

Benefit Plan Deadlines Extended, Enforcement Standards Relaxed by DOL and IRS During Pandemic

Tax & Benefits Alert

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The U.S. Department of Labor's Employee Benefits Security Administration and the IRS recently issued the following coordinated guidance providing additional relief to employee benefit plan sponsors, fiduciaries, participants, and beneficiaries navigating the challenges of complying with administrative requirements and deadlines under ERISA as a result of the COVID-19 outbreak and quarantine measures:

- **EBSA Disaster Relief Notice 2020-01** provides plan fiduciaries and plan sponsors additional time to meet notice and disclosure obligations under Title I of ERISA, and announces relaxed DOL enforcement of certain operational requirements relating to plan amendments, plan loans, depositing participant contributions, and timing of blackout notices.
- **Joint Notice** (published as Final Rule 85 Fed. Reg. 26351, May 4, 2020) extends certain time frames affecting a participant's right to healthcare coverage, portability, and continuation of group health plan coverage under COBRA. The Joint Notice also extends the time for plan participants to file or perfect benefit claims or appeals of denied claims.

Notice 2020-01 and the Joint Notice are summarized below.

Notice 2020-01

Extension of Certain ERISA TITLE I Deadlines

Notice 2020-01 extends the deadlines that apply to certain notices, disclosures, and documents that must be furnished under Title I of ERISA during the COVID-19 outbreak. The extension is subject to the limitation under ERISA §518 that authorizes the DOL to disregard periods up to one year in determining the deadline for actions required to be taken under an employee benefit plan in the event of a Presidentially declared disaster or public health emergency.

During the period from March 1, 2020 (the effective date of the Presidentially declared COVID-19 national emergency ("National Emergency")) through the 60th day after the end of the National Emergency is declared or such other date as the agencies may announce (the "Outbreak Period"), an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA if action is taken in good faith to furnish a notice, disclosure, or

document as soon as administratively practicable under the circumstances.

Good faith acts include the use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites. The relief applies to plan disclosures such as summary plan descriptions, summaries of material modifications, summary annual reports, annual funding notices, qualified default investment alternative notices, and periodic pension benefit statements that are due anytime during the Outbreak Period.

The DOL will issue additional guidance if different Outbreak Period end dates apply for different parts of the US.

Clarification of Form 5500 Filing Due Date Extensions

Notice 2020-01 confirms that the DOL has not yet extended the Form 5500 Annual Report due date of July 31, 2020 (subject to extension) for 2019 calendar year plans. (Previously issued COVID-19 emergency relief, IRS Notice 2020-23, extended the Form 5500 filing deadline to July 14, 2020, for plans whose filing deadline otherwise occurs during the period of April 1, 2020, to July 14, 2020.)

Extension of Blackout Notices

Under Notice 2020-01, any notices with respect to a blackout period for an individual account plan that are due during the Outbreak Period will not be subject to an ERISA violation if the plan and responsible fiduciary act in good faith and furnish the notice as soon as administratively practicable under the circumstances. Further, where the plan administrator was unable to provide the 30 days' advance notice of a blackout period under 29 CFR 2520.101-3 due to the pandemic, the DOL will not require the plan fiduciary to make a written determination that the delay was caused by events beyond the plan administrator's reasonable control.

Relief for Plan Loan Administration

- Errors in Plan Loan Verification Procedures

Pursuant to Notice 2020-01, the DOL will not treat a failure of a qualified retirement plan to follow procedural requirements for plan loans or distributions imposed by the terms of the plan as a failure if (i) that failure is solely attributable to the COVID-19 outbreak; (ii) the plan administrator makes a good faith diligent effort under the circumstances to comply with those requirements; and (iii) the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

This relief covers only the verification requirements required under provisions of Title I of ERISA that are within the interpretive and regulatory authority of the DOL, and, for example, does not include spousal consent or other statutory or regulatory requirements under the jurisdiction of the IRS.

- Prohibited Transaction Relief for Loans Made Under the CARES Act

The CARES Act (see our separate CARES Act Alert, [here](#)) provides COVID-19-related relief to qualified retirement plan participants by expanding access to plan loans in the form of a higher loan maximum and delayed repayment deadlines. Under Notice 2020-01, the prohibited transaction relief provided in ERISA Section 408(b)(1) will not be lost solely because the plan made a loan to a qualified individual during the loan relief period in compliance with the CARES Act, or because a qualified individual delayed making a plan

loan repayment in compliance with the CARES Act and the provisions of any related IRS notice or other published guidance.

Certain Plan Amendments Related to the COVID-19 Outbreak

Notice 2020-01 provides that, if a qualified retirement plan is amended to provide for the increased loan amounts or coronavirus-related distributions made available under the CARES Act (see our separate CARES Act Alert, [here](#)), the DOL will treat the plan as being operated in accordance with the terms of such amendment *prior to its adoption* if (1) the amendment is (i) made on or before the last day of the first plan year beginning on or after January 1, 2022 (or such later date prescribed by the Secretary of the Treasury), and (ii) made retroactive to March 27, 2020, and (2) the plan is operated in full compliance with the CARES Act provisions (Section 2202) governing the new loan relief and coronavirus-related distributions during this period.

Delays in Depositing Plan Assets from Participant Contributions and Loan Repayments

A participant's salary contributions and loan repayments made from payroll deductions are considered qualified retirement plan assets under ERISA. Generally, these funds 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).

Under Notice 2020-01, the DOL will not take enforcement action with respect to a temporary delay in forwarding such payments or contributions to a qualified retirement plan during the Outbreak Period if the delay is solely attributable to the COVID-19 outbreak. In the event of such a delay, employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

Joint Notice

Under the Joint Notice, the Outbreak Period is disregarded for the purpose of counting the following time periods and deadlines applicable to group health plans, disability and other employee welfare benefit plans, and tax-qualified retirement plans subject to ERISA:

- ***Participant time frames under ERISA's claims procedures***, including for filing initial claims and appeals of adverse benefit determinations.
- ***HIPAA's special enrollment period*** required to be offered to individuals by a group health plan in certain circumstances, including when an employee or dependent loses eligibility for a group health plan or other health insurance coverage, or when an employee experiences the addition of a dependent by birth, marriage, adoption, or placement for adoption. Generally, the enrollment period is 30 days (or 60 days in the case of the special enrollment rights added by the Children's Health Insurance Program Reauthorization Act of 2009).
- ***COBRA notice and election periods***:
 - Group health plan's 14-day deadline to provide notice to a qualified beneficiary of COBRA eligibility.
 - Covered employee's 60-day election period for COBRA continuation coverage.
 - COBRA enrollee's 30-day grace period to make COBRA premium payments.
 - Covered employee's (or qualified beneficiary's) 60-day period to provide notice to the administrator of the occurrence of a qualifying event (divorce, separation, dependent child status change) or determination of disability.
- ***Deadlines for requesting external review for group health plan claims***:

- The four-month period within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination.
- The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete (the later of the four-month filing period or within 48 hours of receiving a request for additional information to complete the request).