



PENSION ANALYST

Important information—Plan administration and operation



Hurricane Harvey affects retirement plan administration

Who's affected

This information applies to sponsors of qualified pension, profit sharing and stock bonus plans, including 401(k) plans, multiemployer plans, governmental plans and church plans. It also applies to ERISA 403(b) plans, non-ERISA 403(b) plans, and governmental section 457 plans. In certain circumstances, plan sponsors and participants who were not directly affected by Hurricane Harvey are still eligible for special relief.

Background and summary

The arrival of Hurricane Harvey in August significantly affected individuals and businesses in Texas. Recognizing this impact, the IRS, Department of Labor (DOL) and the Pension Benefit Guaranty Corporation (PBGC) have granted extensions of certain deadlines for both plan sponsors and participants directly affected by this disaster.

The IRS has also provided special rules for plan sponsors that want to offer hardship distributions or plan loans to employees or former employees that have been affected by Hurricane Harvey. These rules apply to qualified plans, 403(b) plans, and governmental section 457 plans. They are not limited to plan sponsors or individuals living in affected areas. Under these rules, loans and hardship distributions may be made available to employees and former employees who live or work in affected areas, or whose family members were directly affected by the disaster.

The hardship and plan loan relief provided by the IRS for Hurricane Harvey victims is identical to the IRS hardship and loan relief provided in the past for Hurricane Katrina, Hurricane Sandy, Louisiana Storms, and Hurricane Matthew. Loans granted under this special relief continue to be subject to standard loan limits of the lesser of \$50,000 or 50% of the participant's vested account balance. Prudential Retirement will continue to monitor regulatory and legislative developments and will keep you informed of any additional Hurricane Harvey relief.

Action and next steps

Plan sponsors should review the information in this publication to determine potential impacts to their plans. If you need more information regarding the various extensions or special plan loan and hardship distribution opportunities, please contact your Prudential Retirement representative.

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Directly-affected plans and participants

IRS relief

On August 28, the IRS announced extensions of certain tax filing and payment deadlines for qualified defined benefit plans, defined contribution plans, IRAs, and certain annuity contracts. For certain filers in Texas whose Form 5500 filings were due on or after August 23, 2017, the extended deadline is January 31, 2018. Filers that are entitled to the relief should check Part I, Box D on the Form 5500, or Part 1 on the Form 5500-EZ and attach the appropriate statement as described in the Instructions to the applicable form.

This extended filing deadline applies to plan administrators, employers, and other entities that are located in the “[covered disaster areas](#)”. Filers located outside the covered disaster areas may also receive relief, but will need to call the IRS disaster hotline to request relief.

For purposes of this extension, the “covered disaster areas” include counties listed on the IRS website, “[Tax Relief for Victims of Hurricane Harvey in Texas](#)”. **PLEASE NOTE: The counties listed on the IRS website for tax relief may differ from the counties identified by the IRS as eligible for the special hardship and plan loan relief discussed in this publication.**

The related Summary Annual Report (SAR) distribution deadline is automatically extended for affected plans.

The IRS also gives affected taxpayers until January 31, 2018, to perform other time sensitive actions. For more information regarding these time sensitive actions, see our [June 2011 Pension Analyst](#).

PBGC relief

The PBGC has extended a number of deadlines that apply to a “designated person.” A “designated person” is any person responsible for meeting a PBGC deadline who:

- Is located in a [disaster area](#); or
- Cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank, or other person whose operations are directly affected by Hurricane Harvey.

For disaster areas, the PBGC extended to January 31, 2018, all of the following deadlines that fall between August 23, 2017 and January 31, 2018, if the plan administrator is a designated person:

- The single employer plan termination deadlines for:
 - Filing Form 500 and providing notices of plan benefits to participants and beneficiaries;
 - Distributing plan assets;
 - Filing Form 501 and related missing participant information and certifications, and paying missing participants’ benefits to the PBGC without penalty; and
 - Filing Form 601.
- Filing reportable event post-event notices. If the filing deadline is 30 days after the Plan’s Form 5500 due date and the Form 5500 Disaster Extension applies, these reportable event notices must be filed no later than 30 days after that date.
- Annual employer reporting. PBGC will grant relief where appropriate on a case-by-case basis. However, for actuarial information due 15 days after the Form 5500 due date, the deadline will follow from the disaster deadline for the Form 5500.
- Multiemployer deadlines. PBGC will not assess penalties for missing multiemployer plan deadlines for making filings with PBGC and issuing notices between August 23, 2017, and January 31, 2018 for designated persons.

All plans and participants

IRS plan distribution relief

The IRS has provided special rules, allowing qualified plans (including 401(k) plans) and 403(b) plans to make loans and hardship distributions to “Hurricane Harvey victims.” Under these rules, governmental section 457 plans may make unforeseeable emergency distributions to “Hurricane Harvey victims.”

For these purposes, “Hurricane Harvey victims” include employees or former employees:

- Whose principal residence on August 23, 2017, was located in one of the Texas counties that have been identified for individual assistance by the Federal Emergency Management Agency (FEMA) because of the devastation caused by Hurricane Harvey;
- Whose place of employment was located in one of these counties on August 23, 2017; or
- Whose lineal ascendant (parent, grandparent, etc.) or lineal descendent (child, grandchild, etc.), dependent, or spouse had a principal place of residence or employment in one of these counties on August 23, 2017.

Plans sponsored by employers that have no business operations in the affected areas are still eligible for this plan distribution relief, if they have employees or former employees who were affected or who have affected lineal ascendants or descendants.

If additional areas in Texas or other states are identified by FEMA for individual assistance because of damage related to Hurricane Harvey, the relief provided in this announcement will also apply, from the date specified by FEMA as the beginning of the incident period, and that date should be substituted for references to August 23, 2017 for special loan and hardship distribution purposes. Please check the [FEMA website](#) for updates.

In general

Hurricane Harvey-related loans and hardship distributions must be made on or after August 23, 2017.

Under these special rules, loans and hardship distributions may be made before plan documents or annuity contracts are formally amended to permit them. However, the necessary amendments must be adopted no later than the last day of the plan’s 2018 plan year.

Plan administrators must only make good-faith efforts to comply with the standard plan requirements for supporting documentation when granting Hurricane Harvey hardship distributions and loans. However, they must make reasonable attempts to assemble the required documentation as soon as possible. For example, plan administrators may initially rely on the employee’s representation of the amount needed to satisfy the hardship, as long as they make reasonable attempts to obtain the documentation that would normally be required. The “good-faith” rule also applies to the need to obtain spousal consent to loans or distribution when an employee claims the spouse is deceased but a death certificate is not available, as long as it is reasonable to believe that the spouse is deceased and reasonable efforts are later made to obtain the death certificate.

Hardship/Unforeseeable emergency distributions

The IRS did not relax all of the rules relating to the granting of hardship distributions. For example, Hurricane Harvey-related hardship distributions cannot be made from QNEC accounts, QMAC accounts, earnings on elective deferrals, safe harbor contributions, or from defined benefit plans or money purchase pension plans.

However, under these special rules, distributions may be made for any Hurricane Harvey-related hardship (e.g., food, shelter, and clothing), not just those hardship reasons listed in existing regulations (i.e., casualty losses, funeral expenses). In addition, the standard six-month suspension of elective deferral contributions following hardship distributions, applicable under some 401(k) plans, does not apply in these situations.

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These Hurricane Harvey-related hardship distributions are subject to the standard 10% early distribution federal income tax penalty.

DOL relief

The DOL has indicated that they will not consider any plan fiduciary to be in violation of the ERISA Title I requirements solely because they made distributions or loans available to Harvey victims in accordance with the special IRS rules.

In addition, the DOL will not enforce the standard contribution timing requirements with respect to employee contributions or loan repayments that are temporarily delayed due to Harvey. Such delays may have affected either plan sponsors or their service providers (e.g., payroll processing services). Affected plan sponsors and service providers must still act reasonably, prudently and in the interest of participants to remit these contributions as soon as practical under these circumstances.

The DOL has also recognized that plans affected by Hurricane Harvey may not have been able to provide the Sarbanes-Oxley 30-day advance notice to participants and beneficiaries whose rights under the plan were temporarily limited by a black-out period. These plans would be subject to the exception that is provided for events that are beyond the reasonable control of the plan administrator.

Prudential Retirement's Response

Checks that were in the mail to plan participants and beneficiaries in the affected areas when the Hurricane Harvey hit are being handled by the U. S. Postal Service's "recycling" program, which attempts to deliver undeliverable mail as delivery services are restored to affected Zip Codes and address changes are received. Since the Post Office does not notify us of address changes, we will send future payments to the addresses we have on file, until participants notify us of address changes or change to direct deposit.

If you want to make Hurricane Harvey hardship distributions or loans available from your plan, please contact your Prudential Retirement representative, so that we can make sure these transactions are handled appropriately. In addition, if we provide document services for your plan and your plan requires an amendment to address these transactions, we will prepare the appropriate plan amendments for adoption before the end of the 2018 plan year.

The IRS distribution and loan relief does not provide specific guidance for handling situations where a plan administrator's authorization is required but the plan administrator cannot be located, or where a participant's spouse's consent is required but it has not yet been determined if the spouse is deceased or simply has not yet been located. We will work individually with plan sponsors and participants to address these types of situations as they arise, to ensure that while participants' needs are met, their plans' tax-favored status is not jeopardized.

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.

Editor: Julie Koos

(563) 585-6811

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