



November 2017

# PENSION ANALYST

Important information—Plan administration and operation



**Prudential**  
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## Hurricane Maria and California Wildfires affect 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(b) plans. In certain circumstances, plan sponsors and participants who were not directly affected by Hurricane Maria or California Wildfires are still eligible for special relief.

### Background and summary

The arrival of Hurricane Maria in September and the recent wildfires in California significantly affected individuals and businesses in Puerto Rico, the U.S. Virgin Islands, and California. Recognizing this impact, the Internal Revenue Service (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 these disasters.

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 Maria and the California Wildfires. These rules apply to qualified plans, 403(b) plans, and governmental section 457(b) 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 these disasters.

The hardship and plan loan relief provided by the IRS for victims of Hurricane Maria and California Wildfires is identical to the IRS hardship and loan relief provided for Hurricane Harvey and Hurricane Irma. This relief is separate and in addition to the relief provided to victims of Hurricane Maria by the [Disaster Tax Relief and Airport and Airway Extension Act of 2017](#).

### 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

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 the disaster areas whose Form 5500 filings were due on or after September 16, 2017 for the U.S. Virgin Islands, September 17, 2017 for Puerto Rico, and October 8, 2017 for California, 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 include 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 any municipality in Puerto Rico or any of the islands of St. Croix, St. John and St. Thomas. In California, individuals who reside or have a business in Butte, Lake, Mendocino, Napa, Nevada, Orange, Solano, Sonoma, and Yuba counties may qualify for relief. Filers located outside the disaster areas may also receive relief, but will need to call the IRS disaster hotline to request relief.

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 the disaster.

For disaster areas, the PBGC extended to January 31, 2018, all of the following deadlines that fall between September 16, 2017, for U.S. Virgin Islands, (September 17, 2017 for Puerto Rico, October 8, 2017 for California) 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 September 16, 2017 for U.S. Virgin Islands, (September 17, 2017 for Puerto Rico, October 8, 2017 for California) 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 Maria victims” or “California Wildfire victims.” Under these rules, governmental section 457(b) plans may make unforeseeable emergency distributions to “Hurricane Maria victims” or “California Wildfire victims.”

For these purposes, “Hurricane Maria victims” and “California Wildfire victims” include employees or former employees:

- Whose principal residence on September 16, 2017 for the U.S. Virgin Islands, September 17, 2017 for Puerto Rico, and October 8, 2017 for California (“Incident Date”), was located in one of the areas identified for individual assistance by the FEMA because of the devastation caused by these disasters;
- Whose place of employment was located in one of these areas on the Incident Date; or
- Whose lineal ascendant (parent, grandparent, etc.) or lineal descendant (child, grandchild, etc.), dependent, or spouse had a principal place of residence or employment in one of these areas on the Incident Date.

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 are identified by FEMA for individual assistance because of damage related to these disasters, 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 the Incident Date for special loan and hardship distribution purposes. Please check the [FEMA website](#) for updates.

The special hardship withdrawal and loan relief applies to plans that are qualified under the U.S. Internal Revenue Code. U.S. employees in those plans may take special hardship withdrawals and loans for themselves and for their lineal ascendants and descendants in impacted areas of Puerto Rico, if applicable. For plans that are qualified under both the Puerto Rico Tax Code and the United States Internal Revenue Code (dual-qualified plans), further guidance is needed from the Puerto Rico Treasury Department (Hacienda) before the special hardship withdrawal and loan relief would apply to Puerto Rico employees in those plans.

### In general

These disaster-related loans and hardship distributions must be made on or after the Incident Date and no later than March 15, 2018.

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 disaster-related 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.

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## Hardship/Unforeseeable emergency distributions

The IRS did not relax all of the rules relating to the granting of hardship distributions. For example, disaster-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 disaster-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.

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

## Prudential Retirement's Response

Checks that were in the mail to plan participants and beneficiaries in the affected areas when the disasters 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 Maria or California Wildfire 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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