

Important information—Plan administration and operation

New law provides additional relief for hurricane victims

Who's affected

This relief is available to sponsors of qualified plans, ERISA and non-ERISA 403(b) plans, and governmental section 457 plans whose participants were directly affected by Hurricane Harvey, Hurricane Irma, and Hurricane Maria.

Background and summary

On September 29, 2017, President Trump signed into law the Disaster Tax Relief and Airport and Airway Extension Act of 2017 ("The Act"). This law provides individuals who were directly affected by Hurricane Harvey, Hurricane Irma, and Hurricane Maria with additional access to their retirement savings to alleviate hardships caused by the arrival of these hurricanes in August and September. It also lessens the tax burdens related to these special hardship distributions. The law is nearly identical to the Katrina Emergency Tax Relief Act of 2005 (KETRA), which provided tax relief for victims of Hurricane Katrina, Hurricane Wilma, and Hurricane Rita. Additionally, we expect the IRS to issue additional guidance on this law, similar to what was done following KETRA.

It is important to note that this relief is *in addition to* the relief previously provided by the federal regulatory agencies, as discussed in our September 2017, *Pension Analyst* publications titled, Hurricane Harvey affects retirement plan administration and Hurricane Irma affects retirement plan administration. In fact, some of that regulatory relief is available to individuals who are not eligible for relief under the Act.

Action and next steps

Plan sponsors with employees or former employees in Texas, Florida, Georgia, Puerto Rico, or the U.S. Virgin Islands should review this publication to become familiar with the additional relief available to these individuals. We will notify sponsors once the IRS issues additional guidance on this law.

In this issue

RSMH080

Recontribution of withdrawals taken for home purchases

The Act contains a special recontribution provision for individuals who took hardship distributions from a 401(k) plan or 403(b) arrangement to purchase a home in one of the hurricane disaster areas, if that home was not purchased or built due to Hurricane Harvey, Hurricane Irma, or Hurricane Maria. By its nature, this provision applies to both individuals who resided in a hurricane disaster area and those who did not yet reside there when the hurricane hit.

If the home purchase distribution was taken after February 28, 2017, but before September 21, 2017, the participant may recontribute the funds to a retirement plan in which he is participating provided:

- The plan accepts rollover contributions; and
- The recontribution is made before March 1, 2018.

The recontribution does not have to be made to the plan that made the original distribution. It may be made to any traditional IRA, qualified plan, governmental section 457 plan, or 403(b) plan in which the individual participates. In fact, the recontribution may be made in the form of one or more contributions, but total recontributions cannot exceed the amount of the original distribution.

Recontributions are treated as direct rollovers. As a result, the original distribution is not treated as a taxable distribution. Following KETRA, the IRS created Form 8915, for qualified hurricane distributions and repayments, to be used by participants when filing their tax returns. We expect the IRS will issue guidance in this instance.

Qualified hurricane distributions

In guidance issued prior to the Act, the IRS allowed plan sponsors to make hardship distributions available on a broader basis to individuals affected by Hurricane Harvey and Hurricane Irma. Under these rules, described in our September 2017, *Pension Analyst* publications titled Hurricane Harvey affects retirement plan administration, and Hurricane Irma affects retirement plan administration. “Harvey and Irma victims” included individuals whose lineal ascendants, descendants, dependents, or spouse were directly affected by the hurricane. These special hardship distribution provisions still apply.

In addition, the Act permits individuals who were directly affected by one of the hurricanes to take “qualified hurricane distributions” from their retirement plans. Unlike the special hardship distributions, qualified hurricane distributions will be eligible for special tax treatment. Plan sponsors may permit such distributions immediately, as long as they eventually amend their plans to provide for them.

A qualified hurricane distribution means a distribution made to an individual:

- Whose principal place of residence on August 23, 2017, was in the “Hurricane Harvey disaster area,” and who sustained an economic loss from Hurricane Harvey:
- Whose principal place of residence on September 4, 2017, was in the “Hurricane Irma disaster area,” and who has sustained an economic loss from Hurricane Irma;
- Whose principal place of residence on September 16, 2017, was in the “Hurricane Maria disaster area,” and who has sustained an economic loss from Hurricane Maria.

Qualified hurricane distributions must be made before January 1, 2019, and can be made from profit sharing plans (including section 401(k) plans), stock bonus plans, 403(b) plans, governmental section 457 plans, and traditional IRAs. In guidance issued by the IRS in Notice 2005-92 following the enactment of KETRA, the IRS clarified the types of distributions that were able to be considered KETRA distributions. If the IRS issues similar guidance for these hurricanes, distributions from defined benefit plans may also be classified as qualified hurricane distributions. However, defined benefit and money purchase pension plans may not permit in-service qualified hurricane distributions.

An individual's total qualified hurricane distributions, taken from all eligible plans, cannot exceed $100,000. When applying this limit, plan sponsors are responsible for tracking distributions from all plans that they or other members of their controlled group sponsor.

The following special tax rules apply to qualified hurricane distributions:

- They are exempt from the 10% federal income tax penalty on early distributions.
- If made from a qualified plan or governmental section 457 plans, they are not eligible for rollover and therefore, are not subject to mandatory 20% federal tax withholding.
- They are included in the individual's gross income ratably over a three-taxable year period, beginning with the year in which the distribution occurred, unless the individual elects otherwise.
- They may be repaid within three years to an "eligible retirement plan" (i.e., an IRA, a qualified plan, a governmental section 457 plan, or a 403(b) arrangement) in which the individual is participating, which is eligible to receive a rollover contribution. The repayment does not have to be made to the same plan or IRA from which the distribution was made.

Refer to the "Special Hurricane Distributions" chart appearing at the end of this publication for a comparison of the types of special distributions available to hurricane victims.

Special Plan Loan Provisions

The IRS relief issued prior to the Act allowed plan sponsors to make plan loans available to individuals who were directly or indirectly affected by Hurricane Harvey and Hurricane Irma, even if their plans did not normally permit loans. However, these loans remained subject to the standard loan limits of the lesser of $50,000 or 50% of the participant's vested account balance.

Under the Act, plans may allow individuals who are eligible to take qualified hurricane distributions to take larger loans from qualified plans, 403(b) plans, and governmental section 457 plans. In addition, any of those individuals who had an outstanding plan loan on or after the qualified beginning date, may delay payments without causing the loan to become taxable.

The qualified beginning date is:
- August 23, 2017, for any qualified Hurricane Harvey individual;
- September 4, 2017, for any qualified Hurricane Irma individual; and
- September 16, 2017, for any qualified Hurricane Maria individual.

The maximum loan amount available to these individuals for loans taken before January 1, 2019 (when added to the outstanding balance of all other loans from the plan), cannot exceed the lesser of $100,000, or 100% of the participant's vested account balance.

In addition, an individual with an outstanding plan loan on or after the qualified beginning date may delay for one year any loan repayments due after the qualified beginning date, and before January 1, 2019. *For example, a repayment originally due on September 18, 2017, may be delayed to September 18, 2018.* This delay will not cause the loan to become a taxable deemed distribution. After the one-year period ends, the loan must be reamortized to adjust payments for the new due date and accrued interest. The one year postponement period will be ignored with respect to the term of the loan.

It is important to note that while the Act increased the limit on nontaxable loans to $100,000 or 100% of the participant's vested account balance, it did not similarly increase the ERISA loan limit. As a result, a plan loan equal to 100% of a participant's vested account balance would not be considered a taxable distribution but could be a prohibited transaction, if the plan administrator does not obtain additional security for the loan outside the plan. The Department of Labor has not yet provided any special relief from the adequate security rule for these situations, but did so shortly after KETRA, so we expect forthcoming relief.

See the “Special Hurricane Plan Loans” chart appearing at the end of this publication for a comparison of the types of plan loans available to hurricane victims.

Plan Amendments

In general, the deadline for plan amendments due to these hurricane provisions, containing retroactive effective dates equal to the dates the special distribution or loan provisions took effect, is the last day of the first plan year beginning on or after January 1, 2019. For governmental plans, plan amendments must be adopted by the last day of the first plan year beginning on or after January 1, 2021. Naturally, the effective dates specified in these amendments must be retroactive to the date the provisions were first made effective. The IRS may establish different amendment deadlines, if they perceive a need to do so.

Next Steps

We expect that the IRS is on a fast track to publish guidance regarding the Act. That guidance will be explained in a future issue of the *Pension Analyst*. In the meantime, if you have questions regarding the availability of this relief to your plan or participants, please contact your Prudential Retirement representative.

RSMH080

Special Hurricane Distributions		
	Announcement 2017-11 and Announcement 2017-13 Hardship Withdrawals	**Disaster Tax Relief and Airport and Airway Extension Act Qualified Hurricane Distributions**
Eligible Participants	Employees or former employees: • Whose principal place of residence on the beginning of the incident period (August 23, 2017, for Hurricane Harvey, and September 4, 2017, for Hurricane Irma) was located in an area identified by Federal Emergency Management Agency (FEMA) as eligible for individual assistance or • Whose principal place of employment was located in one of those areas on the beginning of the incident period; or • Whose lineal ascendant or lineal descendant, dependent, or spouse had a principal place of residence or employment was located in one of those areas on the beginning of the incident period.	Individuals who: • As of ***August 23, 2017, for Hurricane Harvey, September 4, 2017, for Hurricane Irma, or September 16, 2017, for Hurricane Maria***, had their principal place of residence in the "Hurricane Harvey Disaster Area," "Hurricane Irma Disaster Area" or "Hurricane Maria Disaster Area" and • Sustained an economic loss due to the hurricane.
Distribution Period: **On or after** **Before**	The beginning of the incident period January 31, 2018	August 23, 2017 for Hurricane Harvey; September 4, 2017, for Hurricane Irma, or September 16, 2017 for Hurricane Maria January 1, 2019
Dollar Limit	As provided in the plan; cannot exceed 100% of vested account balance	$100,000 total from all of the participant's qualified plan accounts, 403(b) programs and IRAs; employer must monitor from "controlled group" perspective.
Taxation **Inclusion in income**	In year distributed.	Included ratably over 3-year period beginning with year distributed, unless participant elects to include entirely in year distributed.
Federal Withholding	Not eligible for rollover; subject to 10% withholding, but can elect no withholding.	Not eligible for rollover; subject to 10% withholding, but can elect no withholding.
10% Penalty Tax on Early Distributions (§72(t))	Applies.	Does not apply.
Repayment Options	Not available; not eligible for rollover.	May be recontributed to any retirement program accepting rollovers.

Special Hurricane Distributions		
	Announcement 2017-11 and Announcement 2017-13 Hardship Withdrawals	**Disaster Tax Relief and Airport and Airway Extension Act Qualified Hurricane Distributions**
Plan Amendment Requirements	Amendment may not be required if plan already permits Hardship Withdrawals.	Amendment required in all cases.
Deadline(s)	Last day of first Plan Year beginning on or after January 1, 2018.	General: Last day of first Plan Year beginning on or after January 1, 2019. Governmental Plans: Last day of first Plan Year beginning on or after January 1, 2021.

Special Hurricane Plan Loans		
	Announcement 2017-11 and Announcement 2017-13	**Disaster Tax Relief and Airport and Airway Extension Act**
Eligible Participants	Employees or former employees: • Whose principal place of residence on the beginning of the incident period was located in an area identified by FEMA as eligible for individual assistance or • Whose principal place of employment was located in one of those areas on the beginning of the incident period; or • Whose lineal ascendant or lineal descendant, dependent, or spouse had a principal place of residence or employment was located in one of those areas on the beginning of the incident period.	Individuals who: • As of ***August 23, 2017, for Hurricane Harvey; September 4, 2017, for Hurricane Irma; or September 16, 2017, for Hurricane Maria***, had their principal place of residence in the "Hurricane Harvey Disaster Area," "Hurricane Irma Disaster Area" or "Hurricane Maria Disaster Area" and • Sustained an economic loss due to the hurricane.
Loan Grant Date: **On or after**	The beginning of the incident period	August 23, 2017, for Hurricane Harvey; September 4, 2017, for Hurricane Irma; or September 16, 2017, for Hurricane Maria
Before	January 31, 2018	January 1, 2019
Dollar Limit	The lessor of: 1. $50,000, minus the difference between • The highest outstanding loan balance during the last 12 consecutive month period, and • The outstanding loan balance on the date the loan is made; or 2. The greater of 50% of the vested account balance, or $10,000.	The lessor of: 1. $100,000, minus the difference between • The highest outstanding loan balance during the last 12 consecutive month period, and • The outstanding loan balance on the date the loan is made; or 2. The greater of 100% of the vested account balance, or $10,000.

Repayment Requirements **General Purpose Loans**	Level installments, payable at least quarterly, within 5 years.	Level installments, payable at least quarterly, within 5 years.
Principal Residence Loans	Level installments, payable at least quarterly, may extend beyond 5 years.	Level installments, payable at least quarterly, may extend beyond 5 years. For both General Purpose and Primary Residence loans, repayments due after the qualified beginning date and before January 1, 2019, may be postponed for one year, with the one-year postponement period disregarded in determining the length of the loan.
Plan Amendment Requirements	Amendment may not be required if plan already permits plan loans.	Amendment required in all cases.
Deadline(s)	Last day of the first plan year beginning on or after January 1, 2018.	General: Last day of the first plan year beginning on or after January 1, 2019. Governmental Plans: Last day of the first Plan Year beginning on after January 1, 2021.

Hurricane Disaster Areas*	
Hurricane Harvey	Individuals residing in the following Texas Counties: Aransas, Austin, Bastrop, Bee, Bexar, Brazoria, Burleson, Calhoun, Chambers, Colorado, Dallas, De Witt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Madison, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tarrant, Travis, Tyler, Victoria, Walker, Waller, Washington, and Wharton.
Hurricane Irma	Individuals residing anywhere in Florida, Georgia, the U.S. Virgin Islands and the following municipalities in Puerto Rico: Adjuntas, Aguas Buenas, Barranquitas, Bayamón, Camuy, Carolina, Cataño, Ciales, Comerío, Culebra Canóvanas, Dorado, Fajardo, Guaynabo, Gurabo, Hatillo, Jayuya, Juncos, Las Piedras, Loíza Luquillo, Naguabo Orocovis, Patillas, Quebradillas, Salinas, San Juan, Toa Baja, Utuado, Vega Baja, Vieques, and Yauco
Hurricane Maria	Individuals residing anywhere in Puerto Rico or the U.S. Virgin Islands.

*Areas provided are as of September 29, 2017, and are subject to change.

Pension Analyst by Prudential Retirement
The Pension Analyst is published by Prudential Retirement, a Prudential Financial business, to provide clients with information on current legislation and regulatory developments affecting qualified retirement plans. This publication is distributed with the understanding that Prudential Retirement is not rendering legal advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

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RSMH080