

MEMO# 33155

March 4, 2021

DOL Issues Guidance on Maximum Duration of COVID-19 Relief for Employee Benefit Plans

[33155]

March 4, 2021 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Issues Guidance on Maximum Duration of COVID-19 Relief for Employee Benefit Plans

The Department of Labor (DOL) recently issued EBSA Disaster Relief Notice 2021-01 (the “Notice”),[\[1\]](#) which provides guidance on the maximum duration of the COVID-19 relief DOL announced last year (the “Prior Guidance”).[\[2\]](#) Generally, the Notice provides that the relief in the Prior Guidance will continue, but confirms that the deadline for any action may not be delayed for longer than one year.

The Prior Guidance provides relief for certain actions required or permitted under ERISA, and applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and service providers subject to ERISA.[\[3\]](#) It generally applies from March 1, 2020 “until 60 days after the announcement of the end of the COVID-19 National Emergency or such other date announced by the Department in a future notice.”

Section 518 of ERISA, which is the statutory provision that enables DOL to provide this relief, only authorizes DOL to postpone deadlines for a period of up to one year. Rather than provide that the relief in the Prior Guidance expires on February 28, 2021, the Notice explains that the one-year limitation will be applied separately to each individual action. Specifically, the Notice provides that:

Individuals and plans with timeframes that are subject to the relief under the [Prior Guidance] will have the applicable periods under the [Prior Guidance] disregarded until the earlier of

- a. 1 year from the date they were first eligible for relief, or
- b. 60 days after the announced end of the National Emergency (the end of the Outbreak Period).

On the applicable date, the timeframes for individuals and plans with periods

that were previously disregarded under the [Prior Guidance] will resume. In no case will a disregarded period exceed 1 year.

The Notice provides a few examples of how to apply the one-year limitation, including the following example for plan notices and disclosures:

[I]f a plan would have been required to furnish a notice or disclosure by March 1, 2020, the relief under the [Prior Guidance] would end with respect to that notice or disclosure on February 28, 2021. The responsible plan fiduciary would be required to ensure that the notice or disclosure was furnished on or before March 1, 2021.

DOL explains that plan fiduciaries should make reasonable accommodations to prevent the loss of or undue delay in payment of benefits and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames. Further, DOL acknowledges that plans may have difficulty meeting certain deadlines and that its “approach to enforcement will be marked by an emphasis on compliance assistance and includes grace periods and other relief,” provided that fiduciaries have acted in good faith and with reasonable diligence under the circumstances.

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endnotes

[1] EBSA Disaster Relief Notice 2021-01 is *available at* <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01>.

[2] Last April, DOL provided guidance and relief in EBSA Disaster Relief Notice 2020-01, *available at* <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>. See ICI Memorandum No. 32429, dated April 29, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32429. DOL also jointly issued a Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak together with the Department of the Treasury, and the Internal Revenue Service (IRS), published at 85 Fed. Reg. 26351 (May 4, 2020), *available at* <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>.

[3] For example, the relief in the Prior Guidance extends the deadlines for plan sponsors and plan fiduciaries to furnish required notices or disclosures to plan participants, beneficiaries and other persons. See ICI Memorandum No. 32429, dated April 29, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32429.

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