



For your information

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## DOL adds to Hurricane Sandy relief for benefit plans

Echoing the message from IRS about deadline extensions and expedited processing of loans and hardship distributions from eligible retirement programs for plans and participants affected by Hurricane Sandy, the Department of Labor (DOL) has identified certain ERISA deadlines that warrant special treatment. The DOL's [news release](#) makes allowances for delays in processing participant contributions, loan repayments, blackout notices and health plan benefit claims and COBRA elections.

### 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. (See our November 19, 2012 [For Your Information](#).) 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.

**Buck Comment.** While the news release does not 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 similarly 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 Hurricane Sandy are eligible for the exception even without that 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 Hurricane Sandy 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. As suggested in our initial Hurricane Sandy [For Your Information](#), and now by the DOL, 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.

## 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 is to be expected as well.