

OVERVIEW OF EXISTING LAW, ADMINISTRATIVE RELIEF AND LEGISLATION PERTAINING TO COMPENSATION AND EMPLOYEE BENEFITS PROVIDED FOR PERSONS AFFECTED BY HURRICANES KATRINA, RITA AND WILMA

| DISASTER PAYMENTS AND LOANS FROM EMPLOYERS | |
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| <p>STATUTORY RULES FOR TAX-FREE DISASTER RELIEF PAYMENTS</p> <p style="text-align: right;"><i>Box 1</i></p> | <p>Under Internal Revenue Code § 139, an employer or other person may provide tax-free “disaster relief payments” to any employee or other individual. Disaster relief payments are not includable in the recipient’s income and are not taxed as wages. Disaster relief payments are amounts to reimburse or pay reasonable and necessary expenses incurred for personal, family, living or funeral expenses or to repair or rehabilitate a home or its contents. Disaster relief payments may not cover expenses that are compensated for by insurance. Note that there are no dollar limits on disaster relief payments. Section 139 applies to any Presidentially-declared disaster.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Comments:</i> Section 139 was enacted following 9/11/01, and has not been modified specifically to reflect Katrina. Because §139 is by its terms quite broad, consideration should be given as to whether payments and relief provided to persons affected by Katrina, Wilma or Rita or any other declared disaster fall within the §139 exception if there is no other specific regulatory or statutory relief. Some have suggested, for example, that payments from employers that voluntarily continue payroll for affected persons who are not performing services may constitute §139 payments.</p> </div> |
| <p>STATUTORY RULES FOR TAX-FREE EMPLOYER LOANS TO EMPLOYEES</p> <p style="text-align: right;"><i>Box 2</i></p> | <p>Under Code § 7872, employers may make interest-free or below-market loans to employees for amounts up to \$10,000, and the amount of foregone interest will not be treated as compensation to the employee. Note that if a loan is later forgiven, the employee would have compensation income.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Comments:</i> Query whether loan forgiveness or interest foregone on loans in excess of the \$10,000 limit could be treated as a tax-free disaster assistance payment under §139 discussed above.</p> </div> |

This chart overviews relevant administrative guidance and legislation affecting compensation and employee benefits. The Katrina Emergency Tax Relief Act of 2005 (H.R. 3768) (“KETRA”) was enacted on September 24, 2005. On December 21, 2005, the Gulf Opportunity Zone Act of 2005 (“GOZA” or the “Go Zone Act”) was enacted, extending certain tax-relief provisions of KETRA to individuals affected by Hurricane Rita and Hurricane Wilma (together “Hurricane Legislation”). Internal Revenue Service administrative guidance is found in numerous releases, which can be found on the IRS website at <http://www.irs.gov/newsroom/article/0,,id=148203,00.html>, including IR-2005-84 (August 30, 2005), IR-2005-91 (September 2, 2005), and IR-2005-96 (September 8, 2005) (granting general relief for filing tax returns and submitting tax payments); Announcement 2005-70 (regarding retirement plans loans and hardship distributions to Katrina victims); Notice 2005-73 (extending and expanding relief for filing tax returns and submitting tax payments under the authority of Revenue Procedure 2005-27) (May 16, 2005) (listing time-sensitive acts that may be postponed for taxpayers affected by a Presidentially-declared disaster; Notice 2005-60 (extending minimum funding contributions and applications for waivers for certain employee benefit plans in affected areas); Notice 2005-66 (extending deadline for government acts related to taxpayers affected by Hurricane Katrina); IR-2005-110 (September 26, 2005) (extending relief for certain time-sensitive acts to individuals affected by Hurricane Rita); IR-2005-128 (October 27, 2005) (extending relief for certain time-sensitive acts to individuals affected by Hurricane Wilma); Notice 2005-92 (November 30, 2005) (providing guidance interpreting the employee benefit-related provisions of KETRA); FS 2006-12 (January 2006) (discussing tax law changes related to Hurricane Katrina, Rita and Wilma); and Notice 2006-20 (February 17, 2006) (extending certain administrative relief).

DISTRIBUTIONS FROM RETIREMENT PLANS

**ADMINISTRATIVE
RELIEF FOR
RETIREMENT PLAN
WITHDRAWALS FOR
KATRINA-AFFECTED
INDIVIDUALS ONLY**

Relaxed Standards for Katrina-Related Hardship. Under IRS Announcement 2005-70, plan administrators may choose to reasonably interpret the “hardship” distribution standards in a 401(k) plan or a 403(b) arrangement (and the “unforeseeable financial emergency” standards in a 457(b) arrangement) using a relaxed standard for distributions made between August 29, 2005, and March 31, 2006. The relaxed standard means that a request for such a distribution by a participant who states a financial need may satisfy the legal standards for a hardship (or an “unforeseeable financial emergency” in the case of a 457(b) arrangement) unless the plan administrator has knowledge to the contrary. The standard applies to a participant with a principal place of residence in a designated disaster area or whose place of employment was in such area or who had a lineal relative, spouse or dependent so affected (*e.g.*, grandparents, parents, children, and grandchildren.) The plan administrator may recognize any hardship (or financial emergency) of the participant and need not recognize only those events that are enumerated under the terms of the plan or arrangement. In addition, plan administrators (including administrators of IRAs) may relax the formal documentation required for distribution. Plans also need not suspend any future employee contributions if hardship withdrawals are made under the relaxed standards. See Box 12 below regarding plan amendment requirements. Note: This relief only applies to individuals affected by Katrina and does not apply to individuals affected by Rita or Wilma.

Reasonable Documentation Efforts. Notwithstanding the relaxed standards, plan administrators must make reasonable efforts to accumulate foregone documentation under the facts and circumstances. Thus, if spousal consent is required for a distribution, the plan administrator must make reasonable efforts to obtain that consent, which might include a distribution based upon oral consent followed by signed documents.

Comments: Subsequent to the IRS administrative relief, Hurricane Legislation was enacted (*i.e.*, KETRA and GOZA), which provides for special withdrawal rights and waiver of penalties for certain distributions to individuals affected by Katrina, Rita or Wilma. Some, but not all, distributions covered by the IRS administrative guidance may qualify for relief under the legislation. See discussion below at Box 5. IRS representatives have stated that plans that do not currently provide for plan loans, but allow participants to take Hurricane-related plan loans, will need to be amended at a later date to reflect the allowance of such loans. For employers with prototype plans, query how this requirement would affect an employer’s ability to rely on a prototype plan.

Box 3

**CATEGORY OF
AFFECTED
INDIVIDUALS FOR
CERTAIN IRS
ADMINISTRATIVE
RELIEF**

In addition to the above guidance (see Box 3), the IRS and Treasury issued supplemental administrative relief for victims of Hurricanes Katrina, Rita and Wilma. This guidance extends the deadline for the performance of a number of designated taxpayer acts (which are discussed in greater detail throughout this chart) until February 28, 2006. A subset of individuals are eligible for a further extension until August 28, 2006 (as discussed below). This guidance only applies to the following category of affected individuals:

Category of Affected Individuals for IRS Administrative Relief. The individuals who are eligible for this administrative relief are: (1) any individual whose principal residence, and any business entity whose principal place of business, is located in the covered disaster area (*i.e.*, areas designated by FEMA as eligible for Individual or Public Assistance); (2) all workers assisting in the relief activities in the covered disaster areas, regardless of whether they are affiliated with recognized government or

Box 4

CATEGORY OF AFFECTED INDIVIDUALS FOR CERTAIN IRS ADMINISTRATIVE RELIEF (CONT'D)

philanthropic organizations; (3) any estate or trust that has tax records necessary to meet a filing or payment deadline in a covered disaster area; (4) any individual whose principal residence, and any business entity whose principal place of business, is not located in the covered disaster area, but whose tax professional/practitioner is located in the covered disaster area; and (5) individuals, visiting the covered disaster areas, who were killed or injured as a result of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma and its aftermath or the estate of an individual visiting the covered disaster who was killed as a result of the hurricane. See Notice 2005-73, IR-2005-110, and IR-2005-128. Presumably, this category also is intended to include qualified plan trust of employers located in the disaster area.

Extended Relief for Subset of Category of Affected Individuals. On February 17, 2006, the IRS issued Notice 2006-20, which extends the deadline for the performance of certain taxpayer acts from February 28, 2006 to August 28, 2006 for certain affected individuals. The extended relief only applies to a subset of the Category of Affected Individuals for IRS Administrative Relief; specifically affected individuals that were located in the following designated parishes or counties in the states of Alabama, Mississippi and Louisiana:

- Parishes or Counties Eligible for Extended Relief in Alabama: Baldwin, Choctaw, Clarke, Greene, Hale, Marengo, Mobile, Pickens, Sumter, Tuscaloosa and Washington.
- Parishes or Counties Eligible for Extended Relief in Mississippi: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Franklin, Forrest, George, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Jackson, Jasper, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Wathall, Warren, Wayne, Wilkinson, Winston and Yazoo.
- Parishes or Counties Eligible for Extended Relief in Louisiana: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St., Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge and West Feliciana.

Comments: IRS Notice 2006-20 states that affected individuals located in certain of the above listed counties and parishes are automatically entitled to the extended relief, but that affected individuals located in the remaining counties and parishes must request the extended relief by marking their federal tax returns accordingly and by calling the IRS Disaster hotline at (866) 562-5227. Note: The guidance does not address, for the purposes of providing the extended relief, whether plans sponsors, recordkeepers and administrators can assume eligibility for the extended relief based on an affected taxpayer's representations.

Box 4 (CONT'D)

ADMINISTRATIVE RELIEF ALLOWING FOR THE DISREGARD OF THE SEPP RULE

With respect to the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), the following time period may be disregarded in determining whether a distribution is part of a series of substantially equal periodic payments ("SEPPs"):

- For Individuals Affected By Hurricane Katrina: August 29, 2005 (August 25, 2005, for certain persons in Florida) through February 27, 2006 (or August 28, 2006, for individuals eligible for extended relief (see Box 4 for definition)).

Box 5

ADMINISTRATIVE RELIEF ALLOWING FOR THE DISREGARD OF THE SEPP RULE (CONT'D)

Box 5 (CONT'D)

- For Individuals Affected By Hurricane Rita: September 23, 2005, through February 27, 2006.
- For Individuals Affected By Hurricane Wilma: October 23, 2005, through February 27, 2006.

Comments: The administrative exception is apparently designed to assist participants, such as IRA accountholders, who are unable to access their accounts as a result of Hurricanes Katrina, Rita, or Wilma and would otherwise violate the substantially equal periodic payment rule. For more information, see Notice 2005-66, IR-2005-110, IR-2005-128, and Rev. Proc. 2005-27. Note also that if any distribution is subject to the 10-percent penalty, the penalty and any income tax on such distribution would not be due before February 28, 2006, since the relevant period prior to February 28, 2006, is disregarded under administrative guidance.

STATUTORY RELIEF FOR QUALIFIED HURRICANE DISTRIBUTIONS FROM RETIREMENT PLANS NOT SUBJECT TO THE 10-PERCENT PENALTY, ELIGIBLE FOR INCOME AVERAGING AND RECONTRIBUTION RULES

BOX 6

Qualified Hurricane Distribution: The Hurricane Legislation waives the 10% early withdrawal penalty tax under Code § 72(t) for “Qualified Hurricane Distributions” that do not exceed \$100,000 from an IRA, 401(k) plan, 403(b) annuity, governmental 457 plan, or other 401(a) tax-qualified plan and that are made within a certain time frame, as follows:

- For “Katrina Affected Individuals”: Waives the 10% penalty for distributions made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, was located in a Hurricane Katrina Disaster Area and who sustained economic loss by reason of Hurricane Katrina (hereinafter referred to as a “Katrina Affected Individual”). A “Hurricane Katrina Disaster Area” is defined under the Hurricane Legislation to include any area that is declared by the President (*i.e.*, FEMA) before September 14, 2005, to be a major disaster area by reason of Hurricane Katrina.

Comments: In IRS Notice 2005-92, the Service interpreted the definition of a “Hurricane Katrina Disaster Area” under KETRA to include the entire states of Mississippi, Louisiana, Alabama and Florida, regardless of whether an individual actually lived in a county or parish that was declared by the President (*i.e.*, FEMA) to be a major disaster area. The Service followed this approach in IRS Publication 4492, where it stated that the “Hurricane Rita Disaster Area” covers the entire states of Louisiana and Texas and the “Hurricane Wilma Disaster Area” covers the entire state of Florida.

- For “Rita Affected Individuals”: Waives the 10% penalty for distributions made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, was located in a Hurricane Rita Disaster Area and who sustained economic loss by reason of Hurricane Rita (hereinafter referred to as a “Rita Affected Individual”). A “Hurricane Rita Disaster Area” is defined under the Hurricane Legislation to include any area that is declared by the President (*i.e.*, FEMA) before October 6, 2005, to be a major disaster area by reason of Hurricane Rita.
- For “Wilma Affected Individuals”: Waives the 10% penalty for distributions made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, was located in a Hurricane Wilma Disaster Area and who sustained economic loss by reason of Hurricane Wilma (hereinafter referred to as a “Wilma Affected Individual”). A “Hurricane Wilma Disaster Area” is defined under the Hurricane Legislation to include any area that is declared by the President (*i.e.*, FEMA) before November 14, 2005, to be a major disaster area.

**STATUTORY RELIEF
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10-PERCENT PENALTY,
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AVERAGING AND
RECONTRIBUTION
RULES (CONT'D)**

by reason of Hurricane Wilma.

Income Tax Withholding Rules Apply. Qualified Hurricane Distributions are subject to the income tax withholding rules applicable to distributions other than eligible rollover distributions. Therefore, a plan administrator is not required to comply with the 20% mandatory withholding requirement (although the voluntary withholding rules still apply) and is not required to provide a § 402(f) notice. See IRS Notice 2005-92.

Comments: The only guidance interpreting the Hurricane Legislation is IRS Notice 2005-92, which technically only applies to KETRA, and does not technically apply to GOZA, the second piece of the Hurricane Legislation. Given the similar language of GOZA to KETRA, and shared policy objectives, it is expected that the Service and/or Treasury will extend the Notice to GOZA. For the purposes of this chart, we apply Notice 2005-92 to the Hurricane Legislation generally, including GOZA.

The Relief is Permissive. A plan sponsor is permitted to choose whether or not to treat distributions under its plans as Qualified Hurricane Distributions. A plan sponsor is permitted to develop reasonable procedures for identifying which distributions are treated as such under its retirement plans. However, if a plan treats any distribution as a Qualified Hurricane Distribution, the plan must be consistent in its treatment (*i.e.*, the amount of the distribution must be taken into consideration in determining the \$100,000 limit on Qualified Hurricane Distribution payments under the plans maintained by the employer). In making a determination that a distribution is a Qualified Hurricane Distribution, a plan sponsor or plan administrator is permitted to rely on reasonable representations from a distributee with respect to the distributee's principal place of abode, and whether the distributee suffered an economic loss by reason of Hurricane Katrina, Rita or Wilma, unless the plan sponsor or plan administrator has actual knowledge to the contrary. See *Id.*

Defined Benefit and Money Pension Plans Excluded. Sponsors of money pension and defined benefit plans may not treat distributions from such plans as a Qualified Hurricane Distribution. Additionally, a pension plan is not permitted to make a distribution under a distribution form that is not a qualified joint and survivor annuity ("QJSA") without spousal consent merely because the distribution, if made, could be treated as a Qualified Hurricane Distribution. See *Id.*

Deemed Distributions, Excess Contributions and Dividends are NOT Eligible for Treatment. IRS guidance states that the following may not be treated as qualified distributions: (1) loans that are treated as deemed distributions under Code § 72(p), (2) distributions of excess contributions or elective deferrals, and (3) dividends paid on employer securities. The guidance states, however, that an offset or reduction of a participant's account in order to repay a loan may be treated as a qualified distribution.

Comments: The statutory distribution rules do not require a showing that economic losses equaled or exceeded the amount withdrawn or that such losses are not covered by insurance. Thus, so long as a participant living in the affected area had some economic loss (query whether \$1 is sufficient), the withdrawal would qualify for the exclusion from the penalty tax, income averaging, and recontribution rights. Note that the Hurricane Legislation does not modify the tax-qualification rules for tax-qualified plans sponsored by employers. Accordingly, only plans that by law may allow for in-service withdrawals may make Qualified Hurricane Distributions available to their participants.

BOX 6 (CONT'D)

**STATUTORY RELIEF
FOR QUALIFIED
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RULES (CONT'D)**

Income Averaging for Qualified Hurricane Distributions. An individual may elect to include the full amount of a Qualified Hurricane Distribution in income in year one or, alternatively, may elect to include the amount of the distribution in income ratably over the three-year period beginning with the year of distribution. If an individual dies before the full taxable amount of a Qualified Hurricane Distribution has been included in gross income, then the remainder must be included in gross income for the taxable year that includes the individual's death.

Recontribution Rule for Qualified Hurricane Distributions. At any time during the three-year period, any portion of a Qualified Hurricane Distribution may be recontributed to any eligible retirement plan. Such contributions are treated as rollovers and, presumably, would be subject to the same tax reporting rules as rollover contributions. IRS guidance makes clear that only a distribution that is eligible for tax-free rollover treatment under §§ 402(c) and 402(e)(6), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16) is permitted to be recontributed to an eligible retirement plan. Recontributed amounts will be treated as having been made in a direct rollover to the eligible retirement plan. In the case of a distribution from an eligible retirement plan, other than an IRA, periodic payments may not be recontributed. Required minimum distributions paid from an IRA or other eligible retirement plan are also not eligible for recontribution. Distributions paid to a beneficiary of an IRA owner are not eligible for recontribution. For more information, see Notice 2005-92.

Comments: As discussed above, IRS administrative relief provides for relaxed hardship distributions from eligible retirement plans. Note that some but not all of the participants that took hardship distributions pursuant to the administrative relief may be able to recharacterize the distributions as Qualified Katrina Distributions (under KETRA) or Qualified Hurricane Distributions (under GOZA). Hardship withdrawals made by individuals that were living in a Hurricane Katrina Disaster Area, but that took distributions on behalf of non-dependent relatives that were affected, would remain subject to the 10% penalty tax and would not be eligible for the income averaging or recontribution rules for qualified Katrina distributions. See Box 3 above.

Plan Amendments. Sponsors of nongovernmental plans will be required to amend their plans no earlier than the last day of the first plan year beginning on or after January 1, 2007 (January 1, 2009 for Code § 414(d) governmental plans).

Comments: Prior to the passage of GOZA, the IRS indicated that it will be issuing guidance pertaining to plan amendments for KETRA. Presumably, the guidance will address the timing of plan amendments under GOZA.

Tax Reporting. Plans must report the payment of a Qualified Hurricane Distribution to a distributee on a Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. The reporting is required even if the distributee recontributes the distributed amounts to the same eligible retirement plan in the same year. If a plan treats the payment as a Qualified Hurricane Distribution and no other appropriate code applies, the plan is permitted to use Distribution Code 2 (early distribution, exception applies) in box 7 of Form 1099-R. A plan is, however, also permitted to use Distribution Code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

Comments: The tax reporting rules are beneficial for plan sponsors and recordkeepers because they excuse sponsors and recordkeepers from having to determine whether an individual is eligible to receive a Qualified Hurricane Distribution. Additionally, plan sponsors and recordkeepers are not required to determine if previously distributed amounts have been recontributed into the plan prior to issuing a Form 1099-R.

BOX 6 (CONT'D)

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| <p>STATUTORY RELIEF ALLOWING FOR THE RECONTRIBUTION OF RETIREMENT PLAN DISTRIBUTIONS FOR HOME PURCHASES</p> <p style="text-align: right;"><i>Box 7</i></p> | <p>Hurricane Legislation allows individuals affected by Katrina, Rita or Wilma to recontribute certain hardship distributions received from a 401(k) plan, 403(b) annuity or IRA that qualified as a first-time home purchase distribution provided that such distributions were intended to be used for the purchase or construction of a principal residence in a Presidentially-declared disaster area by reason of Katrina. Specifically, the legislation provides:</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Katrina:</u> Distributions received after February 28, 2005, and before August 29, 2005, which qualified as a first-time home purchase distribution and which were intended to be used for the purchase or construction of a principal residence in a Hurricane Katrina Disaster Area (see Box 6 for definition), may be recontributed into an eligible retirement plan no later than February 28, 2006. ▪ <u>For Individuals Affected By Hurricane Rita:</u> Distributions received after February 28, 2005, and before September 24, 2005, which qualified as a first-time home purchase distribution and which were intended to be used for the purchase or construction of a principal residence in a Hurricane Rita Disaster Area (see Box 6 for definition), may be recontributed into an eligible retirement plan no later than February 28, 2006. ▪ <u>For Individuals Affected By Hurricane Wilma:</u> Distributions received after February 28, 2005, and before October 24, 2005, which qualified as a first-time home purchase distribution and which were intended to be used for the purchase or construction of a principal residence in a Hurricane Wilma Disaster Area (see Box 6 for definition), may be recontributed into an eligible retirement plan no later than February 28, 2006. |
| <p>ADMINISTRATIVE RELIEF REGARDING ELIGIBLE ROLLOVERS FROM QUALIFIED PLANS AND SECTION 457 GOVERNMENTAL PLANS</p> <p style="text-align: right;"><i>Box 8</i></p> | <p>With respect to the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), the 60-day rollover period is extended to the later of 60 days or February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)), for eligible rollover distributions made on or between the following dates:</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Katrina:</u> August 29, 2005 (August 25, 2005, for certain persons in Florida) and February 27, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)). ▪ <u>For Individuals Affected By Hurricane Rita:</u> September 23, 2005, and February 27, 2006. ▪ <u>For Individuals Affected By Hurricane Wilma:</u> October 23, 2005, and February 27, 2006. |

LOANS FROM RETIREMENT PLANS

ADMINISTRATIVE RELIEF PROVIDING FOR RELAXED DOCUMENTATION STANDARD FOR LOANS FROM QUALIFIED PLANS FOR KATRINA-AFFECTED INDIVIDUALS ONLY

BOX 9

Under IRS Announcement 2005-70, plan administrators may choose to relax the formal documentation required for a plan loan between August 29, 2005, and March 31, 2006, but the terms of such loan must still satisfy Code § 72(p) (regarding 5-year amortization period, reasonable interest rate, etc.). The relaxed standard applies to a participant who had a principal place of residence in a designated disaster area or whose place of employment was in such area or who had a lineal relative, spouse or dependent so affected (*e.g.*, grandparents, parents, children, and grandchildren).

Comments: IRS representatives have noted that if a plan requires spousal consent for the making of loans (*e.g.*, money purchase plans), plans may relax such requirements during the relief period, but must continue to exercise reasonable efforts to comply. For example, if a plan requires spousal consent for a loan, but the spouse cannot be located, a loan can be made to the participant, but the plan must use reasonable efforts to obtain written consent from the spouse as soon as practicable. IRS representatives have also noted that plans that do not currently provide for plan loans, but allow participants to take Katrina-related plan loans, will most likely need to be amended at a later date to reflect the allowance of such loans. For employers with prototype plans, query how this requirement would affect an employer's ability to rely on a prototype plan.

STATUTORY INCREASE IN PLAN LOAN LIMITS TO \$100,000 FOR INDIVIDUALS IN FEMA RELIEF AREAS

BOX 10

For Katrina Affected Individuals, Rita Affected Individuals and Wilma Affected Individuals (see Box 6 for definitions), the Hurricane Legislation increases the maximum limit on loans from a qualified employer plan (as defined in Code § 72(p)(4)) from \$50,000 to \$100,000, up to 100 percent of the participant's account balance. The Hurricane Legislation also delays for one year the due date of certain loan payments for these individuals. Note: The framework of Code § 72(p)(4) otherwise remains unchanged, such that the maximum amount of a loan is decreased by the highest outstanding balance of loans from the plan during the one-year period ending on the day before the date the loan is made.

Comments: The Hurricane Legislation does not address ERISA regulatory rules requiring that a plan loan be secured by 50 percent of the account balance. In a footnote to IRS Notice 2005-92, however, the Service noted that the Department of Labor has advised the Department of Treasury and the Service that it will not treat any person as having violated Title I of ERISA, including the adequate security requirement, on account of such loans.

STATUTORY RELIEF PROVIDING AN EXTENSION OF TIME FOR THE REPAYMENT OF LOANS FROM RETIREMENT PLANS

BOX 11

The Hurricane Legislation delays for one year the due date of any loan payments that are outstanding on or between the following dates:

- For Katrina Affected Individuals (see Box 6 for definition): August 15, 2005, and December 31, 2006.
- For Rita Affected Individuals (see Box 6 for definition): September 23, 2005, and December 31, 2006.
- For Wilma Affected Individuals (see Box 6 for definition): October 23, 2005, and December 31, 2006.

Comments: IRS guidance in the form of Notice 2005-92 makes clear that repayments made in accordance with the legislative relief must be "appropriately adjusted" to reflect the delay and any interest accruing for such delay and that the period of delay shall be disregarded in determining the 5-year period and the term of the loan under Code §

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| <p>STATUTORY RELIEF PROVIDING AN EXTENSION OF TIME FOR THE REPAYMENT OF LOANS FROM RETIREMENT PLANS (CONT'D)</p> <p style="text-align: right;"><i>BOX 11 (CONT'D)</i></p> | <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>72(p). The guidance also states that an employer is permitted to choose to allow the delay with respect to a qualifying loan repayment and, as a result, a deemed distribution to an individual under Code § 72(p) will not result. Under the terms of the guidance, a plan may rely on a participant's reasonable representations unless the plan has actual knowledge to the contrary. For more information, see Notice 2005-92.</p> </div> <p><u>Administrative Safe Harbor:</u> The IRS has provided employers and plans with an administrative safe harbor for purposes of satisfying the loan repayment relief provisions of the Hurricane Legislation. Under the safe harbor, a plan will be treated as satisfying the requirements of Code § 72(p) if the individual's obligation to repay a plan loan is suspended for any period beginning not earlier than August 25, 2005, and ending not later than December 31, 2006, so long as loan repayments resume as of January 1, 2007. If a plan falls within the administrative safe harbor, the guidance permits a plan to extend the term of the loan to reflect the period during which repayments are suspended. Interest accrued during the period of suspension must be added to the remaining principal of the loan and reamortized over the remaining period of the loan. For example, a loan with a 5-year term must be repaid in five years from the date of the loan, plus the suspension period. The guidance indicates that an employer may choose to elect a suspension period that begins later than August 25, 2005, or ends before December 31, 2006, so long as the safe harbor period is at least as long as the minimum statutory one-year deferral period. For more information, see Notice 2005-92.</p> |
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| OTHER TIME LIMITS RELATED TO RETIREMENT PLANS | |
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| <p>QUALIFIED PLAN AMENDMENTS</p> <p style="text-align: right;"><i>BOX 12</i></p> | <p>The Hurricane Legislation permits plans to make retroactive plan amendments to reflect changes in plan operation by reason of the legislation, by no later than the end of the 2007 plan year. Governmental plans have until the end of the 2009 plan year to make any necessary retroactive amendments.</p> |
| <p>401(K) EXCESS CONTRIBUTIONS</p> <p style="text-align: right;"><i>BOX 13</i></p> | <p>Distributions of excess contributions under Code §§ 401(k)(8) and 401(m)(6), plus income attributable to the excess, may be delayed for the Category of Affected Individuals for IRS Administrative Relief. (See Box 4 for definition.) Thus, where such distributions are required before the close of a plan year, excess contributions may be distributed as late as February 28, 2006, where the relevant plan year would have otherwise closed on or between:</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Katrina:</u> August 29, 2005 (August 25, 2005, for certain affected individuals in Florida) and February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)). ▪ <u>For Individuals Affected By Hurricane Rita:</u> September 23, 2005, and February 28, 2006. ▪ <u>For Individuals Affected By Hurricane Wilma:</u> October 23, 2005, and February 28, 2006. |
| <p>ADP/ACP EXCESS CONTRIBUTIONS</p> <p style="text-align: right;"><i>BOX 14</i></p> | <p>For the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), distributions of excess ADP/ACP contributions may now be delayed to the latter of 2 ½ months after the close of the plan year or February 28, 2006. Thus, to avoid the 10% penalty for late distributions under Code § 4979, affected plans may now make distributions as late as February 28, 2006, if the relevant plan year would have otherwise closed on or between:</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Katrina:</u> August 29, 2005 (August 25, 2005, for certain affected individuals in |

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| ADP/ACP EXCESS CONTRIBUTIONS (CONT'D) <i>BOX 14 (CONT'D)</i> | <p>Florida) and February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)).</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Rita</u>: September 23, 2005, and February 28, 2006. ▪ <u>For Individuals Affected By Hurricane Wilma</u>: October 23, 2005, and February 28, 2006. |
| 10% EXCISE TAX ON NONDEDUCTIBLE AND EXCESS CONTRIBUTIONS TO A QUALIFIED PLAN <i>BOX 15</i> | <p>Nondeductible and excess contributions to a qualified plan that otherwise would be required to be distributed on or between the following dates may now be distributed no later than February 28, 2006, with respect to the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition):</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Katrina</u>: August 29, 2005 (August 25, 2005, for certain affected individuals in Florida) and February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)). ▪ <u>For Individuals Affected By Hurricane Rita</u>: September 23, 2005, and February 28, 2006. ▪ <u>For Individuals Affected By Hurricane Wilma</u>: October 23, 2005, and February 28, 2006. |
| QUALIFIED PLAN MINIMUM DISTRIBUTIONS <i>BOX 16</i> | <p>Pursuant to IRS administrative relief, required minimum distributions pursuant to Code § 401(a)(9) may be postponed until February 28, 2006 for the Category of Affected Individuals for IRS Administrative Relief (See Box 4 for definition.). For individuals affected by Hurricane Katrina who are eligible for extended relief (see Box 4 for Definition), required minimum distributions may be postponed until August 29, 2005 and August 28, 2006.</p> |
| SELF-CORRECTION PROCEDURES PURSUANT TO EPCRS <i>BOX 17</i> | <p>Employers and tax-qualified plans that are in the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), may suspend the period for self-correcting operational failures under the Employee Plans Compliance Resolution System (“EPCRS”), until February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)). Similarly, the period for applying the EPCRS rules found in § 12.07 (calculation of plan assets based on Form 5500) and 14.03 (Audit CAP sanctions) are suspended until February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)).</p> |

ADMINISTRATIVE RELIEF PERTAINING TO EMPLOYEE STOCK OWNERSHIP PLANS (“ESOPS”)

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| INVESTMENT ELECTIONS <i>BOX 18</i> | <p>Under current law a qualified participant in an ESOP may generally elect within 90 days after the close of each plan year in the qualified election period to direct the plan investment of at least 25% of the participant’s account in the plan (50% in the case of the last election). Pursuant to IRS relief, eligible ESOPS now have until the later of 90 days after the close of the plan year or February 28, 2006 (or August 28, 2006, if eligible for extended relief), to direct plan investments for the Category of Affected Individuals for IRS Administrative Relief. (See Box 4 for definition.) The corresponding 90-day period during which an ESOP is required to distribute or invest the portion of a participant’s account covered by an investment election is also extended until the later of 90 days or February 28, 2006 (or August 28, 2006, if eligible for the extended relief (see Box 4 for definition)).</p> |
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| STOCK DIVIDENDS 90-DAY DISTRIBUTION RULE <i>BOX 19</i> | <p>The 90-day period during which an ESOP is required to distribute certain dividends on employer stock of a C corporation in cash to participants and beneficiaries, is extended until the later of 90 days after the close of a plan year in which dividends were paid or February 28, 2006, for the Category of Affected Individuals for IRS Administrative Relief. (See Box 4 for definition.)</p> |
| EMPLOYER GRANT OF PUT OPTION REGARDING EMPLOYER SECURITIES FOR 60-DAY PERIOD <i>BOX 20</i> | <p>Under current law, an employer required to repurchase employer securities under Code § 409(h)(1)(B) must provide a put option for a period of at least 60 days following the date of distribution of employer securities to a participant, and if the put option is not exercised, for an additional 60-day period in the following plan year. Under IRS relief, the 60-day put option period is extended until the later of 60 days or February 28, 2006 (or August 28, 2006, if eligible for extended relief), with respect to the Category of Affected Individuals for IRS Administrative Relief. (See Box 4 for definition.)</p> |
| PARTICIPANT EXERCISE OF PUT OPTION REGARDING DISTRIBUTION OF EMPLOYER SECURITIES <i>BOX 21</i> | <p>Under current law, a participant who receives a distribution of employer securities under Code § 409(h)(1)(B) must exercise the put option provided by that section within a period of at least 60 days following the date of distribution, or if the put option is not exercised within that period, for an additional 60-day period in the following plan year. Administrative relief has extended the 60-day period for a participant to exercise his or her put option until the later of 60 days or February 28, 2006 (or August 28, 2006, if eligible for extended relief), with respect to participants that are in the Category of Affected Individuals for IRS Administrative Relief. (See Box 4 for definition.)</p> |
| DISTRIBUTION OF PARTICIPANT'S ACCOUNT BALANCE <i>BOX 22</i> | <p>The 90-day period for ESOPs that fall within the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), is extended until the later of 90 days or February 28, 2006 (or August 28, 2006, if eligible for extended relief), for compliance with the distribution requirements of Code § 401(a)(28)(B)(ii), which requires either a diversification election or the distribution of a portion of the account of a participant who has attained age 55.</p> |
| ADMINISTRATIVE RELIEF PERTAINING TO EDUCATION SAVINGS ACCOUNTS | |
| COVERDELL EDUCATION SAVINGS ACCOUNTS AND § 529 COLLEGE SAVINGS PLANS <i>BOX 23</i> | <p>The 60-day rollover period with respect to eligible rollover distributions from Coverdell Education Savings Accounts and § 529 College Savings Plans is extended until the later of 60 days or February 28, 2006 (or August 28, 2006, if an affected individual is eligible for extended relief), for the Category of Affected Individuals for IRS Administrative Relief. (See Box 4 for definition.)</p> |

ADMINISTRATIVE RELIEF PERTAINING TO PENSION PLAN FUNDING AND FILINGS

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| EXTENSIONS FOR MINIMUM FUNDING FOR KATRINA-AFFECTED PLANS ONLY <i>BOX 24</i> | <p>Pursuant to administrative relief, “Affected Plans” now have until February 28, 2006, to make minimum funding contributions, or apply for waivers, if the original deadline for such actions was on or between August 29, 2005, and February 28, 2006. The deadline extensions apply to both non-tax provisions under ERISA and the corresponding provisions of the code.</p> <p><u>Affected Plan:</u> Includes any plan where any of the following were located at the time of Katrina in any of the parishes or counties subsequently designated eligible for Individual Assistance by FEMA: the principal place of business of the employer that maintains the plan; the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan; the office of the plan or the plan administrator; the office of the primary recordkeeper; or the office of the enrolled actuary or other advisor that had been retained by the plan or the employer at the time of Katrina to determine the</p> |
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**EXTENSIONS FOR
MINIMUM FUNDING
FOR KATRINA-
AFFECTED PLANS
ONLY (CONT'D)**

funding requirements for which the due date falls between the period beginning on August 29, 2005, and ending on February 27, 2006. Note that the term "office" includes only the worksite of those individuals and the location of any records necessary to determine the plan's funding requirements for the relevant period. For more information, see Notice 2005-60 and Notice 2005-84.

Comments: The relief only applies to plans affected by Hurricane Katrina and does not apply to plans affected by Hurricanes Rita or Wilma.

BOX 24 (CONT'D)

**EXTENDED FORM 5500
FILING DEADLINES**

Eligible Plan Filers affected by Hurricanes Katrina, Rita or Wilma have until February 28, 2006, to file a Form 5500 and 5500-EZ annual report/returns generally required for pension and welfare benefit plans regarding their financial condition, investments, and operations. Eligible Plan Filers affected by Hurricane Katrina that qualify for the extended relief (see "Extended Relief for certain Eligible Plan Filers" below) have until August 28, 2006, to make the requisite Form 5500 filings.

Comments: Eligible Plan Filers that previously requested and obtained extended filing dates occurring between the relief periods, also have until February 28, 2006, to make their Form 5500 filings. Eligible Plan filers that are entitled to an extension should check Part I, Box D, on the Form 5500 or Part 1 on Form 5500-EZ and attach a statement to the form in accordance with the instructions.

Eligible Plan Filers: Includes plan administrators, employers, and other entities located in the areas directly affected, as well as firms located outside the affected areas who are unable to obtain the necessary information from service providers, banks, or insurance companies whose operations were directly affected by the hurricane. The Katrina relief applies to 64 parishes in Louisiana, 83 counties in Mississippi, 22 counties in Alabama, and 11 counties in Florida in addition to any other counties or parishes that are subsequently designated as eligible for Individual or Public Assistance by FEMA. The Rita relief applies to 9 counties in Texas and 5 parishes in Louisiana as well as any other counties or parishes that are subsequently designated as eligible for Individual or Public Assistance by FEMA. The Wilma relief applies to 20 counties in Florida and also to any other counties or parishes that are subsequently designated as eligible for Individual or Public Assistance by FEMA.

Comments: DOL Representatives stated that plan filers that take advantage of Katrina relief with respect to Form 5500 series filings are also permitted to delay filing the Summary Annual Report ("SAR") until no later than two months after the filing of the Form 5500 or 5500EZ. Presumably DOL will take the same position with respect to plan filers affected by Hurricanes Rita and Wilma.

Extended Relief for Certain Eligible Plan Filers: On February 27, 2006, the Employee Benefits Security Administration ("EBSA") extended the deadline to August 28, 2006, for filing the Form 5500 series annual returns/reports for those Eligible Plan Filers located in the following designated parishes or counties in the states of Alabama, Mississippi and Louisiana:

- Parishes or Counties Eligible for Extended Relief in Alabama: Baldwin, Choctaw, Clarke, Greene, Hale, Marengo, Mobile, Pickens, Sumter, Tuscaloosa and Washington.
- Parishes or Counties Eligible for Extended Relief in Mississippi: Adams, Amite, Attala, Claiborne, Choctaw, Clarke,

BOX 25

**EXTENDED FORM 5500
FILING DEADLINES
(CONT'D)**

Copiah, Covington, Franklin, Forrest, George, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Jackson, Jasper, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Wathall, Warren, Wayne, Wilkinson, Winston and Yazoo.

- Parishes or Counties Eligible for Extended Relief in Louisiana: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge and West Feliciana.

Comments: The list of Eligible Plan Filers for which extended relief has been provided mirrors the list of affected individuals eligible for certain extended IRS administrative relief (see Box 4, “Extended Relief for Subset of Category of Affected Individuals”). Note: The EBSA guidance, which provides for extended relief based upon the IRS’ grant of extended relief in Notice 2006-20, appears to incorrectly reference “46 counties” in Mississippi, instead of the 49 counties addressed in Notice 2006-20.

Box 25 (CONT'D)

**EXTENSIONS FOR
PLAN FILINGS
REGARDING
PREMIUMS,
TERMINATIONS AND
PARTICIPANT NOTICES**

The Pension Benefit Guaranty Corporation (“PBGC”) issued “Disaster Relief” which, in part, waives or extends the following penalties and deadlines for “Designated Persons” affected by Hurricane Katrina, Rita or Wilma.

Premium filings – “Designated Persons” that are required to make premium filings on or between the following dates (“Applicable Period”), now have until February 28, 2006 (or August 28, 2006 if eligible for Extended Relief (see below for definition)), to make the requisite premium filings:

- For “Designated Persons” Affected by Hurricane Katrina: August 29, 2005 (August 25, 2005, for certain Designated Persons in Florida), and February 28, 2006 (or August 28, 2006 if eligible for Extended Relief (see below for definition)).
- For “Designated Persons” Affected by Hurricane Rita: September 23, 2005 and February 28, 2006.
- For “Designated Persons” Affected by Hurricane Wilma: October 23, 2005 and February 28, 2006.

Participant notices – Deadlines for providing a participant notice that fall within the Applicable Period are extended until February 28, 2006 (or August 28, 2006 if eligible for Extended Relief (see below for definition)).

Comments: If a plan filer took advantage of relief with respect to the filing of a Form 5500 or a 5500ez (see Box 25 above), the deadline for providing a participant notice for the following plan year is automatically extended to two months after the extended filing date of the Form 5500 or 5500ez.

Reportable events notices – Deadlines for providing reportable events notices that fall within the Applicable Period are extended until February 28, 2006 (or August 28, 2006 if eligible for Extended Relief (see below for definition)).

Box 26

**EXTENSIONS FOR
PLAN FILINGS
REGARDING
PREMIUMS,
TERMINATIONS AND
PARTICIPANT NOTICES
(CONT'D)**

Comments: In certain cases, the PBGC's regulation on post-event notices of reportable events extends the reporting deadline until 30 days after a plan's Form 5500 due date. If a 30-day extension applies to a Form 5500 for which a plan filer sought filing relief (see Box 25 above), the 30-day extension period is suspended until the date the Form 5500 is filed. In the case of notices required in advance of the effective date of a reportable event, the PBGC will grant relief where appropriate on a case-by-case basis.

Single-employer plan terminations – “Designated Persons” required to file a termination notice, distribution of plan assets notice, post-distribution certification, or distress termination notice during the Applicable Period, now have until February 28, 2006 (or August 28, 2006 if eligible for Extended Relief (see below for definition)).

Annual actuarial and financial filings for certain plans with large underfunding or missed contributions or funding waivers – The PBGC will grant relief where appropriate on a case-by-case basis for these filings. Also, PBGC regulations permit the filing of certain actuarial information by an alternative due date, which is 15 days after a plan's Form 5500 due date, if certain requirements are met. If such an alternative due date is based on a Form 5500 for which a plan filer sought filing relief (see Box 25 above), the 15-day period will automatically be measured from the extended date upon which the Form 5500 is filed.

Requests for reconsideration of appeals – The deadline for requesting review of a PBGC determination under the PBGC's regulation on Rules for Administrative Review of Agency Decisions is generally 45 days (for an appeal) or 30 days (for a request for reconsideration) after the date of the determination. If a Designated Person is aggrieved by a PBGC determination, and the deadline for filing an appeal or a request for reconsideration falls within the Applicable Period, the Designated Person has until February 28, 2006 (or August 28, 2006 if eligible for Extended Relief (see below for definition)).

Multiemployer plan deadlines – Under the PBGC's regulations governing multiemployer plans, various persons (*e.g.*, the plan sponsor) are subject to deadlines for making filings with the PBGC, issuing notices to persons other than the PBGC, and taking other actions. If the person responsible for meeting the deadline is a Designated Person, and the deadline falls during the Applicable Period, the PBGC will neither assess a penalty under ERISA nor take any other enforcement action with respect to any failure to comply with the deadline during the period.

Designated Person: Includes any person responsible for meeting a PBGC deadline that (1) is located in a disaster area for which the IRS has provided relief in IR-2005-84, IR-2005-91, IR-2005-96 (updated September 12, 2005), IR-2005-110 (updated September 27, 2005), IR-2005-112, IR-2005-128, or IR 2006-30, in connection with filing extensions for Form 5500 series returns, or (2) cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank, or other person whose operations are directly affected by Hurricane Katrina.

Designated Persons Eligible for Extended Relief: On February 24, 2006, the PBGC extended the “Applicable Period” until August 28, 2006 for “Designated Persons” affected by Hurricane Katrina from the Louisiana parishes of Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, and St. Tammany, and from the Mississippi counties of Hancock, Harrison, and Jackson (or for "Designated Persons" that cannot reasonably obtain information or other assistance needed to meet the applicable

Box 26 (CONT'D)

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| <p>EXTENSIONS FOR PLAN FILINGS REGARDING PREMIUMS, TERMINATIONS AND PARTICIPANT NOTICES (CONT'D)</p> <p style="text-align: right;"><i>Box 26 (CONT'D)</i></p> | <p>deadline from a service provider, bank, or other person in those counties or parishes whose operations are directly affected by Hurricane Katrina). (Hereinafter referred to as “Extended Relief”).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Comments:</i> PBGC seems to be concerned that participants or beneficiaries will bring suit against Designated Persons and their related plans for failure to comply with these deadlines. The Disaster Relief Announcement, which provides the relief discussed above, includes a statement from the PBGC that “[t]he PBGC recognizes that persons other than the PBGC may have rights to enforce some of these deadlines. The PBGC expects these persons to act reasonably, fully taking into account the effects of damages from [Hurricane Katrina, Hurricane Rita, and Hurricane Wilma] in deciding whether and to what extent to exercise these rights.” Note: In addition to the stated relief, the PBGC states that additional “appropriate relief” may be granted to a requesting party.</p> </div> |
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| OTHER | |
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| <p>LEAVE DONATION PROGRAM FOR KATRINA-AFFECTED INDIVIDUALS ONLY</p> <p style="text-align: right;"><i>Box 27</i></p> | <p>Employees can donate their vacation, sick, or personal leave in exchange for cash payments made by their employers to qualified charitable organizations assisting in Hurricane Katrina disaster relief efforts until the end of 2006. Donated amounts are not includible in an employee’s gross income or wages, and employees will not be considered in constructive receipt of gross income or wages. The employer may deduct cash payments made to a charity. Note: Donations must be made specifically for Hurricane Katrina and must be paid to the organizations before January 1, 2007.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Comments:</i> The leave donation program only applies to organizations assisting in Hurricane Katrina disaster relief efforts. Treasury and the Service have not extended the program to Rita and Wilma relief efforts.</p> </div> |
| <p>DEADLINES FOR FILING RETURNS AND PAYING AND DEPOSITING TAXES</p> <p style="text-align: right;"><i>Box 28</i></p> | <p>For the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), the IRS has extended the deadlines to file returns, or pay and deposit taxes until February 28, 2006. The IRS has stated that it will postpone deadlines and abate interest and any late filing, late payment, or failure to deposit penalties that would otherwise apply, for any tax return, tax payment or tax deposit with an original or extended due date falling on or between the following dates:</p> <ul style="list-style-type: none"> ▪ <u>For Individuals Affected By Hurricane Katrina:</u> August 29, 2005 (August 25, 2005, for certain affected individuals in Florida) and February 28, 2006 (or August 28, 2006, if eligible for the extended relief (see Box 4 for definition)). Note: For Katrina-affected individuals, the relief encompasses the October 31, 2005 deadline for filing quarterly federal employment and excise tax returns; and any employment and excise deposits due on or before February 28, 2006 (or August 28, 2006, if eligible for extended relief (see Box 4 for definition)). ▪ <u>For Individuals Affected By Hurricane Rita:</u> September 23, 2005, and February 28, 2006, for individuals affected by Rita. Note: For Rita-affected individuals, the extension does <u>not</u> apply to information returns in the W-2, 1098, 1099 or 5498 series, although penalties for failure to timely file information returns can be waived under existing procedures for reasonable cause. Nor does the extension apply to employment and excise tax deposits. However, penalties for failure to timely file information returns can be waived under existing procedures for reasonable cause. Additionally, the Service has stated that it will abate penalties for failure to make timely employment and excise tax deposits due before February 28, 2006, so long as the deposits are made by that date. |

**DEADLINES FOR
FILING RETURNS AND
PAYING AND
DEPOSITING TAXES
(CONT'D)**

Box 28

- For Individuals Affected By Hurricane Wilma: October 23, 2005, and February 28, 2006, for individuals affected by Wilma. Note: For Wilma-affected individuals, the extension does not apply to information returns in the W-2, 1098, 1099 or 5498 series, although penalties for failure to timely file information returns can be waived under existing procedures for reasonable cause. Additionally, the extension does not apply to employment and excise tax deposits, however, the Service has stated that it will abate penalties for failure to make timely employment and excise tax deposits due before November 4, 2005, so long as the deposits are made by that date.

Comments: As outlined above, the relief granted by the Service with respect to the filing of information returns and deposit of employment and excise taxes varies significantly depending on whether the individual was affected by Katrina, Rita or Wilma. In applying the relief, attention should be paid to the basis for an individual's eligibility (*i.e.*, whether the individual was affected by Katrina or Rita or Wilma) and the scope of the specific relief granted.

**CAFETERIA PLANS --
ELECTIONS AND
APPLICATION OF THE
USE-IT-OR-LOSE-IT
RULE**

Box 29

For the Category of Affected Individuals for IRS Administrative Relief (see Box 4 for definition), the following time period may be disregarded for purposes of applying the constructive receipt rules of Code section 125 (regarding timing for plan elections and application of the use-it-or-lose-it-rule):

- For Individuals Affected By Hurricane Katrina: August 29, 2005 (August 25, 2005, for certain affected individuals in Florida) and February 28, 2006 (or August 28, 2006, for certain individuals eligible for extended relief (see Box 4 for definition)).
- For Individuals Affected By Hurricane Rita: September 23, 2005, and February 28, 2006.
- For Individuals Affected By Hurricane Wilma: October 23, 2005, and February 28, 2006.

Comments: We interpret the guidance as permitting plan sponsors to provide relief to affected individuals (1) by providing individuals with additional time (as outlined above) to make or change their cafeteria plan elections, including salary deferral elections with respect to Health FSA coverage, and (2) by providing additional time beyond the close of the plan year for individuals to incur claims. Note: The administrative relief is permissive, not mandatory, and plan sponsors may choose to provide as much or as little relief as they desire (within the parameters of current law and the administrative relief provided). For example, sponsors could decide to provide affected individuals with additional time to incur claims under the sponsor's Health FSA plan, but decide not to extend/relax the timing rules for making salary deferral or coverage elections.

DOL EXTENSION OF TIME FRAMES FOR EMPLOYEE BENEFIT PLANS WITH RESPECT TO HIPAA AND COBRA FOR KATRINA-AFFECTED INDIVIDUALS ONLY

For plan participants, beneficiaries, qualified beneficiaries, or claimants directly affected by Hurricane Katrina (an individual who resided, lived, or worked in one of the disaster areas at the time of the hurricane or the employee benefit plan providing the individual's coverage was directly affected), group health plans, disability and other welfare plans, pension plans, and health insurance issuers subject to Part 7 of ERISA, must disregard the period from August 29, 2005, until February 28, 2006, when determining any of the following time periods and dates:

- ◆ The 63-day break in coverage period under ERISA § 701(c)(2)(A) and Code § 9801(c)(2)(A);
- ◆ The 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children under ERISA § 701(d) and Code § 9801(d);
- ◆ The 30-day period to request special enrollment under ERISA § 701(f) and Code § 9801(f);
- ◆ The 60-day period to elect COBRA continuation coverage under ERISA § 605 and Code § 4980(B)(f)(5);
- ◆ The date for making COBRA premium payments pursuant to ERISA § 602(2)(C) and (3) and Code § 4980B(f)(2)(B)(iii) and (C);
- ◆ The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA § 606(a)(3) and Code § 4980B(f)(6);
- ◆ The date within which individuals may file a benefit claim under the plan's claims procedure pursuant to 29 CFR 2560.503-1; and
- ◆ The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure pursuant to 29 CFR 2560.503-1(h).

For group health plans, their sponsors and administrators, and health insurance issuers subject to Part 7 of ERISA, that are directly affected by Hurricane Katrina (an employee benefit plan is directly affected if the principal place of business of the employer that maintains the plan, the principal place of business of employers that employ more than 50 percent of active participants covered by the plan, the office of the plan or the plan administrator, or the office of the primary recordkeeper serving the plan, was located in one of the disaster areas), the period from August 29, 2005, until February 28, 2006, shall be disregarded when determining the following dates:

- ◆ The date for providing an automatic certificate of creditable coverage under 29 CFR 2590.701-5(a)(2)(ii) and 26 CFR 54.9801-5(a)(2)(ii); and
- ◆ The date for providing a COBRA election notice under ERISA § 606 and Code § 4980B(f)(6).

Comments: The DOL and the EBSA have not extended the HIPAA and COBRA-related relief to individuals affected by Hurricanes Rita and Wilma. Informal statements made by representatives from DOL indicate that there are no current plans to extend the relief to individuals affected by Hurricanes Rita and Wilma.

BOX 30

IRS CIRCULAR 230 NOTICE: Any tax advice contained in this document was not intended or written by Davis & Harman LLP to be used, and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Recipients of this document should seek advice based on their particular circumstances from an independent tax advisor.