

MEMO# 27320

June 19, 2013

Department of Labor Issues Compliance Guidance Regarding Oklahoma Tornadoes

[27320]

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TO: PENSION MEMBERS No. 26-13

OPERATIONS COMMITTEE No. 26-13

TRANSFER AGENT ADVISORY COMMITTEE No. 46-13 RE: DEPARTMENT OF LABOR ISSUES COMPLIANCE GUIDANCE REGARDING OKLAHOMA TORNADOES

The Department of Labor (DOL) issued guidance on compliance with employee benefit plan rules for those impacted by the tornadoes that began on May 18, 2013 in parts of Oklahoma. [\[1\]](#) The DOL's guidance is in addition to the Form 5500 filing extension relief previously provided by the Internal Revenue Service (IRS) for victims of the Oklahoma tornadoes. [\[2\]](#) The guidance applies to plans, plan sponsors, and service providers located in the Oklahoma counties identified as covered disaster areas. [\[3\]](#) The guidance addresses two pension plan issues: (1) participant contributions and loan repayments; and (2) ERISA disclosures.

With respect to participant contributions and loan repayments, the guidance notes DOL's recognition that there may be some employers and service providers (such as payroll processing centers) located in covered disaster areas, who will not be able to forward participant contributions or loan repayments to plans within ERISA's requirements. [\[4\]](#) The guidance provides that, in such instances, DOL will not, solely on the basis of a failure attributable to the Oklahoma tornadoes, seek to enforce ERISA's provisions regarding the payments or contributions to the extent that affected employers and service providers acted reasonably, prudently, and in the interest of employees to comply as soon as practicable under the circumstances. The guidance further acknowledges that the IRS has informed DOL that it will not seek to assess an excise tax with respect to a prohibited transaction under the Internal Revenue Code resulting solely from such a temporary delay.

With respect to ERISA disclosures, according to the guidance, DOL will not seek to enforce disclosure timeliness requirements for ERISA disclosures (such as blackout notices, participant-level fee disclosures, or pension benefit statements) that were due to be made between May 18, 2013 and September 30, 2013, if the failure to make the disclosure is due to events reasonably beyond the control of the plan administrator or fiduciary and if

they act prudently under the circumstances to comply as soon as practicable. The guidance notes that natural disasters, by definition, are beyond the control of a plan administrator or fiduciary.

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endnotes

[1] See generally: <http://www.dol.gov/ebsa/newsroom/2013/EBSA061313.html>.

[2] See [Memorandum](#) to Pension Members No. 24-13 [27273], dated June 5, 2013; [Memorandum](#) to Transfer Agent Advisory Committee No. 41-13, Operations Committee No. 22-13 [27279], dated June 6, 2013.

[3] Covered disaster areas include the following counties in Oklahoma: Canadian (added June 13, 2011), Cleveland, Lincoln, McClain, Oklahoma and Pottawatomie.

[4] DOL Regulation § 2510.3-102 provides that such participant contributions or loan repayments are required to 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 fifteenth business day following the month in which the amounts were paid to or withheld by the employer.