Hurricane Harvey and Hurricane Irma Disaster Relief

Notice 2017-49

I. PURPOSE

The Internal Revenue Service (IRS), the Department of Labor's Employee Benefits Security Administration (EBSA), and the Pension Benefit Guaranty Corporation (PBGC) are providing relief in connection with certain employee benefit plans because of damage caused by Hurricane Harvey and Hurricane Irma. The relief provided by this notice is in addition to any relief already provided by the IRS, EBSA, and PBGC to victims of Hurricanes Harvey and Irma. For additional information relating to disaster relief, see https://www.irs.gov/newsroom/help-for-victims-of-hurricane-harvey and https://www.pbgc.gov/prac/other-guidance/dr/updates.

II. BACKGROUND

A. Provisions Relating to Disaster Relief.

Under § 7508A(b) of the Internal Revenue Code (Code), in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such a plan affected by a federally declared disaster or a terroristic or military action, the Secretary of the Treasury may prescribe a period of up to 1 year that may be disregarded in determining the date by which any action is required or permitted to be completed. No plan is to be treated as failing to be operated in accordance with its terms solely because the plan disregards any period by reason of this relief. Sections 518 and 4002(i) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), as amended (ERISA), authorize the provision of parallel relief under Titles I and IV of ERISA.

B. Funding-related Provisions for Single-employer Defined Benefit Plans.

Section 412(a) of the Code and section 302(a) of ERISA require that an employer that sponsors a single-employer pension plan satisfy the minimum funding standard for a plan year. For most single-employer plans, the minimum funding standard is satisfied for a plan year if the employer contributes the minimum required contribution determined under § 430 of the Code and section 303 of ERISA (or, in the case of a money purchase plan, the contributions that are required under the terms of the plan) for the plan year. Section 430(j)(1) of the Code and section 303(j)(1) of ERISA provide that the due date for payment of the minimum required contribution for a plan year is 8-1/2 months after the close of the plan year.

Section 430(f) of the Code provides rules regarding a plan's maintenance of a prefunding balance and a funding standard carryover balance, including rules permitting the use of those balances to offset the minimum required contribution. Section 1.430(f)-1(f)(2) sets forth timing rules regarding elections with respect to a plan's prefunding balance and funding standard carryover balance.

Section 412(c) of the Code and section 302(c) of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive such a waiver, § 412(c)(5) of the Code and section 302(c)(5) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought.

Section 430(j)(3) of the Code and section 303(j)(3) of ERISA impose a higher rate of interest with respect to late quarterly installments for a plan with a funding shortfall for the prior plan year. Section 430(j)(4) of the Code and section 303(j)(4) of ERISA increase the quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan year, the due dates for the required installments are the 15th day of the 4th plan month, the 15th day of the 7th plan month, the 15th day of the 10th plan month, and the 15th day after the end of the plan year.

Section 430(k) of the Code and section 303(k) of ERISA provide, for certain plans with a funding target attainment percentage of less than 100 percent for the plan year, that a lien arises in favor of the plan if the required installments or any other payment required under § 430 of the Code and section 303 of ERISA are not made to the plan before the due date for the required installment or other payment and if the aggregate unpaid balance of required installments and other payments exceeds $1,000,000. If this lien arises, the plan sponsor is required to notify PBGC within 10 days of the failure.

Section 436 of the Code and section 206(g) of ERISA impose certain benefit restrictions that are applied based on a plan's adjusted funding target attainment percentage for the plan year. For this purpose, § 436(h)(2) of the Code and section 206(g)(7)(B) of ERISA provide that a plan's adjusted funding target attainment percentage for the plan year is conclusively presumed to be less than 60 percent from the first day of the 10th month of the plan year through the end of the plan year if no certification of the adjusted funding target attainment percentage for the plan year is made before the first day of the 10th month of the plan year. Section 436(h)(3) of the Code and section 206(g)(7)(C) of ERISA require, in certain cases in which no certification of the adjusted funding target attainment percentage for a plan year is made before the first day of the 4th month of the plan year, that the plan's adjusted funding target attainment percentage is presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage for the preceding plan year for a period beginning on the first day of the 4th month.

Section 101(j)(1) of ERISA provides that the plan administrator of a single-employer plan is required to provide written notice to participants and beneficiaries within 30 days after the date the plan has become subject to a benefit restriction under section 206(g)(1) of ERISA (under which the payment of certain unpredictable contingent event benefits is restricted) or section 206(g)(3) of ERISA (under which the payment of certain accelerated benefit distributions is restricted). Section 101(j)(2) of ERISA provides that, for a single-employer plan under which benefit accruals are restricted under section 206(g)(4) of ERISA because the plan's adjusted funding target attainment percentage is less than 60 percent, the plan administrator is required to provide written notice to participants and beneficiaries within 30 days after the earlier of the plan's valuation date or the date the adjusted funding target attainment percentage is presumed to be less than 60 percent for the plan year pursuant to section 206(g)(7)(B) of ERISA.

Under PBGC’s premium regulations, contribution receipts for a plan year (as described in section 303(g)(4) of ERISA) are included in the market value of assets as of the valuation date to the extent received by the plan by the date the premium is filed. See 29 CFR section 4006.4(c). In addition, reporting requirements under Title IV of ERISA arise from certain late contributions. See 29 CFR sections 4043.25 and 4043.81.

C. Funding-related Provisions for Multiemployer Defined Benefit Plans.

Section 432(b)(3)(A) of the Code and section 305(b)(3)(A) of ERISA provide special rules for certain multiemployer defined benefit plans. For a plan that is subject to those requirements, the plan actuary must make certain certifications each year regarding the plan’s funded status. The deadline for these certifications for a plan year is the 90th day of the plan year. Under § 432(b)(3)(D) of the Code and section 305(b)(3)(D) of ERISA, in certain circumstances, the plan sponsor is required to provide notice regarding the plan’s funded status to participants and beneficiaries, the bargaining parties, PBGC, the Secretary of Labor, and, if applicable, the Secretary of the Treasury. Section 432(c)(1) of the Code and section 305(c)(1) of ERISA require, for the first plan year that a multiemployer plan is in endangered status, that the plan sponsor adopt a funding improvement plan no later than 240 days following the required date for the actuarial certification of endangered status. Section 432(e)(1) of the Code and section 305(e)(1) of ERISA require, for the first plan year that a multiemployer plan is in critical status, that the plan sponsor adopt a rehabilitation plan no later than 240 days following the required date for the actuarial certification of critical status.

III. RELIEF

A. Definition of Affected Plan and Initial Relief Date.

Pursuant to § 7508A(b) of the Code, the relief set forth in this section III applies to an Affected Plan. A plan is an Affected Plan if any of the following were located in the Affected Area[1]: the principal place of business of the employer that maintains the plan (in the case of a plan covering employees of one employer, determined disregarding the rules of § 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of § 414(b) and (c)); the relevant office of the plan or the plan administrator; the relevant office of the primary record keeper serving the plan; or the office of the enrolled actuary or other advisor that previously had been retained by the plan or the employer to make funding determinations or certifications for which the due date falls between the date specified by the Federal Emergency Management Agency (FEMA) as the beginning of the incident period (for example, August 23, 2017, for Texas counties affected by Hurricane Harvey and September 4, 2017, for Florida counties affected by Hurricane Irma) and January 31, 2018. For purposes of the preceding sentence, the term "office" means the worksite of the relevant individuals and the location of any records necessary to determine the plan's funding requirements for the relevant period.

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[1] The Affected Area is defined as any of the Texas counties identified for individual assistance by FEMA because of Hurricane Harvey, any of the Florida counties identified for individual assistance by FEMA because of Hurricane Irma, and any other areas identified for individual assistance by FEMA because of Hurricane Harvey or Hurricane Irma (or Tropical Storm Harvey or Tropical Storm Irma). The areas identified for individual assistance by FEMA can be found on FEMA's website at https://www.fema.gov/disasters.

In addition, for purposes of this notice, the date specified by FEMA as the beginning of the incident period with respect to a plan is referred to as the Initial Relief Date for the plan.

B. Relief for Single-employer Defined Benefit Plans.

For any single-employer plan (other than a CSEC plan as defined in § 414(y)) that is an Affected Plan, if the date described in § 430(j)(1) or 430(j)(3) of the Code and section 303(j)(1) or 303(j)(3) of ERISA for making a contribution for a plan year falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date for making such a contribution is postponed to January 31, 2018.[2] If the date specified in § 1.430(f)-1(f)(2) for making an election relating to such a plan's prefunding balance or funding standard carryover balance falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date by which that election must be made is postponed to January 31, 2018. If the date described in § 436(h)(2) or 436(h)(3) of the Code and section 206(g)(7)(B) or 206(g)(7)(C) of ERISA for certification of the adjusted funded target attainment percentage falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date by which that certification must be made is postponed to January 31, 2018.

For any CSEC plan that is an Affected Plan, if the date described in § 433(c)(9) or § 433(f) of the Code and section 306(c)(9) or section 306(f) of ERISA for making a contribution for a plan year falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date for making such a contribution is postponed

[2] This extension also applies to contributions that are due during this period to plans described in section 104 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006).

to January 31, 2018. For any such plan that is an Affected Plan, if the date described in § 433(j)(4) of the Code and section 306(j)(4) of ERISA by which the plan actuary must make the required certification falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date by which that certification must be made is postponed to January 31, 2018. If the deadline described in § 433(j)(3) of the Code and section 306(j)(3) of ERISA by which a plan sponsor of such an Affected Plan that is in funding restoration status must adopt a funding restoration plan falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then that deadline is postponed to January 31, 2018.

With respect to any single-employer plan that is an Affected Plan, if the deadline for furnishing a notice required under section 101(j)(1) or (2) of ERISA falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date by which that notice must be furnished is postponed to January 31, 2018.

The relief set forth in this section III.B applies under Title IV of ERISA for purposes of determining the timeliness of a contribution and whether that contribution is included in market value of assets. For example, for any plan for which this notice extends a due date described in § 430(j)(1) of the Code and section 303(j)(1) of ERISA, contribution receipts are taken into account in determining the variable rate premium if made on or before the date the plan's premium is filed.

C. Relief for Multiemployer Defined Benefit Plans.

For any multiemployer plan that is an Affected Plan, if the date described in § 432(b)(3)(A) of the Code and section 305(b)(3)(A) of ERISA by which the plan actuary must make any certification required under § 432(b)(3)(A) falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then the date by which that certification must be made is postponed to January 31, 2018. If the deadline described in § 432(c)(1) or 432(e)(1) of the Code and section 305(c)(1) or 305(e)(1) of ERISA by which a plan sponsor of such an Affected Plan that is in endangered or critical status must adopt or update a funding improvement plan or a rehabilitation plan falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then that deadline is postponed to January 31, 2018. If, however, the date by which a certification of such an Affected Plan's status is postponed in accordance with this section III.C, then the date described in § 432(c)(1) or 432(e)(1) of the Code and section 305(c) or 305(e) of ERISA by which the plan sponsor of such an Affected Plan that is in critical or endangered status must adopt a funding improvement plan or a rehabilitation plan nonetheless continues to be determined based on the original deadline for the certification of the plan's status.

D. Relief Related to Funding Waivers.

With respect to a plan that is an Affected Plan, if the date described in § 412(c)(5) of the Code and section 302(c)(5) of ERISA for applying for a waiver for an Affected Plan falls within the period beginning on the Initial Relief Date and ending on January 31, 2018, then that deadline is postponed to January 31, 2018.

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the

IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 (not a toll-free call). For further information regarding the relief in this notice relating to Title IV of ERISA, contact Amy Viener at (202) 326 4000 extension 3919 (not a toll-free call).