Hardships & Hurricanes: What are the Hardship Rules Following a Natural Disaster?

Facts

Our company sponsors a 401(k) plan. One of our participants lives in the Florida panhandle and lost her home in Hurricane Michael. She is under age 59 ½ and is not eligible to take in-service withdrawal, and a loan would only impose a greater burden. I've not seen any direct guidance that permits hardships distributions for those affected by Hurricane Michael the way I have for previous federally declared natural disasters. She really needs the cash to rebuild her home, but I do not want to approve a hardship that isn't allowed.

Question

Am I allowed to approve a hardship request for her as a result of her losses from Hurricane Michael?

Answer

The TL;DR version is yes. But that's not why you come to DWC searching for answers. So, let's dig a little deeper.

The criteria for taking a hardship distribution has evolved over the last year. Prior to 2018, a participant could take a hardship distribution to repair casualty damage (such as that from a hurricane) to a primary residence. Then, at the start of 2018, the rules changed so that the casualty damage had to be the result of a federally declared disaster in order to qualify for hardship. This appears to have been an unintended consequence of an unrelated law change, but nevertheless, that has been the rule for this year.

To further complicate matters, the IRS has, throughout the last 10+ years, published guidance that would loosen the requirements and permit hardships to cover other types of financial needs for those impacted by a federally declared disaster. They did so in 2017 for victims of the California wildfires and Hurricane Maria.

Thanks to a new set of regulations, the IRS has streamlined things. Starting January 1, 2019, participants will again be able to take a hardship distribution for casualty losses to a primary residence even if not in a disaster area. However, the IRS took it one step further. The new regulations now include a provision permitting hardship distributions to cover certain losses resulting from federally declared disasters. Not only will participants no longer have to await separate guidance from the IRS for future disasters, but the IRS also made this particular change available retroactive to 2018 to cover hurricanes Michael and Florence.

To take advantage of the expanded hardship availability for disasters, the employees' primary residence or primary work place must have been located in the designated area at the time the disaster occurred. Additionally, you must amend your plan to formally apply the revised criteria. For more information about hardship distributions, please visit our Knowledge Center here and here.

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