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Congress Passes The Katrina Emergency Tax Relief Act; IRS Issues Katrina Relief in Announcement 2005-70

Please read carefully since these new provisions may apply to your Plan, even if you are not located in the Katrina disaster area. Plans may, but are not required to, apply these new provisions to plan participants and/or to their “lineal descendants or ascendants, dependents or spouse” with a principal residence or place of employment located within the designated disaster area.

On September 15, Congress passed The Katrina Emergency Tax Relief Act (H.R. 3768) and submitted it to the President for signature. This \$6.1 billion tax relief package for Katrina victims includes modifications to retirement plan withdrawals and loans in order to make additional funds available for Hurricane Katrina victims. This Act provides the following tax relief:

- The 10% premature distribution penalty is waived for hardship distributions taken for immediate needs caused by the disaster for participants in the counties and parishes affected by Hurricane Katrina.
- Participants can pay the federal income tax due on their hardship distributions ratably over three (3) years.
- Participants can choose to repay a hardship distribution to the qualified plan within three (3) years and it will be treated as if they made a 60-day rollover. The amounts subject to this special rule cannot exceed \$100,000.

- The maximum loan amount on loans for affected participants are increased to the lesser of \$100,000 or 100% of the participant's account balance.
- Loan payments due after August 29, 2005 and before August 30, 2006 may be deferred and the maximum repayment period may be extended by twelve (12) months.

IRS Guidance In Announcement 2005-70

Also on September 15, the Internal Revenue Service (IRS), in conjunction with the Department of Labor and PBGC, released Announcement 2005-70 containing guidance on tax- and ERISA-related plan administration matters for participants and plan sponsors located in the areas affected by Hurricane Katrina.

Announcement 2005-70 applies to "qualified employer plans," which are defined as §401(a), §403(a), §403(b) and governmental §457(b) plans.

The relief under Announcement 2005-70 applies to loans or hardship distributions made after August 29, 2005 but no later than March 31, 2006, and includes:

- Plans may make loans or process hardship/unforeseeable emergency distributions to employees or former employees affected by Katrina even if the plan document does not currently allow for loans and/or hardship distributions.
- Plan sponsors have until the end of the plan year in 2006 to amend the plan to allow loans and/or hardship distributions. The deadline for calendar year plans would be December 31, 2006.
- Plan loans and hardship distributions can be made to employees or former employees who, on August 29, 2005, fit into one of the following categories:
 - Employee's principal residence located in designated disaster area;
 - Employee's place of employment located within the disaster area;
 - Employee's lineal descendants or ascendants, dependents or spouse have a principal residence or place of employment located within the designated disaster area.

- Plan administrators can rely upon representations from the participant as to the need for and amount of a hardship unless the plan administrator has actual knowledge to the contrary.
- Plan sponsors may make hardship distributions for any reason, not just those listed in regulations.
- Contributions need not be suspended for six months after a disaster-related hardship distribution is made.
- Loans taken to purchase a principal residence that is not now going to be purchased can be repaid to the plan.
- Distribution can be made without all required paperwork and/or spousal consent.
- Plan administrator must make all reasonable efforts to obtain all required documentation and signatures as soon as practical.

Great-West Retirement Services is currently reviewing all available guidance with respect to Hurricane Katrina relief, and will keep you apprised of procedures that will be implemented for disaster-related loans and hardship distributions.

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