

September 19, 2005

More IRS Benefit Plan Guidance for Hurricane Katrina Relief

IRS Announcement 2005-70 relaxes rules for loans and hardship distributions from 401(k), profit sharing, 403(b) and 457(b) plans. Defined benefit, money purchase and nonqualified plans are generally not affected by this release.

For the counties and parishes of Louisiana, Alabama and Mississippi that have been declared Hurricane Katrina disaster areas by FEMA (see, <http://www.fema.gov/press/2005/katrinaassistance.shtm>), relief is available to:

- employees and former employees
- dependents and spouses
- lineal ascendants or descendents (e.g. parents)

who have a principal residence or a place of employment in such counties or parishes.

Under the Announcement, hardship distributions can be: (i) made for any reason, without the limits of the “safe harbor” reasons, (ii) made without restrictions, such as the 6-month suspension, (iii) based on the employee’s representation, and (iv) made from any plan account (other than QNEC, QMAC or earnings on pre-tax deferrals). Where plan requirements require paperwork to process loans (e.g., spousal consent), the requirements can be waived temporarily. As the urgency of the situation subsides, plan administrators must make a good faith effort to comply with IRS requirements, including making a reasonable attempt to assemble the documentation that would normally be expected. The special hardship distributions and/or loans must be made between August 29, 2005 and March 31, 2006.

If a plan permits any such hardship distributions and/or loans, plans must be amended by the end of the first plan year beginning after December 31, 2005 (by December 31, 2006 for calendar year plans). It will be important to keep track of the loans and/or hardship distributions made and the restrictions lifted during the emergency period.

In addition, bills have been passed by the U.S. House and Senate as the Katrina Emergency Tax Relief Act of 2005 that would eliminate the 10% premature distribution penalty on hardship distributions before age 59-1/2 and would raise the loan limits to the lesser of \$100,000 or 100% of a participant’s account.

The proposed legislation would also give employees tax breaks by permitting payment of taxes on distributions over three years or repaying the hardship distribution as if it were a rollover contribution and would give employers who continue wage payments to affected employees a tax credit of up to \$2400 per employee.

If you have questions or need additional information on the IRS guidance, please contact the Seyfarth Shaw attorney with whom you normally work or any Employee Benefits attorney on our website at www.seyfarth.com.



This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact any Seyfarth Shaw LLP office. Copyright © 2005 Seyfarth Shaw LLP. All Rights Reserved.