



Disaster Relief for Retirement

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Three levels of relief

- Presidential disaster area relief (Code §7508A)
- Special IRS relief
 - Hardships and documentation
 - Defined benefit funding
- Major Congressional relief (Code §1400Q)



FEMA

Presidential disaster area relief

Code §7508A

- “In the case of a taxpayer determined by the Secretary to be affected by a federally declared disaster . . . or a terroristic or military action . . ., the Secretary **may specify a period** of up to one year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer:”
 - Timeliness of certain acts
 - Application of interest and penalties



Rev. Proc. 2007-56 puts meat on the bones

- What to expect:
 - IRS will issue guidance
 - Outlining start and end of delay period
 - Specifying affected taxpayers
 - Specifying actions postponed:
 - Usually it's all items listed in the Rev. Proc.
- List of items that can be extended
 - 39 items related to employee benefits!

Sample IRS News release

Hurricane Harvey TX-20170-09

- The President has declared that a major disaster exists in the State of Texas. Following the recent disaster declaration for individual assistance issued by the Federal Emergency Management Agency, the IRS announced today that affected taxpayers in Texas will receive tax relief.
- Under section 7508A, the IRS gives affected taxpayers until Jan. 31, 2018, to file most tax returns (including individual, corporate, and estate and trust income tax returns; partnership returns, S corporation returns, and trust returns; estate, gift, and generation-skipping transfer tax returns; and employment and certain excise tax returns), that have either an original or extended due date occurring on or after Aug. 23, 2017, and before Jan. 31, 2018.
- Affected taxpayers that have an estimated income tax payment originally due on or after Aug. 23, 2017, and before Jan. 31, 2018, will not be subject to penalties for failure to pay estimated tax installments as long as such payments are paid on or before Jan. 31, 2018.

Sample IRS news release continued

- The IRS also gives affected taxpayers until Jan. 31, 2018 to perform other time-sensitive actions described in Treas. Reg. § 301.7508A-1(c)(1) and Rev. Proc. 2007-56, 2007-34 I.R.B. 388 (Aug. 20, 2007), that are due to be performed on or after Aug. 23, 2017, and before Jan. 31, 2018.
- **This relief also includes the filing of Form 5500 series returns, (that were required to be filed on or after Aug. 23, 2017, and before Jan. 31, 2018, in the manner described in section 8 of Rev. Proc. 2007-56.** The relief described in section 17 of Rev. Proc. 2007-56, pertaining to like-kind exchanges of property, also applies to certain taxpayers who are not otherwise affected taxpayers and may include acts required to be performed before or after the period above.
- Unless an act is specifically listed in Rev. Proc. 2007-56, the postponement of time to file and pay does not apply to information returns in the W-2, 1094, 1095, 1097, 1098, or 1099 series; to Forms 1042-S, 3921, 3922, 8025, or 8027; or to employment and excise tax deposits. However, penalties on deposits due on or after Aug. 23, 2017, and before Sept. 7, 2017, will be abated as long as the tax deposits were made by Sept. 7, 2017.

Who gets the relief

- Any individual whose principal residence is located in a covered disaster area;
- Any business entity or sole proprietor whose principal place of business is located in a covered disaster area;
- Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area;
- Any individual whose principal residence, or any business entity or sole proprietor whose principal place of business is not located in a covered disaster area, but whose records necessary to meet a deadline for an [extended act] are maintained in a covered disaster area;
- Any estate or trust that has tax records necessary to meet a deadline for an [extended act] and that are maintained in a covered disaster area;
- The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; or
- Any individual visiting the covered disaster area who was killed or injured as a result of the disaster

Tax Relief in Disaster Situations

- <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>

State	Event	Start	Extension
Georgia	Storms, Tornadoes, Winds	2 Jan 2017	31 May 2017
Mississippi	Storms, Tornadoes, Winds	20 Jan 2017	31 May 2017
Georgia	Storms, Tornadoes, Winds	21 Jan 2017	31 May 2017
Louisiana	Storms, Tornadoes, Winds	7 Feb 2017	30 Jun 2017
Arkansas	Storms, Tornadoes, Winds	26 Apr 2017	31 Aug 2017
Missouri	Storms, Tornadoes, Winds, Flooding	28 Apr 2017	31 Aug 2017
Michigan	Storms, Flooding	22 Jun 2017	31 Oct 2017
West Virginia	Storms, Flooding	28 July 2017	30 Nov 2017
Texas	Hurricane Harvey	23 Aug 2017	31 Jan 2018
Florida, Puerto Rico, VI	Hurricane Irma	4 Sep 2017	31 Jan 2018

Retirement plan delays: Loans

- Participant loans
 - Postpones 5-year deadline if during relief period
 - Postpones deemed distribution for late payments
 - Cure period applies
- Example:
 - Participant loan taken 2/1/2017
 - Participant misses August 31, 2017 payment
 - Payment due January 31, 2018
 - Cure period ends June 30, 2018
 - 5-year deadline still ends 2/1/2022



Premature distribution penalty



- Distribution in installments to avoid 10% penalty tax
 - Example: Installment due 9/1/2017 can be paid as late as 1/31/2018 and still avoid the penalty
- Exemption from penalty for first time home buyers (normally 120 days after distribution)
 - Example: IRA owner takes \$50,000 from IRA intending to use funds as down payment for new home
 - Deadline to acquire home 10/1/2017
 - No penalty if funds used or rolled to IRA by 1/31/2018

Qualified Reservist Distribution



- Can be repaid within 2 years after end of active duty to an IRA
 - Nondeductible after-tax contribution
- 2 year period extended if it ends during relief period
- Example:
 - Joe called up to active duty in national guard 1/1/2015
 - Takes \$30,000 QRD from plan
 - Active duty ends 10/1/2015
 - Joe normally has until 10/1/2017 to repay to IRA
 - Extended to 1/31/2018

Rollovers, IRA contributions

- Normal IRA contribution deadline is April 15
 - Georgia tornado victim has until May 31, 2017
- Deadline for rollovers
 - Example:
 - Plan distributes to participant 7/15/2017
 - Normal rollover deadline is 9/13/2017
 - Extended to 1/31/2018



Required minimum distributions

- Delays both required beginning date and following distributions
- Example: Plan required to make \$10,000 RMD by 12/31/2017
 - Distribution is timely if made by 1/31/2018
 - Note: If plan waits to 2018:
 - 12/31/2018 RMD will be a little higher
 - Participant pays tax on 2 years' RMD in 2018



Excess deferrals, contributions

- 402(g) failures
 - For Georgia victim 401(a)(30) and 402(g) deadline extended from April 15 to May 31
- ADP/ACP corrections
 - Extends 2½ deadline (March 15) to correct without 10% penalty tax
 - Georgia plan deadline to distribute ADP correction without penalty extended to 5/31/2017
 - Extends 12 month deadline to correct by distribution
 - Texas plan deadline to distribute 2016 ADP correction extended to 1/31/2018
 - Does **not** extend 12 month deadline to correct by making QMAC/QNEC

Remedial amendment period

- Statutory remedial amendment period under Code §401(b) extended during relief period
- Does not extend:
 - Deadline for discretionary amendments
 - Deadline for interim amendments
 - Deadline for restatements
 - March 31, 2020 deadline for 403(b) remedial amendment period

A stylized, handwritten signature in black ink that reads "John Hancock". The signature is written in a cursive, calligraphic style with large, sweeping loops and a prominent flourish at the end.

Deduction deadline for contributions

- Deduction deadline is normally tax return deadline, plus extensions
- Example: Calendar year corporation extends 2016 tax return deadline
 - Deduction can be claimed on 2016 return if made by 1/31/2018
 - Effectively extends limit to make 415 annual addition to 2/14/2018





No safe harbor extensions

- No extension of any of these calendar year plan deadlines
 - October 1 deadline to adopt new safe harbor plan
 - December 31 deadline to make 2016 safe harbor contribution
 - December 2 “deemed reasonable” deadline to distribute SH, EACA, QACA notices
 - December 1 deadline to distribute supplemental notice (maybe SH)
 - 30 days after adoption deadline to distribute updated safe harbor notice following plan amendment
 - Adding hurricane hardship or loan provisions likely OK without notice

IRA recharacterization deadline

- Recharacterization allows individual to change character of IRA contribution or rollover as Roth or traditional
- Normal deadline is October 15 of year following year of contribution
- Example:
 - Sue receives \$30,000 pretax distribution 4/15/2016 from 403(b) plan
 - Direct rollover to Roth IRA – taxable
 - Sue changes her mind and moves money to conventional IRA to avoid paying tax
 - Deadline extended to 1/31/2018



Excise taxes; returns

- Normal deadline to return nondeductible contributions to avoid 10% penalty is deduction deadline
- Disaster relief extends both
- Extending tax return deadline extends 4975 filing deadline
- 5500 extended as indicated in announcement
 - Presumably includes 8955-SSA
 - In the case of “affected taxpayers,” . . . the IRS may permit a postponement of the filing of the Form 5500 or Form 5500-EZ. Taxpayers who are unable to obtain on a timely basis information necessary for completing the forms from a bank, insurance company, or any other service provider because such service providers' operations are located in a covered disaster area will be treated as “affected taxpayers.”
Whatever postponement of the Form 5500 series filing due date is permitted by the IRS under [section 7508A](#) will also be permitted by the Department of Labor and PBGC for similarly situated plan administrators and direct filing entities.

EPCRS

- Presidential disaster declaration also extends deadline to self-correct significant operational failures, or failures following a merger or acquisition
- Does not necessarily cover deadline for reduced QNEC correction of employee elective deferral failures





DOL Relief

- Google: DOL EBSA compliance disaster relief
- Overall: Act reasonably, prudently and in the interest of employees to comply as soon as practical under the circumstances
- Not enforce Title I for late deposit of deferrals and loans
- No need to make written determination of reason plan was late in giving blackout notice

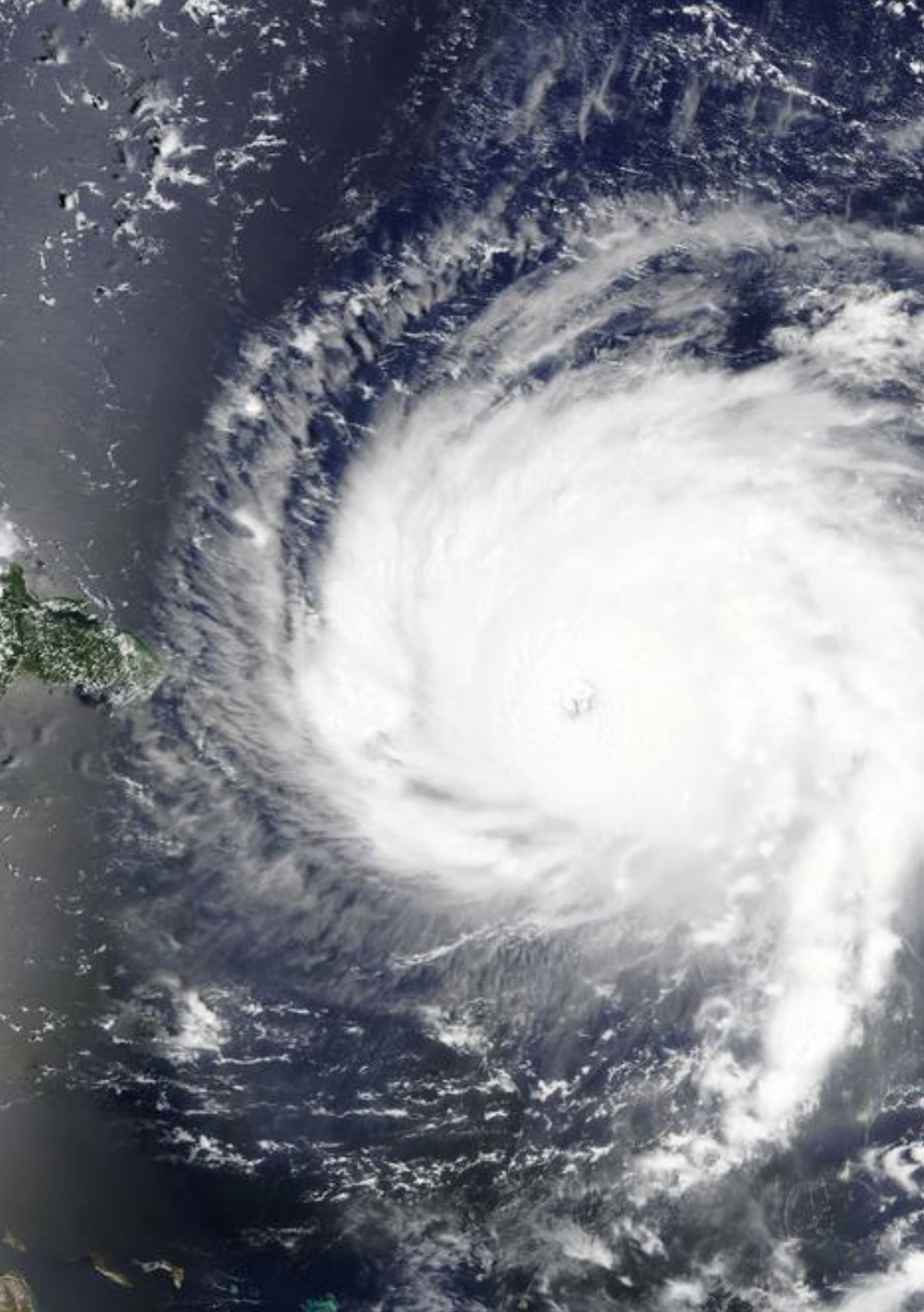
PBGC Relief

- Extends to January 31, 2018 for Harvey and Irma victims deadlines for:
 - Premium filing
 - For standard termination
 - Deadline for filing standard termination notice (Form 500)
 - Deadline for completing asset distribution
 - Deadline for post-distribution certificate (Form 501)
 - Distress termination notice (Form 601)
 - Reportable event post-event notice
 - Deadline to file appeal or request for reconsideration
- Other deadlines extended on case by case basis





Special IRS Relief



Special relief granted for

- Victims of Katrina (Announcement 2005-70)
- Victims of Sandy (Announcement 2012-44)
- Victims of Louisiana flooding (Announcement 2016-30)
- Victims of Matthew (Announcement 2016-39)
- Victims of Harvey (Announcement 2017-11)
- Victims of Irma (Announcement 2017-13)

Individuals entitled to relief

- Employee or former employee
 - Primary home or place of work on date of disaster in disaster area:
 - Employee
 - Spouse
 - Descendant
 - Ancestor



Hardship distribution

- Qualified plan or 403(b) plan can make hardship distribution to affected employee
 - Only plans that can make hardship distributions – not pension plans
- Governmental 457(b) plan can make unforeseeable emergency distribution to affected employee
- Whether or not:
 - Plan has hardship language
 - Plan recognizes this hardship
- No hardships from QMACs or QNECs or deferral earnings
- Can rely on employee's reasonable representations of hardship need and amount
- No need for 6 month deferral suspension

Procedural relief

- Don't have to follow all plan procedures:
 - If spouse can't be located, don't wait for death certificate
 - Take care of paperwork ASAP
- Applies to plans and IRAs
- Applies to distributions and loans
- Plan amendment may be needed to authorize loan/distribution if document doesn't already authorize them
 - Extended adoption deadline: last day of following plan year
 - No need for amendment to change hardship rules; just authorize hardships

New! Defined benefit funding relief

Notice 2017-49



- Applies to DB plans if any of these are in disaster area:
 - The principal place of business of the sponsor if the plan covers only one employer;
 - The principal place of business of employers that cover more than 50% of the active participants if the plan covers more than one employer;
 - The relevant office of the plan or the plan administrator;
 - The relevant office of the plan's primary record keeper; or
 - The office of the enrolled actuary or other advisor that the plan or the employer had previously retained to make funding determinations or certifications for which the due date falls between the beginning of the incident and January 31, 2018.
- Disregard controlled group/common control in determining employer

Relief given

- Virtually any and all IRS, DOL, and PBGC deadlines relating to DB funding are extended to January 31, 2018
- Corporation in Jacksonville, FL has a calendar year defined benefit plan. The following are extended to 1/31/2018
 - The 9/15 deadline for making the minimum required contribution
 - The deadlines to make quarterly installments normally due 10/15 and 1/15
 - The deadline for the certification of the plan's AFTAP and for providing AFTAP related participant notices.
 - These extensions also apply under PBGC rules to determine the timeliness of a contribution and whether that contribution is included in the market value of assets.



Major Congressional Relief

Code §1400Q has been invoked twice

- Written for Hurricanes Katrina, Rita, and Wilma (2005)
- Adapted for Midwestern storm/flooding area (2008)



Beneficiaries

- Qualified Individual
 - Principal place of abode
8/28/05 in LA, MS, AL, or FL
 - Don't have to live on the coast or in New Orleans
 - IRS broader than statute
 - “Sustained an economic loss by reason of Hurricane Katrina”
 - No affect for Rita or Wilma



Katrina Distribution

- Qualified Hurricane Katrina Distribution
- Distribution from eligible plan
 - Between 8/25/05 and 12/31/06
 - To qualified individual
 - Could be beneficiary
 - Limit: \$100,000



Distribution type

- Doesn't have to be related to Katrina
 - Could be:
 - RMD
 - Plan loan offset
 - Periodic payment
 - Extent of loss irrelevant
- Can't be:
 - Corrective distribution
 - Deemed distribution
 - ESOP dividends
 - Cost of current life insurance protection



Example

- Frank lived in northern Louisiana
- He had a truck parked in New Orleans – total loss \$8,000
- Frank wants a \$20,000 distribution from qualified plan and \$30,000 from his IRA
- It's all Katrina Distributions
- Same for RMD he'd be taking anyway

Two perspectives

- Plan

- Distributable event
- Not eligible rollover distribution
 - No rollover notice
 - No 20% withholding
 - No automatic rollover

- Recipient

- No 10% penalty
- 3 year tax option
- Rollover option



Penalty tax

- No 10% early distribution penalty
- Example: Ellen (age 49)
 - \$100,000 IRA distribution – no penalty
 - \$30,000 plan distribution – penalty





Tax options

- Pay tax in year of distribution
- Pay tax over 3 years
- Default: 3 year
- Example:
 - Kevin receives \$45,000 Katrina Distribution in 2006
 - Includes \$15,000 in income in 2006, 2007, and 2008
 - Or Kevin can include \$45,000 in 2006 income

Rollover

- Option to roll over Katrina distribution
- “Recontribution”
- Just like 60-day rollover
- Can be eligible plan
- Deadline – 3 years from date of Katrina distribution



Recontribution limits

- Can't recontribute amounts that wouldn't be eligible rollover distribution: e.g.,
 - RMD
 - Periodic payments
 - Payments to non-spouse beneficiary
- Exception: Can recontribute hardship



Limit

- \$100,000 limit applies to all Katrina Distributions from a single employer
 - Employer doesn't care about distributions from other employers or IRAs
- Controlled group/ASG rules apply

Plan choice

- Plan can choose whether to recognize distributions as Katrina Distributions
 - Doesn't affect participant choices
- Develop reasonable procedures to identify Katrina Distributions
- Be consistent



Distributable event

- 401(k), 403(b) and 457(b) deferrals limited to distributable events
- Katrina Distribution satisfies these rules
 - Also for QNECs and QMACs
- Plan choice
- Not pension distributable event
- Doesn't get around J&S or participant consent rules

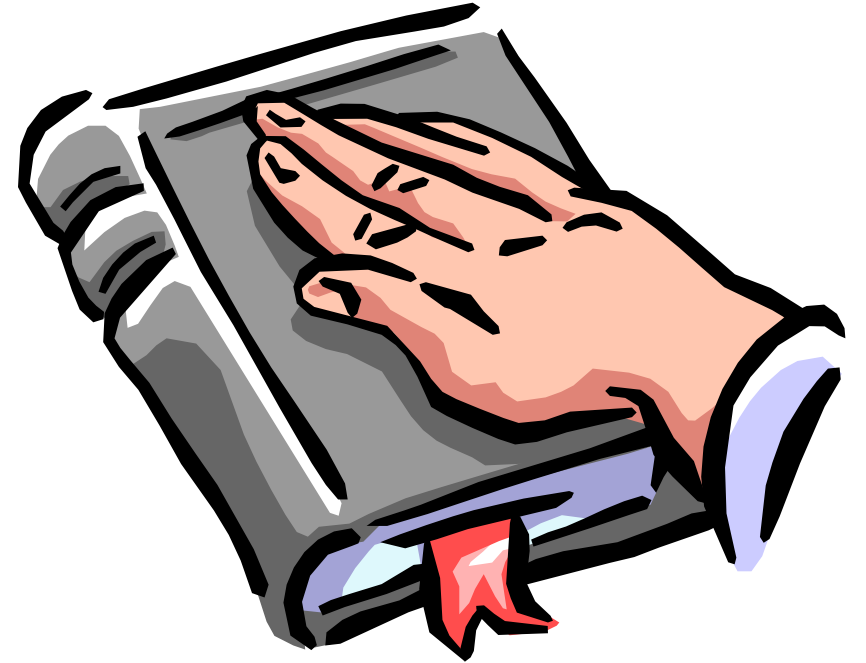
Rollover related rules

- Not eligible rollover distribution for 401(a)(31)
 - No rollover notice
 - No offer for direct rollover
 - No 20% withholding
- Voluntary withholding applies (Code §3405(b))



Reliance

- Plan entitled to rely on individual's reasonable representations:
 - Principal place of abode
 - Suffered economic loss
 - Unless actual contrary knowledge
- Applies to
 - Making Katrina Distribution
 - Receiving Katrina recontribution



Katrina loans



Loan limits

- Double 72(p) loan limits: Lesser of
 - \$100,000
 - 100% vested account balance
 - Subtract other loans
- DOL
 - Not PT because of
 - Reasonably equivalent basis rule
 - Adequate security
 - So 100% loan secured solely by vested account?



Application

- Qualified individuals
- Employer plans
 - Qualified
 - 403(b)
 - Governmental 457(b)
- Loans between 9/24/2005 and 12/31/2006

Suspension of payments elsewhere

- Normally, plan loans require quarterly (or more frequent repayments)
- Payment moratoriums OK for leave of absence
 - 5 year clock still runs; 1 year limit
 - Except for military
 - When moratorium over
 - Reamortize loan
 - Have balloon payment
 - Extend loan (but not beyond 5 year unless home)

Katrina suspension

- Qualified individuals
- Loan outstanding on or after Katrina
- KETRA provision
 - Any payment due from 8/25/2005 to 12/31/2006 can be delayed for one year
 - Subsequent payments adjusted
 - 5 year clock stops during delay

IRS “Safe harbor”

- Plan can suspend any loan repayment otherwise due from qualified individual between 8/25/2005 and 12/31/2006
- 5-year clock extended by suspension period
- Interest runs
- Reamortize remaining payments



Other KETRA Relief

Home Loan

- Adam took hardship distribution 8/25/2005 to buy new home
- In New Orleans
- Changes mind about buying home
- Adam can recontribute to plan
- Treated like rollover
- Applies to amounts received between 2/28/2005 and 8/28/2005

Plan Amendments



- Deadline: No later than last day of plan year beginning in 2007
 - Governmental plan: 2009 plan year



Thank you!

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