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DOL, IRS issue additional retirement plan relief

Against the backdrop of the COVID-19 outbreak, the DOL, Department of Treasury, and the IRS issued joint guidance easing critical deadlines for employee benefit plans and their stakeholders. The guidance provides relief from deadlines for providing benefit statements, annual funding notices, and other notices under ERISA as well as easing some participant deadlines, such as the one to appeal an adverse benefit determination.

Background

On April 29, 2020, the DOL, Department of Treasury, and IRS (the “agencies”) issued guidance temporarily extending certain deadlines and easing certain requirements under ERISA and the Code (the “guidance”). The guidance provides relief for both employer-sponsored retirement plans and group health plans. This *FYI* focuses on the relief for retirement plans. (Please view our [May 7 FYI](#) for the impact of this guidance on group health plans.)

The guidance includes a joint agency notification of relief, [DOL Employee Benefit Security Administration Disaster Relief Notice 2020-1](#) (Notice 2020-1), and [FAQs](#) for plan participants and beneficiaries. For retirement plans, the relief is primarily outlined in Notice 2020-1.

Overview of specific guidance

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) granted DOL the authority to postpone certain deadlines and requirements under ERISA by reason of a presidentially declared disaster. The president declared a national disaster on March 13, 2020 in response to the COVID-19 pandemic.

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Extended deadlines

Notice 2020-1 extends the deadlines to furnish required notices or disclosures to plan participants, beneficiaries, and other persons during the COVID-19 Outbreak Period.

Notices and deadlines impacted by this relief include:

- Annual funding notices
- Benefit statements
- Individual account statements
- Summary plan descriptions
- Summary annual reports

What is the Outbreak Period?

The “Outbreak Period” began on March 1, 2020 and will end 60 days after the announced date of the end of national emergency related to COVID-19 or such other date announced by EBSA and IRS. Thus, the end date of the period is currently unknown.

Missing from this list is Form 5500. Notice 2020-1 notes, but does not expand, the relief provided by IRS Notice 2020-23 extending to July 15, 2020, the deadline for filing Forms 5500 due between April 1 and July 14, 2020.

Notice 2020-1 also separately provides relief from the advance notice of a blackout period, which occurs when a participant’s right to direct investments or obtain loans or other distributions from the plan is temporarily suspended, limited, or restricted. The guidance exempts a plan administrator who is unable to provide timely notice of the blackout period from having to make a written determination that timely notice cannot be provided due to events beyond the plan administrator’s reasonable control. The notice observes that pandemics are, by definition, beyond a plan administrator’s control.

Buck comment. Notices and disclosures should be timely provided if possible. If the extended deadlines or the relaxed requirements are needed, Buck recommends including in the notice or disclosure itself, or in an internal document, a footnote, statement, or reference indicating that the plan sponsor or administrator is relying on the relief. This will allow auditors to clearly link permissible delays in meeting compliance obligations to this relief.

In addition to Notice 2020-1, the agencies issued a joint notification of relief extending certain other deadlines. Although the joint rule primarily provides relief for group health plans, it also extends the time periods applicable to claims and appeals filed by retirement plan participants.

Plan loans and distributions

Notice 2020-1 includes additional relief in the administration of plan loans and distributions. Specifically, the notice provides that if a retirement plan does not follow the procedural requirements for plan loans or distributions imposed by the terms of the plan, the DOL will not treat the failure to follow the terms of the plan a failure, provided that:

- The failure is solely attributable to the COVID-19 outbreak
- The plan administration makes a good faith, diligent effort to comply with the requirements

- The plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling missing documentation, as soon as administratively possible

This relief does not waive requirements such as spousal consent or other requirements within the jurisdiction of IRS. It does not provide any relief from the requirement to have elections, spousal consents, or other documents notarized. However, most states now offer electronic notarization, which should help facilitate the ongoing spousal consent requirement.

Buck comment. With many states and localities under stay at home orders, this relief can alleviate limitations on access to proof of birth, marriage, or divorce, which are often required as part of the distribution process. Rather than requiring official documentation of these events before approving a distribution, consider adopting administrative procedures that permit a delay in providing such proof for COVID-19 reasons. The participant could sign an acknowledgment of the reason for the delay and that the official documentation will be provided later at the direction of the plan administrator.

The CARES Act amended the Code to increase the maximum permissible loan amounts and extend the repayment period for loans to qualified individuals impacted by COVID-19. Notice 2020-1 provides that the DOL will not treat these loans as violating the fiduciary rules requiring adequate security and providing loans on a reasonably equivalent basis if the loans are provided in accordance with the CARES Act.

Similarly, fiduciary relief is provided for temporary delays in forwarding participant contributions and loan repayments to a retirement plan beyond the earliest date on which amounts can reasonably be aggregated from the employer's general assets. Any delay must be based solely on a failure attributable to the COVID-19 outbreak and the plan administrator acts reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

Buck comment. Amounts withheld from wages or that a participant or beneficiary pays directly to an employer to contribute to a plan or to repay a plan loan must be forwarded to the plan by the earliest date on which such amounts can reasonably be segregated from the employer's general assets. Under normal circumstances, the DOL construes a "reasonable time" narrowly, often as short as 24 hours or a few days. We expect that even with this relief, the DOL will continue to view any delay in contributing participant funds similarly. Any deviation from the plan's typical contribution schedule should be reviewed with counsel and fully documented in plan files.

Overarching guidance — in good faith

Even when leveraging the relief provided under the guidance, the plan and responsible fiduciary must act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Notice 2020-1 provides that good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries whom the plan

fiduciary reasonably believes have effective access to those means of communication, including email, text messages, and continuous access websites.

Buck comment. The shift to working remotely has made electronic communications a necessity for many plan sponsors and administrators. In November, the DOL issued proposed regulations liberalizing electronic distribution rules. Those regulations are under review by the Office of Management and Budget but are not yet final. Using the principles under the existing electronic disclosure rules, the proposed regulations, and Notice 2020-1, plan sponsors and administrators can work to address the challenges presented by the new remote work environment.

The DOL stresses that enforcement efforts will emphasize compliance assistance and will include grace periods and other relief where appropriate, including when physical disruption to a plan or service provider's place of business makes compliance with pre-established timeframes for certain claims' decisions or disclosures impossible.

In closing

Good faith compliance and documentation of any deviation from the normal requirements under ERISA is key to exercising this relief for your plan. We expect continued clarification on all guidance from the agencies in the coming months.

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