



## Hurricane Katrina Affects Retirement Plan Administration

**WHO'S AFFECTED** This information applies to sponsors of qualified pension, profit sharing and stock bonus plans, including 401(k) plans, multiemployer plans, governmental plans and church plans. It also applies to ERISA 403(b) plans and non-ERISA 403(b) programs, and to governmental section 457 plans. In certain circumstances, plan sponsors and participants who were not directly affected by Hurricane Katrina are still eligible for special relief.

**BACKGROUND AND SUMMARY** The arrival of Hurricane Katrina on the Gulf Coast on August 29, 2005, significantly affected businesses in Louisiana, Mississippi, Alabama, and parts of Florida. Recognizing this impact, the IRS, the Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC) have granted extensions of certain deadlines for both plan sponsors and participants directly affected by this disaster.

The IRS and DOL have also provided special rules for plan sponsors that want to offer hardship distributions or plan loans to employees or former employees that have been affected by Hurricane Katrina. These rules apply to qualified plans, 403(b) arrangements, and governmental section 457 plans. They are not limited to plan sponsors or individuals living in affected areas. Under these rules, loans and hardship distributions may be made available to employees and former employees whose family members were directly affected by the disaster.

In addition, the IRS has:

- Suspended many compliance activities throughout the affected areas for a period of at least 60 days;
- Created a special Hurricane Katrina Webpage, which can be accessed at: <http://www.irs.gov/newsroom/article/0,,id=147085,00.html>; and
- Created a special toll-free telephone number, 1-866-562-5227 available Monday through Friday from 7:00 AM to 10:00 PM local time, for use by taxpayers affected by Hurricane Katrina.

**ACTION AND NEXT STEPS** Plan sponsors should review the information in this publication to determine potential impacts to their plans and programs. If you need more information regarding the various extensions or special plan loan and hardship distribution opportunities, please contact your Prudential Retirement representative.

**IN THIS ISSUE**

[Directly-Affected Plans and Participants](#)  
[Extension for Filing Form 5500 and Form 5500-EZ](#)  
[Contribution and Funding Relief](#)  
[PBGC Relief](#)  
[IRS Compliance Relief](#)  
[All Plans and Participants](#)  
[IRS and DOL Plan Distribution Relief](#)  
[Prudential Retirement's Response](#)  
[More Relief on the Horizon](#)  
[Hurricane Katrina Parish/County Disaster Declarations](#)

## **Directly-Affected Plans and Participants**

### **Extension for Filing Form 5500 and Form 5500-EZ**

For many plans, the deadline for filing Form 5500 or Form 5500-EZ is either September 15 or October 15. For certain filers whose Form 5500 and Form 5500-EZ filings were due on or after August 29, 2005 (August 24, 2005, for Florida), the IRS, DOL and PBGC have extended the filing deadline. This "Form 5500 Disaster Extension Date" is **January 3, 2006**. Filers that are entitled to this relief should check Part I, Box D on the Form 5500, or Part 1 on Form 5500-EZ and attach the appropriate statement as described in the Instructions to the applicable Form.

This extended filing deadline applies to plan administrators, employers and other entities that are located in the "directly affected areas" of the country. It also applies to filers located outside the directly affected areas that are unable to obtain the necessary information from service providers, banks or insurance companies whose operations were directly affected by the hurricane.

For purposes of this extension, the "directly affected areas" include the Louisiana parishes, Mississippi counties, Alabama counties, and Florida counties designated as [Disaster Areas eligible for Individual Assistance or Public Assistance](#).

The related Summary Annual Report (SAR) distribution deadline is automatically extended for affected plans.

### **Contribution and Funding Relief**

#### **Deductible Contribution Deadline**

Generally, tax-deductible contributions to qualified retirement plans must be made by the due date (including extensions) for filing the employer's federal tax return for that taxable year. For taxpayers in Louisiana parishes, Mississippi counties and Alabama counties designated as [Disaster Areas eligible for Individual Assistance](#), the IRS has extended the deadline for contributions due on or after August 29, 2005, to **January 3, 2006**.

### **Minimum Funding Contribution Deadline**

For “affected plans,” an ERISA minimum funding contribution deadline or waiver application deadline that falls between August 29, 2005, and October 30, 2005, has been extended to **October 31, 2005**.

A plan is an “affected plan” only if any of the following were located in a Louisiana parish, Mississippi county, or Alabama county designated as a [Disaster Area eligible for Individual Assistance](#), at the time of Katrina:

- In the case of a single employer plan, the principal place of business of the employer that maintain the plan, disregarding the controlled group and affiliated service group rules;
- In the case of a multiple employer plan or multiemployer plan, the principal place of business of employers that employ more than 50% of the active participants covered by the plan, disregarding the controlled group and affiliated service group rules;
- The plan office;
- The office of the plan administrator;
- The office of the primary recordkeeper serving the plan; or
- The office of the enrolled actuary or other advisor that had been retained by the plan or sponsoring employer at the time of Katrina to determine the plan’s funding requirements.

### **PBGC Relief**

Defined benefit plans that are eligible for the minimum funding contribution deadline extension described above are also eligible for special relief in determining

- Unfunded vested benefits, or
- Entitlement to the full-funding limit exemption from the variable rate premium, for a premium payment year. These plans may take contributions into account for these purposes if they are made on or before the earlier of **October 31, 2005**, or the plan’s variable rate premium filing deadline.

In addition, contributions made by the extended contribution deadline will be considered timely for purposes of ERISA Title IV reporting and disclosure requirements.

The PBGC has also extended a number of deadlines that apply to a “designated person.” A “designated person” is any person responsible for meeting a PBGC deadline who:

- Is located in a Louisiana parish, Mississippi county, Alabama county, or Florida county designated as a [Disaster Area eligible for Individual Assistance or Public Assistance](#); and
- Cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank, or other person whose operations were directly affected by Hurricane Katrina.

Filers that are entitled to this relief should type or print the words: “Hurricane Katrina” at the top of the filing. Filers should also check the disaster relief box at the top of Form 1 or Form 1-EZ.

If a plan administrator is a designated person, any PBGC premium filing that was due on or between August 29, 2005,\* and January 2, 2006, will be treated as being made timely if it is made by **January 3, 2006**. As a result, the PBGC will waive any late payment or filing penalty. However, the PBGC will not waive the applicable interest charge.

The PBGC has also extended to **January 3, 2006**, all of the following deadlines that fall on or between August 29, 2005,\* and January 2, 2006, if the plan administrator is a designated person:

- The single employer plan termination deadlines for:
  - Filing Form 500 and providing notices of plan benefits to participants and beneficiaries;
  - Distributing plan assets;
  - Filing Form 501 and related missing participant information and certifications, and paying missing participants' benefits to the PBGC without interest; and
  - Filing Form 601.
- Any deadline for providing underfunded plan Participant Notices.
- Filing reportable event post-event notices. If the filing deadline is 30 days after the Plan's Form 5500 due date and the Form 5500 Disaster Extension Date applies, these reportable event notices must be filed no later than 30 days after that date.

\* If the designated person is located in one of the affected Florida counties or cannot obtain information from an entity located in one of those counties, the August 29, 2005, date is replaced with the date "August 24, 2005."

### **IRS Compliance Relief**

In addition to extending certain Form 5500 filing deadlines, the IRS has extended to **January 3, 2006**, the following compliance deadlines for taxpayers, including both plan sponsors and plan participants, located in a Louisiana parish, Mississippi county, Alabama county, or Florida county designated as a [Disaster Area eligible for Individual Assistance or Public Assistance](#):

- Plan loan repayment due dates and loan maturity dates occurring on or after August 29, 2005 (the Katrina Emergency Tax Relief Act (KETRA), which the President signed into law on September 23, 2005, would extend these dates even further);
- Annual payments scheduled to be made on or after August 29, 2005, to qualify distributions as part of a series of substantially equal periodic payments and avoid the 10% excise tax;
- Minimum required distributions due to be made from qualified plans, ERISA 403(b) plans and programs, and section 457 plans on or after August 29, 2005, but before January 1, 2006;
- ESOP diversification election period deadlines occurring on or after August 29, 2005;
- ESOP diversification distribution deadlines occurring on or after August 29, 2005;
- 401(k) plan excess contribution (from failed ADP tests) distribution deadlines occurring on or after August 29, 2005;
- Excess aggregate contribution (from failed ACP tests) distribution deadlines occurring on or after August 29, 2005;
- ESOP dividend distribution deadlines occurring on or after August 29, 2005;
- ESOP put option deadlines occurring on or after August 29, 2005;
- ESOP employer securities repurchase deadlines occurring on or after August 29, 2005;
- Deadlines for employers to pay for ESOP repurchased securities occurring on or after August 29, 2005;
- Deadlines for beginning ESOP distributions elected by participants occurring on or after August 29, 2005;
- Deadlines for distributing nondeductible plan contributions to avoid a 10% excise tax occurring on or after August 29, 2005;

- 2½-month deadlines for distributing excess contributions and excess aggregate contributions to avoid the 10% excise tax, occurring on or after August 29, 2005; and
- Two-year deadlines for self-correction of operational failures under the Employee Plans Compliance Resolution System (EPCRS) ending on or after August 29, 2005.

In addition, 60-day rollover periods for distributions made from qualified plans, 403(b) arrangements, or governmental section 457 plans, which would normally have ended on or after August 29, 2005, will disregard the period from August 29, 2005 through January 3, 2006. *For example, if an affected individual received a distribution from his employer's 401(k) plan on August 29, 2005, his 60-day rollover period would begin on January 4, 2006.*

## All Plans and Participants

### IRS and DOL Plan Distribution Relief

The IRS has provided special rules, allowing qualified plans (including 401(k) plans) and 403(b) arrangements to make loans and hardship distributions to “Katrina victims.” Under these rules, governmental section 457 plans may make unforeseeable emergency distribution to “Katrina victims.”

For these purposes, “Katrina victims” include employees or former employees:

- Whose principal residence on August 29, 2005, was located in a Louisiana parish, Mississippi county, or Alabama county designated as a [Disaster Area eligible for Individual Assistance](#);
- Whose place of employment was located in one of these counties or parishes on August 29, 2005; or
- Whose lineal ascendant (e.g., parent, grandparent, etc.) or lineal descendant (e.g., child, grandchild, etc.), dependent, or spouse had a principal place of residence or employment in one of these counties or parishes on August 29, 2005.

Plans sponsored by and programs offered by employers that have no business operations in the affected areas of Louisiana, Mississippi, and Alabama are still eligible for this plan distribution relief, if they have employees or former employees who have affected lineal ascendants or descendants.

### In General

Katrina-related loans and hardship distributions must be made on or after August 29, 2005, and before April 1, 2006.

Under these special rules, loans and hardship distributions may be made before plan documents or annuity contracts are formally amended to permit them. However, the necessary amendments must be adopted no later than the last day of the plan's 2006 plan year.

Plan administrators must only make good-faith efforts to comply with the standard plan requirements for supporting documentation when granting Katrina hardship distributions and loans. However, they must make reasonable attempts to assemble the required documentation as soon as possible. For example, plan administrators may initially rely on the employee's

representation of the amount needed to satisfy the hardship, as long as they make reasonable attempts to obtain the documentation that would normally be required. The “good-faith” rule also applies to the need to obtain spousal consent to loans or distribution when an employee claims the spouse is deceased but a death certificate is not available, as long as it is reasonable to believe that the spouse is deceased and reasonable efforts are later made to obtain the death certificate.

### **Hardship/Unforeseeable Emergency Distributions**

The IRS did not relax all of the rules relating to the granting of hardship distributions. For example, Katrina-related hardship distributions *cannot* be made from QNEC accounts, QMAC accounts, earnings on elective deferrals, or from defined benefit plans or money purchase pension plans.

However, under these special rules, distributions may be made for any Katrina-related hardship (e.g., food, shelter, and clothing), not just those hardship reasons listed in existing regulations (i.e., casualty losses, funeral expenses). In addition, the standard six-month suspension of elective deferral contributions following hardship distributions, applicable under some 401(k) plans, does not apply in these situations.

These Katrina-related hardship distributions are subject to the standard 10% early distribution federal income tax penalty. However, Katrina-related distributions as permitted under KETRA will be exempt from this penalty tax.

### **Plan Loans**

Katrina-related plan loans must meet the standard rules and limitations (\$50,000 or 50% of the participant’s account balance). However, KETRA relaxes these rules in some situations.

### **Additional DOL Relief**

The DOL has indicated that they will not consider any plan fiduciary to be in violation of the ERISA Title I requirements solely because they made distributions or loans available to Katrina victims in accordance with the special IRS rules.

In addition, the DOL will not enforce the standard contribution timing requirements with respect to employee contributions or loan repayments that are temporarily delayed due to Katrina. Such delays may have affected either plan sponsors or their service providers (e.g., payroll processing services). Affected plan sponsors and service providers must still act reasonably, prudently and in the interest of participants to remit these contributions as soon as practical under these circumstances.

The DOL has also recognized that plans affected by Hurricane Katrina may not have been able to provide the Sarbanes-Oxley 30-day advance notice to participants and beneficiaries whose rights under the plan were temporarily limited by a black-out period. These plans would be subject to the exception that is provided for events that are beyond the reasonable control of the plan administrator.

### **Prudential Retirement’s Response**

Prudential Retirement has already identified clients whose headquarters are located in Louisiana, Mississippi and Alabama, or who have operations in these states. We have also identified plan

participants and beneficiaries who were living in these areas and receiving retirement payments from plans that we administer.

Checks that were in the mail to plan participants and beneficiaries in the affected areas when Katrina came ashore are being handled by the U. S. Postal Service's "recycling" program, which attempts to deliver undeliverable mail as delivery services are restored to affected Zip Codes and address changes are received. Since the Post Office does not notify us of address changes, we will send future payments to the addresses we have on file, until participants notify us of address changes or change to direct deposit.

If you want to make Katrina hardship distributions or loans available from your plan, please contact your Prudential Retirement representative, so that we can make sure these transactions are handled appropriately. In addition, if we provide document services for your plan and your plan requires an amendment, our Pension Consulting Group will prepare appropriate plan amendments for adoption before the end of the 2006 plan year. Finally, if we approve hardship distributions or loans for your plan, we will work with you to identify the type of documentation that will be required for approval of Katrina-related requests.

The IRS distribution and loan relief does not provide specific guidance for handling situations where a plan administrator's authorization is required but the plan administrator cannot be located, or where a participant's spouse's consent is required but it has not yet been determined if the spouse is deceased or simply has not yet been located. We will work individually with plan sponsors and participants to address these types of situations as they arise, to ensure that while participants' needs are met, their plans' tax-favored status is not jeopardized.

### **More Relief on the Horizon**

On September 23, 2005, President Bush signed into law the Katrina Emergency Tax Relief Act (KETRA). This new law provides additional relief for victims of Hurricane Katrina, including increased access to retirement plan assets. An upcoming *Pension Analyst* will discuss this relief package.

## Hurricane Katrina Parish/County Disaster Declarations

State	Individual Assistance	Public Assistance
<b>Louisiana</b>	Parishes of: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana.	Parishes of: Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn.
<b>Mississippi</b>	Counties of: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo.	Counties of: Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Clay, Coahoma, DeSoto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Leflore, Lee, Marshall, Monroe, Montgomery, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, and Yalobusha.
<b>Alabama</b>	Counties of: Baldwin, Choctaw, Clarke, Greene, Hale, Mobile, Pickens, Sumter, Tuscaloosa, and Washington.	Counties of: Bibb, Colbert, Cullman, Jefferson, Lamar, Lauderdale, Marengo, Marion, Monroe, Perry, Wilcox, and Winston.
<b>Florida</b>	None	Counties of: Bay, Broward, Collier, Escambia, Franklin, Gulf, Miami-Dade, Monroe, Okaloosa, Santa Rosa, and Walton.

### **Pension Analyst by Prudential Retirement**

The Pension Analyst is published by Prudential Retirement, a Prudential Financial business, to provide clients with up-to-date information on current legislation and regulatory developments affecting qualified retirement plans. This publication is distributed with the understanding that Prudential Retirement is not rendering legal advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans. Prudential Retirement and Prudential Financial are service marks of The Prudential Insurance Company of America, Newark, NJ and its affiliates.

Editor: Mitzi Romano (860) 534-2768