

## Updates

May 01, 2020

### COVID-19 Relief for Employer-Sponsored Benefit Plans: Federal Government Announces Deadline Extensions and Other Short-Term Relief

Many employee benefit plan sponsors, administrators, and fiduciaries have been asking about regulatory relief in response to administrative challenges created by the COVID-19 pandemic. Most recently, the U.S. Departments of Labor (DOL), Treasury (Treasury), and Health and Human Services (DHHS) have issued a joint notice that modifies certain benefit plan notice, reporting, and election deadlines imposed by ERISA and the Code. In addition, DOL's Employee Benefits Security Administration (EBSA) and the Pension Benefit Guaranty Corporation (PBGC), have issued additional short-term relief. This update summarizes these respective agency actions.

#### **Joint Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by COVID-19**

On Monday, April 28, 2020, EBSA, Treasury, the Internal Revenue Service (the IRS), and DHHS jointly announced the extension of employee benefit plan notification, reporting, and election deadlines imposed by ERISA and the Code ([to be published in the Federal Register](#)):

- **Relief for Participants, Beneficiaries, Qualified Beneficiaries, and Claimants:** All group health, disability, other welfare benefit, and pension benefit plans must disregard the period of March 1, 2020, through 60 days after the announcement of the end of the national emergency declared under the Stafford Act (the outbreak period) (or such other date as the agencies designate) for purposes of the following deadlines:
  - Thirty-day special enrollment periods provided under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
  - Sixty-day continuation coverage election periods under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
  - The deadline for participants to timely make COBRA premium payments
  - The date for individuals to notify plan administrators of qualifying events or determinations of disability
  - The deadlines by which individuals must file a benefit claim or an appeal of an adverse benefit determination under the plan's claims procedures, or a request for external review after receipt of an adverse benefit determination or final internal adverse benefit determination
  - The deadlines by which an individual must file information to perfect a request for external review upon a previous finding that the request was not complete
- **Relief for Group Health Plans:** For group health plans, plan sponsors, and plan administrators, the outbreak period will be disregarded for purposes of determining the date for providing a COBRA election notice to qualified beneficiaries. The agencies may provide additional relief in further guidance.

#### **EBSA Disaster Relief Notice 2020-01**

Under the authority granted to the DOL secretary under the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), EBSA announced the following additional extensions to benefit plan notification and reporting deadlines in [EBSA Disaster Relief Notice 2020-01](#):

- **For Notices and Disclosures to Plan Participants, Beneficiaries, and Other Persons Otherwise Required Under Title I of ERISA and Subject to DOL Regulation:** Plan fiduciaries will not be considered to have violated ERISA with respect to plan notices or disclosures that are due during the outbreak period (e.g., annual funding notices for certain pension plans that were due by April 30, 2020), so long as plan fiduciaries act in good faith and furnish the notices or disclosures as soon as practicable under the circumstances. Throughout the outbreak period, plan fiduciaries will be considered to be acting in good faith when providing notices and disclosures to plan participants and beneficiaries through electronic communications such as email, text messages, and continuous access websites, so long as the fiduciaries reasonably believe that recipients have access to such electronic means of communication.
- **For Plan Loans and Distributions:** EBSA provided short-term relief by not treating plan loan and distribution verification procedure violations as a failure so long as the deviation from plan terms and procedures is: (1) due to COVID-19; (2) the plan administrator made a good-faith diligent effort under the circumstances to comply with applicable plan terms and procedures; and (3) the plan administrator makes a reasonable attempt to correct procedural deficiencies as soon as practicable thereafter.
- **For Participant Loans under the CARES Act:** EBSA will not treat any person as having violated plan loan requirements and limitations under Title I of ERISA solely because such person: (1) made a plan loan to a qualified individual pursuant to the terms of the CARES Act and applicable IRS guidance; or (2) a qualified individual delayed making a plan loan repayment in compliance with the terms of the CARES Act and other IRS guidance. In addition, EBSA will treat a plan that offers participant loans authorized under the CARES Act as having complied with the terms of an amendment to implement such loans so long as the amendment is adopted no later than the last day of the first plan year beginning on or after January 1, 2022, and the terms of the amendment comply with the requirements of the CARES Act.
- **Enforcement Relief for Delinquent Contributions:** EBSA will not take enforcement action against plan sponsors and fiduciaries due to delays in forwarding of participant contributions and loan repayments caused by COVID-19 so long as any delay is temporary and the plan administrator acts reasonably, prudently, and in the best interest of plan participants to forward such payments as soon as is reasonably practicable under the circumstances.
- **Relaxation of Requirement to Distribute Certain Advance Blackout Notices:** Individual account plans will not be required to distribute blackout notices in advance of a blackout period during the outbreak period. Generally, a plan might not be subject to such advance notice requirement when events beyond the control of the plan administrator prevent distribution of the notice. Such determination must be made in writing by the plan's fiduciary. However, EBSA indicated that this written determination is not necessary during the outbreak period because EBSA deems pandemics as being, by definition, beyond a plan administrator's control.
- **Forms 5500 and M-1 Filing Deadlines:** In accordance with IRS guidance, EBSA has extended the deadline for Forms 5500 and M-1 due between April 1, 2020, and July 14, 2020, to July 15, 2020 (i.e., primarily for non-calendar year plans).
- **General Fiduciary Principles:** EBSA highlighted that the guiding principle for plans, administrators, and fiduciaries should be to act reasonably, prudently, and in the best interest of persons covered by employer-sponsored benefit plans. Further, EBSA indicated that plan administrators should make reasonable accommodations to avoid loss of benefits and undue delays in benefit payments. EBSA also plans to emphasize compliance assistance during the duration of the declared national emergency when dealing with plan failures.

## **EBSA COVID-19 FAQs for Participants and Beneficiaries**

EBSA also issued a series of [Frequently Asked Questions](#) (FAQs) for benefit plan participants and beneficiaries to understand how their rights under ERISA are affected by the COVID-19 pandemic. These FAQs, while

helpful for participants and beneficiaries to understand how their benefit plan interactions (e.g., how to make coverage elections, how to request distributions, and when to expect receipt of plan disclosures and notifications) may change during the outbreak period, are not considered formal guidance and do not change the legal obligations of plan sponsors, administrators, or fiduciaries.

## **PBGC Press Release 20-02**

In PBGC [Press Release 20-02](#), PBGC extended until July 15, 2020, due dates for PBGC filings and actions that were due during the period of April 1, 2020, through July 14, 2020. This extension follows PBGC's standard disaster relief policy and does not include important or time-sensitive filings on the exceptions list. Due dates were not extended for the following notices and actions: advance notices of reportable events, notices of large missed contributions, post-event notices for specific reportable events, and certain actions related to distress terminations.

These deadline extensions and other forms of short-term relief provide opportunities for employee benefit plans to remain compliant with ERISA, the Code, and other applicable laws and guidance despite significant complications posed by the COVID-19 pandemic. Plan sponsors, administrators, and fiduciaries should consult with legal counsel to determine whether any such extensions or other forms of relief apply to their plans and how their standard plan administration processes should be modified as a result.

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