TRANSAMERICA CENTER
FOR RETIREMENT STUDIES®

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TCRS 2012-03: Hurricane Sandy Relief – Using Retirement Plan Assets to Alleviate Hurricane Hardships, and Relief from Certain Plan Verification Procedures for Loans and Hardship Distributions.

On November 16, 2012, the Internal Revenue Service ("IRS") issued Announcement 2012-44, providing certain relief for taxpayers adversely affected by Hurricane Sandy who (i) have retirement plan assets they (the affected taxpayers) would like to use to alleviate hardships caused by the hurricane, and (ii) are otherwise subject to certain retirement plan verification procedures (e.g. spousal consent) for loans and hardship distributions.

The relief provided under Announcement 2012-44 ("Announcement") is in addition to other IRS relief already provided (e.g. see Release IR-2012-83, providing certain tax relief for various tax filing and payment deadlines that occurred starting in late October, 2012).

Relief Period

The relief under the Announcement is available for the period beginning on or after October 26, 2012 through February 1, 2013.

To Whom the Relief Applies ("Covered Individuals")

Following are the Announcement's Covered Individuals:

- Employees or former employees whose (a) principal residence or (b) place of employment on October 26, 2012 was located in a county or a Tribal Nation identified as a covered disaster area ("Disaster Area"), and/or
- Lineal ascendants or descendants, dependent, or spouse (of those listed above) who had a principal residence or place of employment in the Disaster Area on October 26, 2012.

Relief Provided (during the relief period)

Hardship distributions – Plan administrators of a "qualified employer plan[1]" may allow a participant (who is a Covered Individual or whose family member described above is a Covered Individual) to receive a hardship distribution even if the plan does not yet, but could, contain language allowing a hardship distribution.[2]

Following are additional rules and plan verification procedures included in the relief:

- A plan administrator may rely upon the Covered Individuals' representations regarding the need for, and the amount of, a hardship distribution (unless the plan administrator has actual knowledge to the contrary), even if the plan otherwise contains verification procedures that must normally be met first.
- A plan administrator may make the distribution without first obtaining spousal consent, a copy of a death certificate, or other documentation generally required, if any, provided (i) a good-faith effort is made to obtain such, and (ii) as soon as practicable post-distribution, makes a reasonable attempt to obtain any missing consent or documentation.
- The hardship is not limited to the types of hardships listed in the plan and/or Treasury regulations (e.g. not limited to prevent eviction from one's principal residence or to pay funeral/burial costs of a parent, spouse, child, or dependent).
- The plan may allow the hardship distribution without suspending employee contributions to the plan.

Following are hardship distribution rules that still apply, even during the relief period:

- The hardship is limited to the maximum amount permitted for a hardship distribution under the Internal Revenue Code and any associated Treasury regulations.
- The hardship is limited to the type of plan and account balances from which such a distribution may be made. For example:
    - A defined benefit or money purchase pension plan generally cannot make in-service hardship distributions, other than from a separate account, if any, such as a rollover account. The relief in the Announcement does not change these facts.
    - A 401(k) plan cannot make a hardship distribution from Qualified Non-Elective Contribution or Qualified Matching Contribution accounts, or from earnings on elective contributions.

Participant loans – Similar to some of the relief granted with respect to hardship distributions, plan administrators of a "qualified employer plan[1]" may allow a participant (who is a Covered Individual or whose family member is a Covered Individual) to receive a loan that satisfies the requirements of Internal Revenue Code ("IRC") §72(p) even if the plan does not yet, but could, contain language allowing participant loans.[2] In addition, a plan administrator may make the distribution without first obtaining spousal consent or other documentation generally required, if any, provided (i) a good-faith effort was made to obtain such, and, (ii) post-loan, makes a reasonable attempt to obtain such.

[1] A "qualified employer plan" means (i) a plan or contract meeting the requirements IRC §§401(a), 403(a), or 403(b) that may allow hardship distributions or loans, and (ii) a plan described in IRC §457(b) maintained by an eligible employer described in IRC §457(e)(1)(A) (i.e. a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state) that allows a distribution due to an "unforeseeable emergency."

[2] If the plan does not contain language allowing a hardship distribution/loan and if such is made in accordance with the relief in the Announcement, the plan must be amended. The amendment must be made no later than the end of the first plan year beginning after December 31, 2012. For a calendar-year plan, the amendment must be made no later than December 31, 2013.