

## DOL Expands Plan Compliance Relief for Louisiana Floods

The DOL has announced relief from certain ERISA deadlines in light of the devastating Louisiana floods. The DOL's news release makes allowances for delays in providing blackout notices as well as processing participant contributions, loan repayments, health plan benefit claims and COBRA elections.

### Background

In August, in response to the devastation wrought by the severe Louisiana floods, IRS and PBGC announced relief from meeting filing deadlines (such as for Form 5500). They also permitted relaxed standards for processing plan loans and hardship withdrawals from profit-sharing plans, stock bonus plans, 401(k), 403(a), 403(b) and eligible governmental 457(b) plans. We covered that guidance in our [September 2, 2016 For Your Information](#).

### DOL Follows Suit

In a [news release](#), the DOL has now responded to the disaster with relief comparable to what was announced in response to Hurricane Sandy in 2012. They will allow for delays in processing participant contributions, loan repayments, health plan benefit claims and COBRA elections, as well as the provision of blackout notices. In addition to the guidance for plan sponsors, the DOL provided [FAQs for plan participants and beneficiaries](#).



DOL's relief applies to employee benefit plans, plan sponsors, employers and employees, and service providers to such employers who were located — as of Aug. 11, 2016 — in parishes identified in the general disaster [IRS news release](#) as covered areas because of the Louisiana storms. (Note: additional parishes were added to the list of affected areas on September 6, 2016.)

### Depositing Participant Contributions and Loan Repayments

The DOL's news release affirms what IRS had reported about relaxing verification procedures for plan loans and hardship withdrawal distributions. The DOL will not pursue ERISA violations solely because a plan administrator

follows the IRS guidance in processing payments. In addition, the DOL acknowledges that there may be temporary delays in depositing participant contributions and loan repayments due to the storm. Ordinarily, the DOL regulations require that amounts withheld from wages to cover these amounts must be forwarded to the plan on the earliest date on which such amounts can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer.

**Comment.** While the news release doesn't specifically mention the special deadline for employers of fewer than 100 employees to remit participant contributions and loan repayments (not later than the seventh business day following the day on which such amounts are received by the employer), there is no reason to believe that the relief does not also extend to such employers.

The DOL will not pursue an ERISA enforcement action where there are delays in processing these amounts to the extent that employers and their service providers act reasonably, prudently and in the interest of employees to comply as soon as practicable under the circumstances. The DOL reports that the IRS will not seek to assess prohibited transaction excise taxes resulting solely from such a temporary delay.

## Providing Blackout Notices

Ordinarily, the administrator of an individual account plan is required to provide 30-day advance notice to participants and beneficiaries when services will be temporarily suspended, limited or restricted by a blackout period. An exception is provided for events that are beyond the reasonable control of the plan administrator and a fiduciary so determines in writing. The DOL says that blackouts due to the Louisiana storms are eligible for the exception even in the absence of a written determination.

## Group Health Plans

The DOL's news release similarly acknowledges the health plan administrative delays that can face participants, beneficiaries and plan administrators when a disaster like the Louisiana storms strikes. The DOL suggests that plan fiduciaries make reasonable accommodations to prevent the loss of benefits and minimize loss of coverage for individuals affected by the storm. They also suggest that employers may want to provide affected employees additional time for making COBRA elections and paying premiums so that they are not adversely affected. The DOL also encourages granting additional time for filing benefit claims.

As to the plans and insurers, the DOL's approach to enforcement will include grace periods and other relief for situations where the disaster impacted the plan or service provider's ability to comply with established timeframes for evaluating claims or providing disclosures.

## In Closing

This additional information from the DOL is useful in acknowledging the practical approach to expect from the agencies about dealing with ERISA requirements during a period that is not "business as usual." Although selective requirements seem to have been singled out in the DOL's release, as a practical matter, it suggests that a reasonable approach to compliance and enforcement of other ERISA notice and timing requirements may be expected as well.

**Authors**

Marjorie Martin, EA, FSPA, MAAA  
Rachel D. Kugelmass

**Produced by the Knowledge Resource Center of Xerox HR Consulting**

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email [fyi@xerox.com](mailto:fyi@xerox.com).

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.