

# IRS and PBGC Issue Relief Extending Certain Employee Benefit Plan Deadlines Due to COVID-19 Pandemic

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## Coronavirus Legal Advisory

04.22.2020

### IRS Deadlines

On April 9, 2020, the IRS released Notice 2020-23, which postpones (automatically, without the need for the taxpayer to file for an extension) numerous federal tax deadlines until **July 15, 2020**, provided that the deadline otherwise would have occurred on or after April 1, 2020, and before July 15, 2020.

The following employee benefit plan-related filing and other compliance deadlines are among those postponed until July 15, 2020 (if the regular deadline would otherwise have occurred during the above period):

- Filing Form 5500 and Form 8955-SSA. (The deadline for calendar year plans remains July 31, subject to normal extension rules.)
- Plan loan repayments (including cure periods).
- The required beginning date for required minimum distributions (“RMDs”) under IRC §401(a)(9) (April 1 for participants who reached age 70 ½ in 2019). (However, RMDs have already been waived for 2020 under the CARES Act; see our separate Alert, [here](#), for more information on the CARES Act.)
- The 60-day qualified plan/IRA rollover deadline (subject to the regular one rollover per 12 months rule). (*The extension of the 60-day rollover period effectively permits RMDs that were taken on or after February 1, 2020, and before May 15, 2020, to be rolled over by July 15, 2020.*)
- Plan remedial amendment periods.
- Return of excess elective deferrals under IRC § 402(g).
- Return of excess contributions under 401(k) plan Actual Deferral Percentage (ADP)/Actual Contribution Percentage (ACP) tests.
- Timely distribution of nondeductible employer contributions to avoid the 10% excise tax under IRC § 4972.
- A participant’s 90-day window to take a permissible withdrawal from an eligible automatic contribution arrangement under a 401(k) plan.
- Various actions under ESOPs (e.g., qualified participant election to direct the plan as to the investment of the participant’s account and employer’s repurchase of employer securities as part of a total distribution from an ESOP).

- The correction period for self-correction of a tax-qualified plan operational failure under the Employee Plans Compliance Resolution System.
- The 60-day health savings account (“HSA”) rollover deadline, as well as certain trustee/custodian reporting obligations relating to HSAs.
- Election of benefits under an IRC § 125 cafeteria plan.
- Making an IRC § 83(b) election with respect to a transfer of substantially unvested property (e.g., restricted stock).
- Contributions to a qualified retirement plan, a simplified employee pension, or a SIMPLE IRA plan to be taken into account for the prior tax year due by the plan sponsor’s tax return filing due date (including extensions).

### **PBGC Deadlines**

Following the IRS relief notice extending the above deadlines, on April 10, 2020, the Pension Benefit Guaranty Corporation (“PBGC”) also announced that certain due dates for required filings or actions that apply to single-employer pension plans under Title IV of ERISA and that would otherwise have been due on or after April 1, 2020, and before July 15, 2020, are extended to July 15, 2020. (The PBGC has the authority to extend these due dates for plan sponsors and administrators who are affected by a presidentially declared federal disaster to the same extent [covering the same disaster and the areas covered by the IRS declarations] and for the same period when the IRS determines that an extension of time to file the Form 5500 is warranted, as listed above.)

Under the PBGC relief, the following filings will not be subject to late filing penalties under ERISA §§ 4071 and 4302, or late premium payment penalties under ERISA §4007 if they are filed by July 15, 2020 (provided that the deadline would otherwise have occurred during the period covered by the extension):

- 2020 Comprehensive Premium filing and payment (ERISA §4006).
- Certain Reportable Event Notices (ERISA §4043) (see below for exceptions).
- Underfunded plan reporting of financial and actuarial information (ERISA §4010).
- Any filing, payment, or other action under PBGC regulations that uses the extended relief date to calculate other deadlines based on that date for a filing.

To be eligible for the PBGC’s relief, (i) the plan administrator or contributing sponsor, or the person responsible for providing information or other assistance needed for the filing (e.g., a service provider or bank), must be located in the declared disaster area, (ii) the due date of the filing, payment, or other action must occur within the relief period, and (iii) the filer must notify the PBGC of the filer’s eligibility for disaster relief on or before the last day of the relief period.

The extended due dates do not apply to the following filings or actions identified on the PBGC “Exceptions List,” but taxpayers can request relief for these filings and actions, which the PBGC may grant on a case-by-case basis:

- Advance Notices of Reportable Events under ERISA §4043 (Form 10-Advance).
- Notices of large missed contributions under ERISA §303(k) (Form 200).
- Post-event Notices for the following five Reportable Events under ERISA §4043:
  - Failure to make required contributions under \$1 million.
  - Inability to pay benefits when due.
  - Liquidation.
  - Loan default.
  - Insolvency or similar settlement.
- Actions related to distress terminations for which PBGC has issued a distribution notice.

### Other Benefit Plan-Related Deadline Relief

In addition to the benefit plan-related deadline extensions under the CARES Act (i.e., extensions of pension plan funding contributions, IRC §436 benefit restrictions; please refer to our separate CARES Act Alert, [here](#)), the following deadlines applicable to plan sponsors have also been extended:

- **403(b) Plan Remedial Amendment Period.** The IRS has extended the last day of the initial remedial amendment period for Section 403(b) plans from March 31, 2020, to June 30, 2020. Therefore, plan sponsors now have until June 30, 2020, to update their preapproved and individually designed 403(b) plan documents.
- **Preapproved Defined Benefit Plans.** The IRS has extended the following from April 30, 2020, to July 31, 2020:
  - The deadline to adopt a preapproved defined benefit plan and to submit a determination letter application (if eligible) under the second six-year remedial amendment cycle.
  - The end of the second six-year remedial amendment cycle for preapproved defined benefit plans, as set forth in IRS Announcement 2018-05.