



# DOL Provides COVID-19 Relief

New Relief Affects ERISA Requirements, Deadlines

May 2020

## KEY POINTS

- New guidance and relief related to the COVID-19 emergency provides temporary relief in complying with certain ERISA requirements and deadlines applicable to retirement plans.
- It includes an extension of the time for furnishing ERISA notices and disclosures and annual funding notices, if the plan makes a good faith effort to furnish the documents as soon as administratively practicable.
- The guidance also includes relief for higher loan limit provisions in the CARES Act.

The Department of Labor (“DOL”) recently issued guidance and relief related to the COVID-19 emergency in coordination with the Department of Treasury (“Treasury Department”), the Internal Revenue Service (“IRS”), and the Department of Health and Human Services..

The guidance and relief included EBSA Disaster Relief Notice 2020-01 (the “Notice”), which provides temporary relief in complying with certain requirements and deadlines under the Employee Retirement Income Security Act of 1974 (“ERISA”) in recognition of challenges due to COVID-19. It is effective immediately.

The guidance is applicable to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and service providers

subject to ERISA. The temporary relief is in effect from March 1, 2020 until 60 days after the announcement of the end of the COVID-19 National Emergency declared by the President or other date as announced by the DOL at a future date (the “Relief Period”).

## Deadline Relief for ERISA Notices and Disclosures

While there are no specific deadline extensions, the Notice provides that an employee benefit plan and plan fiduciary will not violate ERISA if deadlines were not met for furnishing notices, disclosures, and other documents required under ERISA that were otherwise due during the Relief Period. This is as long as the plan and plan fiduciary act in good faith and furnish the notices, disclosures, and other documents as soon as administratively practicable under the circumstances.

The relief is available for furnishing documents such as pension benefit statements and annual funding notices. It does not cover documents that are required to be furnished to retirement plan participants under IRS rules, such as safe harbor notices.

The Notice also provides helpful clarification on:

- **Electronic communications.** Good faith acts include the use of electronic means of communicating with plan participants and beneficiaries who are believed to have effective access to electronic communications—such as email, text messages, and continuous access to websites.

The guidance appears to permit the use of personal email addresses for this purpose, which is a departure from the DOL's current e-delivery safe harbor (but aligned with a proposed new safe harbor that is awaiting approval at the Office of Management and Budget).

- **International delivery.** The guidance may be particularly useful in delivery of ERISA-required documents to certain countries subject to temporary service suspensions by the U.S. Postal Service.

Note: The deadline relief does not apply to any notices or disclosures addressed by a new regulation issued in conjunction with this guidance affecting the timeframes that are relevant to ERISA's claims processing deadlines, HIPAA's special enrollment periods, and COBRA continuation coverage.

## Procedural Requirements for Plan Loans and Distributions

If an employee pension benefit plan fails to follow the plan's verification procedures required by ERISA for plan loans or distributions, the DOL will not treat it as a failure as long as:

- The failure is solely attributable to the COVID-19 outbreak;

- A good faith effort by the plan administrator is made to comply with the procedural requirements; and
- A reasonable attempt is made by the plan administrator to correct any procedural deficiencies (e.g., assembling any missing documentation).

This relief does not apply to spousal consent or other requirements of the Treasury Department or IRS.

## Higher Participant Loan Limits Provided Under the CARES Act

While the CARES Act amended provisions of the Internal Revenue Code to permit an increased limit and temporary suspension of loan repayments to eligible individuals, it did not change any requirement under ERISA, which requires that any loans made by an ERISA-covered plan to participants be adequately secured. Under current DOL regulations, no more than 50% of the present value of a participant's vested accrued benefit may be considered by a plan as security for the outstanding balance of all plan loans made to that participant.

The Notice resolves potential conflicts with ERISA created by higher loan limit provisions of the CARES Act by providing that, with respect to a plan loan made in compliance with the CARES Act and related guidance, the DOL will not treat anyone as having violated Title I of ERISA, including the adequate security requirements.

In addition, the DOL will treat a plan as having operated in accordance with the terms of an amendment providing relief for plan loans and distributions under the CARES Act prior to the adoption of the amendment as long as the amendment meets the conditions and prescribed timeframe of the CARES Act. (For example, the amendment is 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.)

## Remittance of Participant Contributions and Loan Repayments

The DOL requires that amounts withheld from the participant's wages by an employer (for contribution or repayment of a participant loan) must be forwarded to the plan on the earliest date on which such amounts can reasonably be segregated from the employer's general assets. It should be forwarded 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.

The Notice provides that the DOL will not take enforcement action during the Relief Period for a temporary delay in forwarding such payments to the plan if the delay was solely due to the COVID-19 outbreak. In order to be eligible for relief, “[e]mployers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.”

## Blackout Notices

The Notice clarifies that a blackout notice—which is required when there is a period of more than three consecutive business days when a participant's ability to direct investments is suspended, limited, or restricted—is eligible for the deadline relief described above.

DOL regulations provide an exception to the 30 days' advance notice requirement in circumstances where the inability to provide the blackout notice is due to events beyond the reasonable control of the plan administrator and the fiduciary determines so in writing. The Notice provides that the DOL will not require a written determination by a plan fiduciary for delays related to the COVID-19 outbreak, as pandemics are by definition beyond a plan administrator's control.

## No Additional Relief for Form 5500 Filing Deadlines

The Notice provides that the deadline relief is not applicable to the plan administrator's responsibility to file Form 5500 (or Form M-1 which is required, for example, for multiple employer welfare arrangements). These filings are eligible for relief under recently issued IRS Notice 2020-23, which extends the Form 5500 deadline to July 15, 2020 for fiscal-year plans whose deadline would ordinarily fall within the date range of April 1 to July 14, 2020.

## Claims Processing and General Fiduciary Compliance

The Notice includes acknowledgement by the DOL that there may be cases where plans and service providers may not be able to fully and timely comply with claims processing and other ERISA requirements. With regard to enforcement, an emphasis will be placed on compliance assistance and include a grace period and other relief where appropriate, including when a plan or service provider's principal place of business has a physical disruption making timely compliance for certain claims' decisions or disclosures "impossible."

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