

Additional Hurricane Relief for Retirement Plan Participants Makes Landfall

On September 29, 2017, the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (the "Act")¹ was signed into law to provide aid to victims who are recovering from the recent hurricanes in August and September (including Hurricane Harvey, Hurricane Irma, and Hurricane Maria). The Act, among other things, provides additional ability for retirement plan sponsors to allow for victims of the hurricanes to take qualified hurricane distributions and plan loans from certain retirement plans. The new relief in the Act is in addition to the earlier disaster relief announced by the IRS in August and September (which is described in our prior Alert, available [here](#)).

Qualified Hurricane Distributions

The Act permits eligible retirement plans² to make "qualified hurricane distributions" (up to \$100,000 from all eligible retirement plans combined in an employer's controlled group) to participants who had a principal residence in relevant hurricane disaster areas³ at the time of the hurricanes (for Hurricane Harvey, on August 23, 2017; for Hurricane Irma, on September 4, 2017; and for Hurricane Maria, on September 16, 2017) and who have sustained an economic loss from the related hurricane ("qualified individuals").⁴ Qualified hurricane distributions must be made before January 1, 2019 and will benefit from the following favorable tax treatment:

- these distributions are not subject to the 10% tax penalty under Code Section 72(t) on early distributions before reaching age 59 ½;
- these distributions are subject to income tax ratably over 3 tax years (beginning with the year the distribution would normally be included in income), instead of being taxed all in the year of distribution under normal tax rules;⁵ and
- the participant can recontribute all or a part of these distributions to the plan (or another eligible retirement plan to which a rollover contribution of such distribution could be made) for a period of up to 3 years after the date the distribution was made, and the distribution that was repaid would not be subject to income tax.

Hurricane-Related Plan Loans

The Act permits eligible retirement plans to make larger plan loans available to qualified individuals (as defined above) before January 1, 2019. The maximum loan amount for these loans (when added to the outstanding balance of all other loans from the plan) is increased to \$100,000, or 100% of the qualified individual's vested account balance (which is double the normal plan loan limits of \$50,000 and 50% of the vested account balance, respectively).

In addition, beginning on the "qualified beginning dates" relating to each of the hurricanes (August 23, 2017 for Hurricane Harvey; September 4, 2017 for Hurricane Irma; and September 16, 2017 for Hurricane Maria), a qualified individual's repayments through December 31, 2018 under plan loans (whether the loan was already outstanding, or newly issued

1 The text of the Act can be found here: <https://www.congress.gov/bill/115th-congress/house-bill/3823/text>

2 The term "eligible retirement plan" means a plan that is listed in Code Section 402(c)(8)(B) (which includes a traditional IRA, a profit sharing plan, a 401(k) plan, a stock bonus plan, a 403(b) plan, and a governmental 457(b) plan).

3 The "hurricane disaster area" with respect to each of Hurricanes, Harvey, Irma, and Maria, are those areas with respect to which a major disaster has been declared by the President before September 21, 2017, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. A list of major disaster declarations can be found at FEMA's website (<http://www.fema.gov/disasters>).

4 We note that prior IRS disaster relief guidance had broader coverage in that it applied to individuals and their family members who lived or worked in Hurricane Harvey and Hurricane Irma disaster areas. The Act only provides relief to individual participants who lived in hurricane disaster areas.

5 A participant may opt out of the special 3 year treatment and, instead, elect to have the normal tax rules apply to the distribution.

after the applicable beginning date but before January 1, 2019) are required to be delayed for a one-year period.

This delay in repayment will not cause the loan to be taxable as a deemed distribution and will be ignored with respect to the maximum term of a loan. For a new plan loan issued after the applicable qualified beginning date(s) for the hurricane event(s), the one-year delay effectively will result in most hurricane-related plan loans having up to a 6 year term (instead of the normal maximum 5 year term). After the one-year delay ends, the outstanding loan must be reamortized to reflect accrued interest and a new due date.

Return of Hardship Withdrawals Taken for Home Purchase

The Act also permits an individual who took a hardship withdrawal between February 28, 2017 and September 21, 2017 from a 401(k) plan or 403(b) plan for a home purchase or construction in one of the hurricane disaster areas to recontribute those funds to the plan (or another eligible retirement plan in which the individual is participating), provided the following conditions are met:

- home was not purchased or built as a result of the occurrence of the related hurricane;
- the plan accepts rollover contributions; and
- the recontribution is made before March 1, 2018.

The recontribution of the hardship withdrawal would be treated as a direct trustee to trustee rollover distribution (which means the original hardship withdrawal would not be treated as a taxable distribution). This ability to recontribute the hardship withdrawal is not limited only to "qualified individuals" (i.e., only those individuals who lived in hurricane disaster areas).

Options for Plan Sponsors; Timing of Plan Amendments

A plan sponsor may (but is not required to) in its retirement plan implement certain of the relief provided for under the Act, such as allowing participants the ability to take qualified hurricane distributions and plan loans with increased loan limits. However, we note that certain other provisions of the Act, including an individual's right to recontribute a qualified hurricane distribution (if applicable) or a hardship withdrawal that was taken out to purchase or construct a home and the one-year delay of repayments for certain plan loans, are not presented in the Act as optional provisions and it appears that plans may be required to be amended to incorporate these terms. A plan sponsor may implement the optional and mandatory hurricane-related provisions under the Act before the plan is amended to incorporate the appropriate language, so long as the plan sponsor amends the plan (with a retroactive effective date) before the last day of the first plan year beginning on or after January 1, 2019 (or a later date as the IRS may establish).

We anticipate additional guidance to be forthcoming from the IRS and U.S. Department of Labor with additional details around the rules relating to provisions of the Act.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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