

PR Treasury Adopts Special Distribution Rules for Retirement Plans and IRAs to Help Victims of Hurricane Fiona

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An McV Employee Benefits Alert

October 4, 2022

The Puerto Rico Treasury Department (“PR Treasury”) has issued guidance for special disaster distributions from Puerto Rico qualified plans (“Retirement Plans”) and Puerto Rico Individual retirement accounts and annuities (“PR IRAs”) resulting from Hurricane Fiona as they did for Hurricane María, the earthquakes that struck Puerto Rico in 2019 and the COVID 19 pandemic.

Internal Revenue Circular Letter No. 22-13 (“CL 22-13”) of September 27, 2022 provides the rules to allow participants affected by the passage of Hurricane Fiona through Puerto Rico to request distributions from Retirement Plans and PR IRAs (“Eligible Distributions”). Eligible Distributions for Retirement Plans are optional. The window period for Eligible Distributions will run from October 6, 2022 through December 31, 2022. Eligible Distributions must cover damages or losses suffered, and extraordinary expenses incurred, by the individual and/or members of his/her immediate family (i.e., spouse, offspring, or parents) resulting from Hurricane Fiona (“Eligible Expenses”).

To receive an Eligible Distribution, the participant or individual must submit a written statement signed under penalty of perjury with the administrator/ sponsor of the Retirement Plan and/or financial institution providing the PR IRA, as applicable, certifying, among others:

- Puerto Rico *bona fide* residency status for 2022.
- Dollar amount requested as an Eligible Distribution meets the \$100,000 maximum limitation.
- Eligible Distribution will cover Eligible Expenses.
- Any other Eligible Distribution(s) received, and the tax(es) withheld therefrom, if any.
- Responsibility for payment of income taxes owed if requirements for Eligible Distributions are not met.

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Eligible Distributions will be subject to the special tax treatment granted under Sections 1081.01(b)(1)(D) and 1081.02(d)(1)(I) of the Puerto Rico Internal Revenue Code (“PR Code”):

- The first \$10,000 will be exempt from withholding and income tax (including the basic alternate tax).
- Amounts over \$10,000 (up to \$100,000) will be subject to withholding and income tax rate of 10% in lieu of any other tax imposed by the PR Code.
- Any portion of a distribution over \$100,000 will be taxed as a regular distribution from a Retirement Plan or PR IRA.

Retirement plans not yet amended to incorporate the provisions under PR Code Section 1081.01(b)(1)(D), must be amended by December 31, 2022, to permit these Eligible Distributions.

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