

Retirement Plans: Regulators Provide Relief from Certain ERISA Requirements During the COVID-19 Crisis

The Bottom Line

- The Notice provides valuable relief from the DOL's enforcement of certain requirements under Title I of ERISA. However, the Notice does not affect a participant or beneficiary's enforcement rights under ERISA.
- Much of the relief provides that enforcement actions will generally not be taken to the extent that the violation is solely attributable to the COVID-19 outbreak. If a violation could be interpreted as having multiple potential causes, plan fiduciaries may need to demonstrate that the COVID-19 pandemic caused the violation — otherwise the relief provided in the Notice may not be available to them.
- Plan fiduciaries should consult their ERISA counsel to discuss whether the relief applies to them and to ensure that they are fulfilling their fiduciary obligations.

The Department of Labor (DOL) issued a [notice](#) on April 28, 2020 (the Notice) providing relief from certain requirements and deadlines imposed by the Employee Retirement Income Security Act of 1974 (ERISA) during the COVID-19 crisis.

Plan sponsors and fiduciaries must take care to continue to ensure they act in accordance with their fiduciary obligations, and should discuss any possible delay in meeting ERISA-imposed timelines with their ERISA counsel to determine whether the relief under the Notice applies to them.

Relief Period

Relief is provided during the period from March 1, 2020 until 60 days after the announced end date of the COVID-19 national emergency, or any other date announced by the agencies in a future notice (the Outbreak Period). If the emergency ends in different parts of the country at different times, additional guidance will be issued.

Relief Provided

Regardless of whether plans and their fiduciaries utilize the relief outlined, they must continue to act reasonably, prudently and in the interest of plan participants and beneficiaries. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delays in payments due to a failure to comply with pre-established timeframes.

Disclosure Requirements

Plans and responsible plan fiduciaries will not be treated as violating ERISA if they act in good faith and furnish notices, disclosures or documents required by Title I of ERISA as soon as administratively

practicable under the circumstances. Good faith acts include electronic communication with participants and beneficiaries who the plan fiduciary reasonably believes can effectively access electronic communications.

While the Notice doesn't specify notices other than blackout notices, examples of notices and disclosures required by Title I of ERISA include benefit statements, summary plan descriptions, qualified default investment alternative notices and annual funding notices.

The Notice specifically notes that the relief applies to blackout notices. Under normal circumstances, plans may provide less than 30 days' notice of a blackout period if the failure is due to circumstances beyond the plan's control, but plans must make this determination in writing. The Notice waives the written determination requirement since the pandemic is a circumstance beyond the plan's control.

Plan Loans and Distributions

The DOL will not treat a plan's failure to follow procedural requirements for plan loans or distributions as a failure if:

1. The failure is solely attributable to the COVID-19 outbreak;
2. The plan administrator makes a good faith diligent effort to comply with the procedural requirements; and
3. The plan administrator makes a reasonable attempt to correct any procedural deficiencies.

Importantly, the relief does not apply to items outside the DOL's interpretive and regulatory authority, such as spousal consent. The DOL will not treat any person as having violated Title I of ERISA for plan loans made or repaid in compliance with the Coronavirus Aid, Relief, and Economic Security Act and any related Internal Revenue Service (IRS) guidance.

Participant Contributions and Loan Repayments

ERISA imposes strict deadlines on the time in which participant contributions and loan repayments must be deposited in the plan's trust. Under the Notice, the DOL will not take enforcement action for temporary delays in forwarding participant contributions and loan repayments if the delay is attributable *solely* to the COVID-19 outbreak. Late contributions are also typically subject to excise tax liability by the IRS. Because this excise tax liability falls outside the DOL's authority, it is unclear at this time whether the IRS would excuse the excise tax liability in connection with the DOL's non-enforcement.

Form 5500

IRS guidance regarding filing deadlines applies to Form 5500 filing requirements, which means that Forms 5500 otherwise due on or after April 1 and before July 15, 2020 are now due July 15, 2020. There has not yet been any revision to the July 31, 2020 deadline for plan years ending December 31, 2019.

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