

Special Edition Benefits Alert: Hurricane Harvey

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IRS provides Retirement Plan Loan and Hardship Distribution Relief for Harvey Victims

The IRS has released Announcement 2017-11 providing relief from some of the loan and hardship distribution requirements under qualified retirement plans (including Code Section 401(a) and 403(b) plans) for the period of August 23, 2017 through January 31, 2018. The relief applies to employees or former employees either (i) whose principal residence on Aug. 23 was in one of the Texas counties identified by FEMA for individual assistance because of Hurricane Harvey, or (ii) whose place of employment on Aug. 23 was in one of those counties. The relief also applies if the employee's or former employee's "lineal ascendant or descendant, dependent, or spouse" lived or worked in one of those counties on Aug. 23. This relief will also apply to those living or working in other areas FEMA may identify for individual assistance in Texas or other states due to damage from Harvey. For a list of the counties FEMA has identified, click [here](#).

A hardship distribution is still limited to the maximum amount permitted by IRS rules but can be provided for any hardship, not just those listed in the IRS regulations, and no post-distribution contribution restrictions are required. However, the normal tax rules still apply to any distribution. Plan loans can be made without following the procedural requirements imposed by the plan at the time of the loan. Finally, qualified plans that do not have loan or hardship distribution provisions can still make loans or hardship distributions, so long as the plan is amended to provide for them by December 31, 2017.

For additional information on the loan and hardship distribution relief for individuals affected by Harvey, please see IRS Announcement 2017-11, which is available here: [Announcement 2017-11](#).

Additional Relief for Benefit Plans Due to Hurricane Harvey

The IRS and DOL have announced additional relief for benefit plans affected by Hurricane Harvey. This relief applies to participants, beneficiaries, and plans whose plan administration and/or recordkeeping functions reside within the [disaster area](#). This relief includes the following:

- The filing date for Form 5500 filings due on or after August 23, 2017 and before January 31, 2018 is automatically extended to January 31, 2018.
- The DOL will provide relief for certain plan loan and distribution verification procedures to be described in later guidance, provide enforcement relief for delays in forwarding participant contributions, and provide relief for failures to timely provide blackout notices for temporary plan restrictions caused by Harvey.
- The DOL requests welfare plans make reasonable accommodations for participants and beneficiaries who are unable to timely file benefit claims or make COBRA elections for the purposes of preserving coverage and providing benefits. The request for accommodation should also include appeals processes and payments for coverage. The DOL will also grant enforcement relief to welfare plans and insurance carriers where appropriate. There is no process to pre-emptively request relief, so plans may wish to document compliance issues caused by Harvey as a precaution.

- Additional information on this relief is available from the DOL and IRS [here](#) and [here](#).

Emergency PTO Sharing Plans May Help Employees Affected by Hurricane Harvey

With the effects of Hurricane Harvey likely to be felt for many weeks and months to come, employees affected by the storm may need to take time off from work in excess of the amount of paid time off (“PTO”) they are eligible for from their employer. One way to provide additional PTO to affected employees is for the employer to adopt an emergency PTO sharing plan. Under an emergency PTO sharing plan, employees can donate some of their PTO to a PTO bank that is administered by the employer. Employees who have been adversely affected by Harvey could apply for additional PTO, and the employer would then grant additional PTO to the affected employees based on need. For purposes of an emergency PTO sharing plan, an employee has been adversely affected by a natural disaster if it caused severe hardship to the employee (or a family member) that requires the employee to take time off from work. An emergency PTO sharing plan must satisfy certain other conditions, which include, among others, that (i) PTO may not be donated by an employee for a specific coworker, (ii) an affected employee may not receive cash in lieu of taking additional PTO, (iii) the plan must limit the time period following the natural disaster during which PTO may be donated and used, and (iv) unused donated PTO must be returned to donors at the end of that time period.

For additional information on the requirements of an emergency PTO sharing plan, please see [IRS Notice 2006-59](#).

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