

Date: November 28, 2012

TCRS 2012-04: Hurricane Sandy Relief from the Department of Labor.

On November 20, 2012, the Department of Labor (“DOL”) issued compliance guidance for retirement plans covered by ERISA, such as 401(k) plans. The guidance addresses several topics, including (i) the verification procedures for participant hardship withdrawals and loans that were the subject of recent Internal Revenue Service (“IRS”) Hurricane Sandy Relief¹, (ii) timely deposits of participant contributions and loan repayments, and (iii) Sarbanes-Oxley Act blackout notice requirements.

The relief under this guidance is in addition to Form 5500 Annual Return/Report filing relief previously provided (see below for more information).

To Whom the Relief Applies (“Covered Parties”)

The Covered Parties are the following, who, on October 26, 2012, were located in a county or a Tribal Nation the IRS identified as a covered disaster area (“Disaster Area”) due to Hurricane Sandy:

- retirement plans covered by ERISA,
- the plan sponsors (employers) of the retirement plans, and
- service-providers to the employers.

Relief Provided

Verification procedures for participant hardship distributions and loans – The DOL will not treat any Covered Party as having violated Title I of ERISA based solely upon compliance with IRS Announcement 2012-44 as it pertains to relief from certain verification procedures for participant hardship distributions and loans.¹

Timely deposits of participant contributions and loan repayments – The DOL will not treat any Covered Party as having violated Title I of ERISA for a temporary delay in depositing participant contributions/loan repayments to a plan where such delay is solely attributable to Hurricane Sandy, to the extent the affected Covered Parties act reasonably, prudently, and in the interest of employees to comply as soon as practicable.

Based upon the same conditions and in addition to the DOL relief described above, the IRS will not assess an excise tax for a prohibited transaction under Internal Revenue Code §4975 for a delayed deposit.

Blackout notices – For blackout periods related to Hurricane Sandy, the DOL will not allege a violation of the blackout notice requirement that a fiduciary determine in writing that (i) an advance notice of the blackout was not provided to participants and beneficiaries due to (ii) events beyond the reasonable control of the plan administrator.

In its guidance, the DOL noted that natural disasters (such as a hurricane) are, by definition, beyond the control of a plan administrator.

Previous Form 5500 filing relief

Previous IRS relief extended the Form 5500 filing due date to February 1, 2013 for an employer located in a covered disaster area (defined above) whose plan’s Form 5500 filing due date was on/after October 26, 2012² and before February 1, 2013. See IRS News Release IR-2012-83, related IRS releases, and Treasury Department regulations under Internal Revenue Code §7508A.

¹ See [TCRS 2012-03](#) for more detail regarding IRS Announcement 2012-44.

² For employers in Connecticut and New York, the Form 5500 relief period begins on/after October 27, 2012.

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