

MEMO# 32429

April 29, 2020

DOL Issues COVID-19 Relief and Guidance for Employee Benefit Plans

[32429]

April 29, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: DOL Issues COVID-19 Relief and Guidance for Employee Benefit Plans

The US Department of Labor (DOL) has issued EBSA Disaster Relief Notice 2020-01 (“Notice”), providing relief regarding the deadlines for furnishing certain ERISA-required notices and disclosures, based on a good faith standard.[\[1\]](#) The relief also allows expanded use of electronic delivery and addresses certain provisions of the CARES Act. In issuing this notice, DOL exercises the authority it received in the CARES Act,[\[2\]](#) which gives DOL broad authority to postpone certain deadlines for all ERISA plans.[\[3\]](#)

The relief 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.” The relief applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and service providers subject to ERISA.

Extension of Deadlines

The Notice extends the deadlines for plan sponsors and plan fiduciaries to furnish required notices or disclosures to plan participants, beneficiaries and other persons. This extension applies to the furnishing of ERISA-required notices, disclosures, and other documents over which the DOL has interpretive and regulatory authority. Specifically, the Notice provides that:

an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances.[\[4\]](#)

The Notice specifies that the relief applies to blackout notices and that DOL will not require the written determination by a fiduciary that is normally required when 30-day advance

notice cannot be provided, noting that pandemics are by definition beyond a plan administrator's control.[\[5\]](#)

The Notice also clarifies that relief for filing Form 5500 Annual Return/Report filing relief is provided under separate guidance published by the Treasury Department and the IRS.[\[6\]](#)

Expanded Use of Electronic Delivery

The relief under Notice 2020-01 allows expanded use of electronic delivery, explaining that compliance with the good faith standard includes "the use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites."

Relief for Remittance of Participant Contributions and Loan Repayments

The Notice provides relief regarding the timely remittance of participant payments and withholdings to plans. DOL will not take enforcement action in the case of a temporary delay in forwarding payments and contributions to the plan, when the delay is solely attributable to the COVID-19 outbreak and provided that employers and service providers "act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances."

Guidance on Plan Loans and Distributions

Regarding plans' verification procedures for loans and distributions, the Notice states that DOL will not treat the failure to follow the plan procedures as a plan failure if:[\[7\]](#)

- that failure is solely attributable to the COVID-19 outbreak;
- the plan administrator makes a good-faith diligent effort under the circumstances to comply with those requirements; and
- the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

Regarding the provisions of the CARES Act that increase plan loan limits and extend the repayment period for plan loans,[\[8\]](#) the Notice also confirms that DOL will not treat any person as having violated ERISA[\[9\]](#) solely because:

1. the person made a plan loan to a qualified individual during the loan relief period in compliance with the CARES Act and the provisions of any related IRS notice or other published guidance; or
2. a qualified individual delayed making a plan loan repayment in compliance with the CARES Act and the provisions of any related IRS notice or other published guidance.

The CARES Act provided relief regarding the plan amendments needed to reflect the CARES Act's special loan rules, providing that plan amendments are due by the last day of the first plan year beginning on or after January 1, 2022 (or January 1, 2024 for governmental plans), or a later date designated by the Secretary of Treasury. In the Notice, DOL states that it will treat the plan as being operated in accordance with the terms of such amendment prior to its adoption if the plan complies with the timing requirements of the CARES Act.

Enforcement

The Notice indicates that DOL's enforcement approach will take into account the fact that plans and service providers may be unable to achieve full and timely compliance with claims, noting,

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

FAQs

In conjunction with the Notice, DOL also published a set of FAQs designed to help participants and beneficiaries impacted by COVID-19 understand their rights and responsibilities under ERISA.[\[10\]](#)

Shannon Salinas
Assistant General Counsel - Retirement Policy

endnotes

[\[1\]](#) EBSA Disaster Relief Notice 2020-01 is *available at* <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>. DOL's press release on the guidance is *available at* <https://www.dol.gov/newsroom/releases/ebsa/ebsa20200428>. Note that DOL also issued a joint notice (to be published in the Federal Register) with the Department of Treasury and Internal Revenue Service that extends certain time frames affecting participants' rights to healthcare coverage, portability, and continuation of group health plan coverage under COBRA, and extends the time for plan participants (including participants in retirement plans) to file or perfect benefit claims or appeals of denied claims. That rule is *available at* <https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/covid-19-final-rule.pdf>.

[\[2\]](#) Notice 2020-01 does not apply to the extensions addressed in the joint notice issued by DOL, the Treasury Department, and IRS.

[\[3\]](#) See ICI Memorandum No. 32328, dated March 27, 2020, *available at* https://www.ici.org/my_ici/memorandum/memo32328.

[\[4\]](#) The delay may not last longer than one year, in accordance with Section 518 of ERISA, which authorizes DOL to delay such requirements for a period of up to one year.

[\[5\]](#) The regulations require a blackout notice to provide 30 days advance notice in the case of a blackout period. However, the regulations provide an exception to this advance notice requirement when the inability to provide the notice is due to events beyond the reasonable control of the plan administrator and a fiduciary so determines in writing.

[\[6\]](#) See ICI Memorandum No. 32391, dated April 15, 2020, *available at*, [/em>https://www.ici.org/my_ici/memorandum/memo32391](https://www.ici.org/my_ici/memorandum/memo32391).

[7] DOL specifies that this relief is limited to ERISA requirements that are within the interpretive and regulatory authority of DOL does not include spousal consent or other statutory or regulatory requirements under the jurisdiction of the Treasury Department and IRS.

[8] For a description of the CARES Act, see ICI Memorandum No. 32328, dated March 27, 2020, available at https://www.ici.org/my_ici/memorandum/memo32328.

[9] This includes compliance with the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b-1.

[10] The FAQs are available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resourcecenter/faqs/covid-19.pdf>. The questions pertaining to retirement benefits begin on page 7.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.