

New Guidance Provides Relief and Extension of Deadlines to Employee Benefit Plans, Participants and Service Providers

On April 28, the Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) (collectively the Agencies) issued a joint notice announcing the extension of certain timeframes applicable to group health plans, disability and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 national emergency. On the same day, the EBSA published Disaster Relief Notice 2020-01 to provide relief for employee benefit plans and service providers from certain deadlines under the Employee Retirement Income Security Act of 1974 (ERISA). The guidance reflects the Agencies' understanding that the COVID-19 crisis is impairing the ability of employee benefit plans and participants to comply with standard deadlines imposed by ERISA and the Tax Code.

Joint Notice from Agencies

The joint notice extends numerous deadlines for both group health plans and retirement plans. It defines the period from March 1, 2020, through the date that is 60 days after the end of the COVID-19 national emergency, or another date announced by the Agencies, as the "Outbreak Period." Plans must disregard this Outbreak Period when calculating deadlines for participants and beneficiaries to exercise certain rights. In other words, days during the Outbreak Period cannot be counted as part of the maximum number of days a participant or beneficiary has to take certain actions. Additionally, days during the Outbreak Period are disregarded when calculating the deadline by which a group health plan must provide a COBRA election notice.

Specifically, days during the Outbreak Period are not counted towards the:

Group Health Plans

- 30-day period (or 60-day period in certain circumstances) for an individual to request enrollment in a group health plan due to a HIPAA special enrollment event;
- 60-day period for a qualified beneficiary to elect COBRA continuation coverage;

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- 30-day grace period for a qualified beneficiary to pay COBRA premiums;
- 45-day period from election of COBRA continuation coverage to the date the first payment may be due;
- Deadline by which a group health plan must provide a COBRA election notice to qualified beneficiaries;
- Period within which a claimant may request an external review of a denied appeal; and
- Date by which a claimant may file information to perfect a request for external review.

All ERISA Plans

- Period during which claimants may file a benefit claim under the plan's claims procedure; and
- Period within which claimants may file an appeal of a claim denial.

The effect of the joint notice is to extend all of these deadlines until after the conclusion of the Outbreak Period. At this time, it is unknown when the national emergency will expire. The public health emergency, in contrast, expires July 25, 2020 (unless extended or terminated earlier by the Secretary of the U.S. Department of Health and Human Services). Assuming for purposes of this summary that the national emergency and public health emergency expire together, the Outbreak Period would be March 1, 2020 to September 23, 2020. Thus, for example, an employee who previously declined group health plan coverage and had a baby on March 27, 2020, would have until October 23, 2020, to enroll herself and her child in coverage. Similarly, a participant who loses group health plan coverage and receives a COBRA election notice on May 1, 2020, would have until November 22, 2020, to elect COBRA.

EBSA Disaster Relief Notice 2020-01

EBSA Disaster Relief Notice 2020-01 (Disaster Notice) provides guidance applicable to employee benefit plans, employers, labor organizations and other plan sponsors, plan fiduciaries, participants, beneficiaries and service providers subject to ERISA. Similar to the joint notice, the guidance is considered in effect from March 1, 2020 through 60 days after the announcement of the end of the



COVID-19 national emergency or such other date as announced by the DOL.

In addition to the relief specifically provided, the Disaster Notice acknowledges that there may be instances where plans and service providers are unable to achieve full and timely compliance with ERISA requirements, and that any enforcement by the DOL will emphasize compliance assistance and include grace periods and other relief where appropriate.

Extension of Time to Furnish Notices, Disclosures and Other Documents

The Disaster Notice provides that an employee benefit plan or plan fiduciary will not be considered as violating ERISA for a failure to timely furnish a notice, disclosure or document required under Title I of ERISA that must be furnished between March 1, 2020 and 60 days after the end of the COVID-19 national emergency if the plan and responsible fiduciary act in good faith and furnish the notice as soon as administratively feasible. The guidance specifically provides that use of electronic means of communication, such as email and posting the notice to a website, would constitute a good faith effort, provided the plan sponsor had reason to believe the participant could access the notice electronically.

This relief applies to summary plan descriptions, summaries of material modifications, summary annual reports, summaries of benefits and coverage, annual funding notices, pension benefit statements, claim and appeal denial notices, among other notices. Specifically with regard to blackout notices, the DOL will not require a written determination by a plan fiduciary that the failure to provide the blackout notice is due to events beyond the reasonable control of the plan administrator.

Deadlines for filing the Form 5500 and Form M-1 are not specifically extended by the Disaster Notice. Rather, the DOL advises that the IRS guidance on these filings will control. As of the date of publication, any filing due between April 1, 2020 and July 14, 2020, is extended to July 15, 2020.

Plan Loans and Distributions

While the Disaster Notice is in effect, the DOL will not treat a plan sponsor as failing to follow the terms of its loan procedure if the:

1. Failure is solely attributable to the COVID-19 outbreak;
2. Plan administrator makes a good-faith diligent effort under the circumstances to comply with the requirements of the plan's loan

procedures; and

3. Plan administrator makes a reasonable effort to correct any violations of the plan's loan procedure, such as requesting any missing documentation, as soon as administratively feasible following discovery of the error.

This relief does not extend to the requirement to obtain spousal consent or other requirements under the jurisdiction of the IRS. Accordingly, a participant's spouse must continue to provide written consent, witnessed by a notary or plan representative, if required under the plan.

Participant Loans Under the CARES Act

As discussed in our [previous e-alert](#), the CARES Act permits plan sponsors to increase the applicable loan limit from March 27, 2020 through September 23, 2020, for participants affected by COVID-19. Additionally, the CARES Act provides that a participant affected by COVID-19 is permitted to delay any loan repayment due from March 27, 2020 through December 31, 2020, for up to one year. The Disaster Notice provides that the DOL will not treat any person as having violated Title I of ERISA, including the adequate security and reasonably equivalent basis requirements, solely because (1) a person made a plan loan to a qualified individual in compliance with the CARES Act and any related guidance; or (2) a qualified individual delayed any plan loan repayment deadline in compliance with the CARES Act and any related guidance.

The Disaster Notice also confirms that the DOL will treat a plan as being operated in accordance with the terms of the plan and the CARES Act, provided (1) any applicable amendment is adopted by the last day of the plan year beginning on or after January 1, 2022, or such later date as permitted by the U.S. Department of the Treasury; and (2) the amendment satisfies the applicable provisions of the CARES Act.

Participants Contributions and Loan Repayments

Generally, retirement plan contributions are due to the plan no later than the 15th day of the month following the month in which the amounts were withheld, unless an exception applies. However, the Disaster Notice provides that the DOL will not take enforcement action with respect to an employer's reasonable delay in forwarding contributions or loan repayments to the plan, provided the delay is solely attributable to the COVID-19 outbreak. This temporary relief does not relieve an employer or service provider from any applicable duty to act



reasonably, prudently and in the best interest of participants.

If you have any questions about the CARES Act and the potential impact these legal changes could have on your benefit plans, please contact your Reinhart attorney.

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