

IRS announces relief to facilitate retirement plan loans and hardship distributions to Hurricane Harvey victims

Following FEMA's [major disaster declaration](#) for Texas and Hurricane Harvey, the IRS has announced relief from certain verification procedures governing loans and hardship distributions from qualified retirement plans for victims in covered Texas counties. ([IRS Announcement 2017-11](#).) The purpose of the IRS Announcement is to relax certain procedures in order to allow employees to access their retirement plan funds, as needed, on account of financial needs created by Hurricane Harvey. ***The relief does not, however, provide relief from taxation. The IRS Announcement reminds taxpayers that in general the normal spousal consent rules apply, and, expect to the extent the distribution consist of already-taxed amounts, any distribution made pursuant to the relief will be included in gross income and generally subject to the 10-percent additional tax under §72(t).***

Nature of the relief

In general, the IRS Announcement provides that a distribution from certain qualified retirement plans will be deemed to constitute a "hardship distribution" when an employee resides in the designated federal disaster zones for Hurricane Harvey, the place of employment is in the disaster zone, or the employee has family members (lineal ascendants or descendants, dependents, or a spouse) who reside or work in the disaster zone. If the employee asserts that there is a financial need as a result of Hurricane Harvey, there is no need to receive any further documentation and the distribution will be treated as a hardship distribution for federal tax purposes.

The relief in the IRS Announcement allows an employer to expand the types of financial events that are eligible for a hardship distribution. For example, a plan might not cover the hardship of a parent but the financial losses of a parent working or residing in the Hurricane Harvey disaster zone will be deemed to be eligible under the IRS Announcement if the employer chooses to utilize this relief. In addition, the IRS Announcement allows the employer to waive any provision in the plan that prohibits the employee from making contributions for at least six months after the hardship distribution.

Texas Counties Eligible for Hardship Distributions

- ❖ Aransas
- ❖ Austin
- ❖ Bastrop
- ❖ Bee
- ❖ Brazoria
- ❖ Calhoun
- ❖ Chambers
- ❖ Colorado
- ❖ DeWitt
- ❖ Fayette
- ❖ Fort Bend
- ❖ Galveston
- ❖ Goliad
- ❖ Gonzales
- ❖ Hardin
- ❖ Harris
- ❖ Jackson
- ❖ Jasper
- ❖ Jefferson
- ❖ Karnes
- ❖ Kleberg
- ❖ Lavaca
- ❖ Liberty
- ❖ Matagorda
- ❖ Montgomery
- ❖ Newton
- ❖ Nueces
- ❖ Orange
- ❖ Polk
- ❖ Refugio
- ❖ Sabine
- ❖ San Jacinto
- ❖ San Patricio
- ❖ Victoria
- ❖ Walker
- ❖ Waller
- ❖ Wharton

The IRS Announcement does not change the standards for determining the amount available for hardship distribution, which generally is limited to the maximum amount that would be permitted to alleviate the financial need and that is not otherwise reimbursed by insurance. However, the IRS Announcement states that an employer can rely on the employee's representation of the need (unless the employer has direct actual knowledge to the contrary).

Although the IRS Announcement does not waive the requirements for plan loans, it provides that an employer may temporarily suspend certain documentation requirements for loans (such as requiring a death certificate of a spouse when spousal consent otherwise would be required). However, the employer needs to obtain the appropriate documentation by January 31, 2018.

Relief period

The relief in the IRS Announcement generally will apply to hardship distributions or loans made on account of a hardship resulting from Hurricane Harvey on or after August 23, 2017, and no later than January 31, 2018. To the extent an employer modifies its procedures to provide for hardship distributions or loans that are not otherwise addressed in the plan, the plan document must be amended no later than the end of the first plan year beginning after December 31, 2017.

Covered plans

For purposes of this relief, a qualified employer plan means a plan or contract that: (1) meets the requirements of Sections 401(a), 403(a) or 403(b), and (2) could make hardship distributions if it contained enabling language. Relief is also available to plans described in Section 457(b) maintained by an eligible employer described in Section 457(e)(1)(A), and any hardship arising from Hurricane Harvey is treated as an "unforeseeable emergency" for purposes of distributions from such plans.

IRA participants are barred from taking out loans, but they may still be eligible for hardship distributions.

Covered persons

For the covered plan above, this relief is available to employees and former employees whose principal residence on August 23, 2017, was located in one of the covered disaster areas or whose lineal ascendant or descendant, dependent or spouse had a principal residence or place of employment in the covered area on that date.

Covered areas are identified as federally declared disaster areas for Hurricane Harvey and are available on the FEMA [website](#). To the extent that other areas are added after publication of the IRS Announcement, employers and employees in those areas will also be eligible for this relief.

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