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Milliman

CLIENT ACTION Bulletin
Employee Benefits

Benefit Plan Rules Relaxed to Help Those Affected by Hurricane Sandy

SUMMARY

The IRS, the Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC) have released guidance that eases some of the rules applicable to employee benefit plan sponsors and participants affected by Hurricane Sandy. The newly announced relief is separate from IRS's tax-related relief available under normal disaster relief guidance (e.g., IRS *Revenue Ruling 2003-12,* permitting employers to provide tax-free cash or benefits to help employees in a presidential-declared disaster; or IRS announcements postponing tax return filing or payment deadlines for individuals and businesses).

This *Client Action Bulletin* summarizes the employee benefit plan-related guidance from the federal agencies that applies to plan sponsors and their service providers, as well as participants. Although the guidance offers relief to those directly in the covered disaster areas (thus far, specified counties and Tribal Nations in Connecticut, New Jersey, New York, and Rhode Island), the agencies' relief for retirement plan loans and hardship distributions extends to employers that sponsor plans in other parts of the country that have participants with relatives in the disaster areas.

DISCUSSION

IRS Provides Relief for Plan Loans and Hardship Distributions

In *Announcement 2012-44,* the IRS will allow 401k, profit-sharing, 403(b), and governmental 457(b) plans to make loans and hardship distributions under relaxed rules for participants. To qualify for relief, loans and hardship withdrawals must be made between Oct. 26, 2012, through Feb. 1, 2013.

This relief affects plan participants and certain family members (lineal ascendants or descendants, dependents, or spouses) whose principal residence or workplace was located in the Hurricane Sandy disaster area on Oct. 26, 2012. It will allow a participant who lives and works outside the disaster area to obtain a plan loan or hardship distribution to assist a qualified family member who lives or works in the disaster area.

Although the announcement provides relief from certain verification procedures and administrative requirements, it does not waive the 10% early distribution penalty and still limits loans to the maximum amount available under the terms of the plan, the tax code, and related regulations. The normal spousal consent rule also continues to apply for plans that require it.

The announcement specifies the following:

- A distribution may be made to alleviate any hardship caused by Hurricane Sandy, not just the types enumerated in the regulations.
- Plan administrators may rely upon representations from the participant as to the need for, and amount of, a hardship distribution, unless the administrator has knowledge to the contrary.
- The plan need not impose any otherwise applicable post-hardship withdrawal suspension period on making elective salary deferral contributions.
- A plan's procedural requirements may be disregarded when making plan loans or distributions, provided the plan administrator makes a good-faith diligent effort to comply with the rules.
- If a plan does not currently allow loans or hardship distributions, it must be amended by the end of the 2013 plan year to be able to do so.

Separately, the IRS earlier postponed tax filing and payment deadlines – including the Form 5500 series, but not for Forms W-2, 1098, or 1099 series – until Feb. 1, 2013.

Compliance Guidance from the DOL

In a Nov. 20 news release, the DOL states the agency will not treat any person as having violated ERISA solely because he or she complied with IRS *Announcement 2012-44*. The news release provides relief for:

- **Participant contributions or loan repayments** – Employers and their service providers located in the designated affected areas that are unable to forward participant payments and withholdings to retirement plans in a timely manner due to Hurricane Sandy will not face penalties for temporary delays in forwarding such payments or contributions. The affected employers and service providers, however, must act reasonably, prudently, and in the interest of employees to comply as soon as practicable under the circumstances. According to the DOL, the IRS will not assess the prohibited transaction excise tax due solely to such a temporary delay.
- **Blackout notices** – If, due to Hurricane Sandy, an individual account retirement plan experienced a blackout period during which participants and beneficiaries could not direct their investments, obtain a loan, or obtain other distributions, the DOL will not allege a violation of the required 30-day advance notice of the blackout period, because the blackout was caused by a natural disaster and thus beyond the plan administrator's reasonable control.
- **ERISA group health plan benefit claims and COBRA elections** – Recognizing that group health plans and insurance issuers may not be able to fully comply with certain timeframes for claims decisions or disclosures, the DOL stresses that its enforcement approach will entail compliance assistance, along with grace periods and other relief where appropriate. In addition, plan fiduciaries should make reasonable accommodations to prevent the loss of benefits for plan participants and beneficiaries who may have difficulties meeting certain deadlines.

PBGC Relief for Affected Defined Benefit Plans

The PBGC also announced disaster relief extensions and penalty waivers:

- *Premiums* – No late payment or late information penalty for single-employer or multiemployer premium filings made by Feb. 1, 2013, but applicable interest charges will apply.
- *Plan terminations* – The deadline for filing termination notices, for providing notices to participants and beneficiaries, and for completing the distribution of plan assets is extended to Feb. 1, 2013.
- *Reportable events* – The deadline for filing the reportable event post-event notice is extended to Feb. 1, 2013 (or later, if a 30-day extension applies to a Form 5500 for which there is a Form 5500 Disaster Extension). Relief for advance notice of a reportable event will be granted on a case-by-case basis.
- *Annual financial and actuarial information reporting* – The PBGC will grant relief on a case-by-case basis for contributing sponsors (and their controlled group members) maintaining plans with large underfunding or certain missed contributions or funding waivers.
- *Multiemployer plans* – No penalties will apply for missing deadlines for making PBGC filings, issuing notices to other persons required by PBGC regulations, and taking other actions during the period ending on Feb. 1, 2013.

ACTION Employers that sponsor employee benefit plans should review the guidance from the federal agencies and determine whether to apply the relief to their various programs. Although sponsors in the covered disaster areas can be expected to avail themselves of the relaxed rules, others – particularly retirement plan sponsors in other parts of the country – might want to apply the loan and/or hardship withdrawal provisions of the new guidance. Plan sponsors also should monitor the agencies' web sites for updated information on Hurricane Sandy disaster areas and relief.

For additional information about the relief provided by the IRS, the DOL, and the PBGC, please contact your Milliman consultant.

