

## DOL and (some) IRS Relief for Recent Hurricane and Fire Victims

As with other disasters in recent years, DOL will not pursue ERISA violations against plans for transactions involving hardship withdrawals, loans, and blackout notices for victims of Hurricanes Florence and Michael and the 2018 California wildfires. DOL has not mandated any additional COBRA deadline extension, as it did with hurricane Maria in 2017. Additionally, for victims of these hurricanes, the IRS has offered relief from a number of the usual distribution restrictions so that participants can quickly access their retirement plan funds for disaster-related needs. While the IRS has not yet extended this relief to 2018 California wildfire victims, it seems likely that the agency will eventually do so. Additional relief may also come in the form of legislation extending relief comparable to that provided for other recent disasters.

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### Background

Natural disasters continue to wreak havoc in various parts of the United States. In September 2018, Hurricane Florence devastated areas of North Carolina, South Carolina, and Virginia. Hurricane Michael followed in October 2018, causing destruction in Alabama, Florida, and Georgia. Meanwhile, in July through November 2018, wildfires destroyed large swaths of property in California. IRS, DOL, and PBGC have standardized “first tier” disaster relief that is routinely announced for any federally declared disaster and includes extended due dates for tax filings, including Form 5500. PBGC has set in place a rule that automatically provides extensions of their deadlines whenever IRS announces relief in news releases issued on or after July 2, 2018.

For extraordinary disasters, announcements of relief from the agencies sometimes provide more than the routine extensions for filing forms and meeting reporting obligations. The additional relief generally includes relaxed standards for processing hardship withdrawals and plan loans, as well as more time to adopt plan amendments, if appropriate. In the past, it did not open the door to loans or withdrawals from amounts that are inaccessible for hardship withdrawal, such as QNEC and QMAC accounts and income accumulated on elective deferrals. For disasters in prior years, these relief options have come from IRS,

DOL, and Congress. These options have been inconsistent from disaster to disaster — 2018 events join that fray.

## DOL announces relief

For these 2018 disasters, DOL extended similar relief to victims of Hurricanes Florence and Michael and California wildfires that it provided in 2017 to victims of Hurricanes Maria, Harvey, Irma, and last year's California wildfires. (See our [December 11, 2017 For Your Information](#)). Specifically, as explained in its news releases for the [hurricanes](#) and [Fact Sheet for the fires](#), the DOL will not take enforcement action on failures to follow requirements in connection with loan and distribution verification procedures, participant contribution and loan repayment deposits, and blackout notices where the failure is attributable to these disasters and the plan makes a reasonable attempt to collect missing documentation and process transactions as soon as practicable.

**Buck comment.** Note that this 2018 DOL relief does not mandate an additional COBRA deadline extension, as DOL did with hurricane Maria in 2017.

Additionally, DOL instructed plan fiduciaries “to make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established [claim procedure] time frames.” It also acknowledged the possibility of situations where plans and service providers cannot comply with claims processing requirements and said that, in such circumstances, the agency will emphasize compliance assistance and extend grace periods and other relief.

DOL also provided FAQs to participants and beneficiaries following the [hurricanes](#) and [2018 California wildfires](#), addressing both health and welfare and retirement plan related questions. Employers may wish to review these documents to understand the information that DOL is providing to participants.

## IRS weighs in (on hurricanes only)

The IRS recently proposed regulations to implement several law changes that eased hardship withdrawal requirements. (See our [November 27, 2018 For Your Information](#).) As part of this guidance, it extended the relief provided under Announcement 2017-15 to victims of Hurricanes Florence and Michael — except that the:

- Incident dates are as specified by FEMA for individual assistance for the disaster. Dates vary based on location. Use the links to the left on the FEMA pages for [Hurricane Florence](#) and [Hurricane Michael](#).
- Relief is provided through March 15, 2019.
- Related plan amendments, including hurricane related amendments, will generally be needed by the end of second calendar year after the proposed regulations are finalized and appear on the required amendments list.

**Buck comment.** See our [December 12, 2017 For Your Information](#) to learn about the IRS Required Amendment List; IRS published a 2018 list with no items listed; if final hardship withdrawal regulations are issued in 2019, expect that these hurricane amendments will be needed in 2021.

Announcement 2017-15 offered relief from several of the usual distribution restrictions to allow participants to quickly access their retirement plan funds for disaster related needs. (See our [November 15, 2017 For Your Information](#).)

While IRS has not yet issued similar guidance on the 2018 California wildfires, the proposed changes to the hardship withdrawal regulations are apparently intended to be available for current use and will allow safe harbor distributions to be made if the employee's principal residence or principal place of employment at the time of the disaster was in an area designated by [FEMA](#) for individual assistance. However, this relief is narrower than that provided for Hurricanes Florence and Michael; it does not include relief from documentation protocols, nor does it draw in expenses for participants with lineal ascendants or descendants, spouses, or dependents who lived or worked in an area impacted by the disaster.

**Buck comment.** The proposed hardship withdrawal regulations noted above remove the requirement to obtain plan loans before taking a hardship withdrawal, eliminate the six-month suspension, and expand the money types that can be tapped for withdrawals. These changes can provide additional relief for all three disasters — but effective dates vary. (See our [November 27, 2018 For Your Information](#).)

## More to come from Congress?

In response to past disasters, Congress has provided additional relief, such as waiving the 10 percent early distribution excise tax for select disasters (for example, see our [October 6, 2017 For Your Information](#)). Although the chances may be slim that anything beyond legislation to keep the government running will cross the finish line in the current lame duck session, amongst the retirement plan proposals on the Hill is [qualified disaster distribution relief](#) for the three disasters discussed here — as well as others such as earthquakes and volcanos in Hawaii. The relief would allow for recontribution of withdrawals, income averaging, larger loans, and longer repayment periods, and limited relief from the 10 percent early distribution excise tax.

## In closing

Plan sponsors can now use the relaxed distribution rules in Announcement 2017-15 to offer some immediate relief to employees affected by Hurricanes Florence and Matthew. It remains to be seen whether IRS will extend this relief to California wildfires and other disasters, but there is some relaxation of rules available via the proposed regulatory changes. The possibility of congressional action is another wildcard.

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