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Congress Expands Disaster Relief For Benefit Plans

As the huge toll from this season's major hurricanes continues to mount, the Agencies have been extending the relief initially provided for Hurricane Harvey. And Congress has just taken an important step to provide more help. Our brief rundown follows.

Emergency Legislative Relief

The House and Senate passed H.R. 3823, the Disaster Tax Relief and Airport and Airway Extension Act of 2017, on September 28 as a vehicle to quickly provide additional disaster relief for those affected by Hurricanes Harvey, Irma, and Maria. President Trump signed it into law the next day (Pub. L. No. 115-63). This legislative relief mirrors the guidance issued in 2005 for Katrina, Rita, and Wilma, and therefore we anticipate similar guidance that was set forth in Notice 2005-92 to be issued shortly.

For participants in the affected areas, the legislation provides for the following:

- waives the 10% penalty on early withdrawals from retirement plans (up to \$100,000);
- permits in-service distributions from 401(k), 403(b) and 457(b) plans (up to \$100,000) without the mandatory 20% withholding;
- allows the payment of taxes associated with in-service distributions to be spread over three years, starting with the year of distribution;
- allows participants to recontribute all or a portion of the in-service distributions within three years and treat the contribution as an eligible rollover;
- allows participants to recontribute amounts withdrawn from retirement accounts for a home purchase, provided the purchase did not occur because of the hurricanes.
- increases the plan loan dollar limit to \$100,000 (and 100% of the participant's account balance); and
- delays payments for those with outstanding loans for up to a year.

This relief is optional, and if elected, a plan amendment is needed to reflect these special rules, and would need to be adopted by the end of the plan year beginning in 2019 (two years longer for governmental plans).

The relief provided by the legislation is on top of that already provided by Treasury/IRS, the Department of Labor (“DOL”), and the Pension Benefit Guaranty Corporation (“PBGC”) in administrative guidance, noted below.

Updated Agency Relief

IRS recently released a helpful recap of the key tax relief for those affected by the three hurricanes (IR 2017-160 (Sept. 26, 2017)). In general, the IRS is now providing relief to individuals and businesses anywhere in Florida, Georgia, Puerto Rico and the Virgin Islands, as well as parts of Texas. Among other things, under this broad-based relief,

- a retirement plan can allow a hurricane victim to take a hardship distribution or borrow up to the specified statutory limits from the victim’s retirement plan, including for members of their families,
- a person who lives outside the disaster area can take out a retirement plan loan or hardship distribution (by Jan. 31, 2018), and use it to assist a son, daughter, parent, grandparent or dependent who lived or worked in the disaster area, and
- employers can make pension contributions as late as January 31, 2018, and have them count for 2016 minimum funding and/or deduction purposes, under especially flexible rules (as spelled out in detail in Notice 2017-49).

Importantly, the IRS relief includes the automatic extension of various employee benefit plan deadlines described in Rev. Proc. 2007-56, Section 8, including the deadline for filing Form 5500.

The PBGC recently issued Disaster Relief Numbers 17-14 and 17-15 addressing plans affected by Hurricane Maria in Puerto Rico and the U.S. Virgin Islands, respectively. The announcements waive certain penalties and extend certain deadlines until January 31, 2018, and provide instructions for filings related to premiums, single-employer plan terminations, reportable event notices, and more.

The websites for all the Agencies – IRS, DOL (EBSA) and PBGC – include a full list of the areas affected and relief granted to date. DOL has not yet issued guidance on Maria.