

## **Guidance and Relief for Employee Benefit Plans Due to the COVID-19 Outbreak**

The Employee Benefits Security Administration ("EBSA") of the Department of Labor ("DOL") has issued EBSA Disaster Relief Notice 2020-01 ("Notice 2020-01") to provide relief for various requirements and deadlines under the Employee Retirement Income Security Act of 1974 ("ERISA"). Note that although Notice 2020-01 specifically applies to ERISA plans, it is highly likely the DOL would apply the same relief to governmental plans and other plans not subject to state insurance laws.

The DOL recognizes that the COVID-19 pandemic may temporarily inhibit efforts by employers to comply with certain ERISA requirements and deadlines. Accordingly, Notice 2020-01 applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and service providers subject to ERISA from March 1, 2020 (the beginning of the national emergency declared by the President), until 60 days after the announcement of the end of the COVID-19 National Emergency, or such other date announced by the DOL in a future notice.

### **Extension of Certain Timeframes for Employee Benefit Plans**

Notice 2020-01 extends the time for plan officials to furnish benefit statements, annual funding notices, and other notices and disclosures required by ERISA "so long as they make a good faith effort to furnish the documents as soon as administratively practicable".

Significantly, the notice explains that "good faith" 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.

### **Plan Loans and Distributions**

Under Notice 2020-01, if a retirement plan fails to follow procedural requirements for verification for plan loans or distributions imposed by the terms of the plan, the DOL will not treat it as a failure if the following requirements are met:

- The 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.

The relief for verification procedures does not include spousal consent or other statutory or regulatory requirements under the jurisdiction of the Treasury Department and IRS.

In addition, if a plan is amended to provide the relief for plan loans and distributions described in section 2202 of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), the

DOL will treat the plan as being operated in accordance with the terms of such amendment prior to its adoption if the following requirements are met:

- 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; and
- The amendment meets the conditions of section 2202(c)(2)(B) of the CARES Act.

## **Employer Segregation of Employee Contributions and Loan Repayments**

Generally, employee contributions and loan repayments must be forwarded to the plan on the earliest date on which such amounts can reasonably be segregated from the employer's general assets, but 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 DOL recognizes that some employers and service providers may not be able to forward participant payments and withholdings to employee pension benefit plans within prescribed time frames during the period beginning on March 1 and ending on the 60th day following the announced end of the national emergency. In such instances, the DOL will not—solely on the basis of a failure attributable to the COVID-19 outbreak—take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan. Still, employers and service providers “must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances”.

The DOL is providing similar relief regarding blackout notices.

The full text of EBSA Disaster Relief Notice 2020-01 can be viewed by [clicking on this link](#).

## **Contact Us**

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