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IRS Allows Easier Access to Retirement Funds for Hurricane Harvey Victims

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The IRS issued an announcement that may allow participants and beneficiaries of 401(k) plans or 403(b) plans that have been affected by Hurricane Harvey easier access to their retirement funds until January 31, 2018.

Announcement 2017-11 (the "Announcement") relaxes hardship distribution standards for employees who live or work in a county designated by FEMA to receive funds on account of Hurricane Harvey, or who have family (including parents, grandparents, children or grandchildren) or dependents with a principal residence in an affected county. (The list of counties is available at: Link).

The Announcement permits distributions on account of any hardship resulting from Hurricane Harvey, not just safe harbor hardship events such as medical expenses or expenses to repair a principal residence. Under the relief, the normal rules for substantiating a hardship event need not apply; plans may instead rely on a participant's representations as to the occurrence of a hardship event and the amount of money necessary to satisfy it absent actual knowledge to the contrary. Further, plans are not required to suspend employee contributions for 6 months following the hardship distribution.

Hardship distributions or participant loans may be made for Hurricane Harvey victims under the Announcement, even if the plan does not currently provide for them, as long as the plan is amended to provide for them by the end of the first plan year beginning after December 31, 2017.

To qualify for relief under the Announcement, a loan or hardship distribution must be made no later than January 31, 2018.

The Announcement does not affect the tax treatment of hardship distributions. Any distribution consisting of not already-taxed amounts will still be includible in gross income and subject to the 10% additional tax on early distributions for employees not yet age 59-1/2. The Announcement also does not affect the limitations on the amounts or terms of participant loans.

The Announcement states that the Department of Labor has informed the IRS that it will not treat hardships or loans that are in compliance with the Announcement as violations. Separately, the Department of Labor announced that it is working with the IRS to provide relief for verification procedures relating to hardship distributions, participant loans and other distributions. The DOL also announced that it will not challenge employers for not providing timely blackout notices for blackouts caused by Hurricane Harvey. See DOL News Release, available at: Link.