

## **DOL extends various deadlines for ERISA-covered plans under its expanded authority during public health emergencies (updated 05/04/2020)**

The CARES Act amended ERISA § 518 to expand the DOL's authority by adding “a public health emergency declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act” as a reason for postponing ERISA-imposed deadlines. The provision has no expiration date, so it is not limited to the COVID-19 pandemic.

Using its expanded authority, the DOL's Employee Benefits Security Administration (EBSA) has issued a joint rule with the IRS, and a separate notice, extending certain deadlines for ERISA-covered retirement plans in response to the COVID-19 emergency.

The joint rule extends the deadlines for filing benefit claims and appeals of adverse benefit determinations by requiring that plans disregard the “outbreak period” from March 1, 2020, until 60 days after the announced end of the COVID-19 emergency or such other date as may be announced in a future notice. An example in the notice illustrates application of the extensions.

The notice includes the following relief:

- *Notices, Disclosures, and Documents.* Plans and responsible plan fiduciaries will not be treated as having violated ERISA if they act in good faith and furnish notices, disclosures, or documents (including those requested in writing by a participant or beneficiary) that would otherwise have to be furnished during the outbreak period “as soon as administratively practicable under the circumstances.” This relief only applies to notices, disclosures, and documents required by ERISA Title I that are under the DOL's jurisdiction and not addressed by the joint rule. Good faith includes using electronic methods to communicate with individuals who are reasonably believed to have effective access to those methods.
- *Plan Loans and Distributions.* The notice extends relief to certain procedural verification requirements for plan loans or distributions imposed by a plan's terms if (1) the failure to comply with the plan's procedures is solely attributable to the COVID-19 outbreak, (2) the plan administrator has made a good faith effort to comply, and (3) the plan administrator makes a reasonable attempt to correct procedural deficiencies (e.g., missing documentation) as soon as administratively practicable. This relief does not apply to items outside the DOL's jurisdiction, such as the spousal consent rules and other rules under IRS jurisdiction. The DOL will not assert a violation of the adequate security and reasonably equivalent-basis requirements for plan loans made or repaid in compliance with the CARES Act and any related IRS guidance, nor will the DOL treat a plan as failing to operate in accordance with its plan document if plan amendments that comply with the CARES Act's requirements are timely adopted by the statutory deadline or a later IRS-prescribed date.
- *Contributions and Loan Repayments.* During the outbreak period, the DOL will not take enforcement action on a temporary delay in the forwarding of participant contributions or loan repayments to a plan if the delay is attributable solely to the COVID-19 outbreak. Employers and service providers must, however, comply as soon as administratively practicable under the circumstances.
- *Blackout Notices.* The relief for ERISA notices applies to the blackout notice requirement, including notices required after a blackout period begins. Plan administrators will not be required to provide a written determination that the COVID-19 pandemic was a circumstance beyond their control.
- *Fiduciary Compliance.* Fiduciaries are encouraged to make reasonable accommodations to prevent benefit losses or payment delays, and to minimize lost benefits due to failures to comply with “pre-established timeframes.” The notice also explains that the DOL's approach to enforcement will be to emphasize compliance assistance, using grace periods and other relief as appropriate.
- *Form 5500.* The notice confirms that Form 5500 filing relief is provided in accordance with IRS guidance.

*Forms 5500 and 8955-SSA.* Form 5500 filings for plan years that ended in September, October, or November 2019, as well as Form 5500 deadlines within the window as a result of a previously filed extension request, are now due July 15, 2020. **The relief window does not include the July 31, 2020 due date for 2019 Form 5500 filings for calendar-year plans. The deadline for filing Form 8955-SSA to report information on separated plan participants with undistributed vested benefits, which like Form 5500 is generally due on the last day of the seventh month after the end of the plan year reported, is similarly extended for filings that would have been due during the relief window (but not for calendar-year plans).**

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