



EBSA Disaster Relief Notice 2020-01

Guidance and Relief for Employee Benefit Plans Due to the COVID-19 (Novel Coronavirus) Outbreak

On March 13, 2020, President Donald J. Trump signed the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (COVID-19 National Emergency).¹ The Department of Labor (Department) recognizes that the COVID-19 outbreak may temporarily impede efforts to comply with various requirements and deadlines under the Employee Retirement Income Security Act of 1974, as amended (ERISA). Except as otherwise provided, this guidance 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 Department in a future notice. To the extent there are different outbreak period end dates for different parts of the country, the Department will issue additional guidance regarding the application of the relief to those different areas.

This notice has been coordinated with and reviewed by the Department of the Treasury (Treasury Department), the Internal Revenue Service (IRS), and the Department of Health and Human Services (HHS). The Treasury Department, the IRS, and HHS have advised the Department that they concur with the relief specified in this notice in the application of the laws under their jurisdiction.²

HHS has advised the Department that HHS will exercise enforcement discretion to adopt a temporary policy of measured enforcement to extend similar timeframes otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants, beneficiaries and enrollees under applicable provisions of the Public Health Service Act (PHS Act). HHS has advised the Department that HHS encourages states and health insurance issuers offering coverage in

¹ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, issued March 13, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² Section 104 of Title I of Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that the Secretaries of Labor, the Treasury, and Health and Human Services (the Departments) ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Internal Revenue Code, published at 64 FR 70164, December 15, 1999.

connection with a group health plan to enforce and operate, respectively, in a manner consistent with the relief provided in this notice and will not consider a state to have failed to substantially enforce the applicable provisions of title XXVII of the PHS Act if it takes such an approach.

ERISA Section 518 Extension of Certain Timeframes for Employee Benefit Plans

Section 518 of ERISA, as amended by section 3607 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), provides, in relevant part, that, in the case of an employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster or a public health emergency declared by the Secretary of HHS, the Secretary of Labor may prescribe, by notice or otherwise, a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 further provides that no plan shall be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline.

Section 518 Relief in Joint Notice Issued by the Department of Labor and Department of the Treasury/Internal Revenue Service

The Department in conjunction with the Treasury Department and the IRS is publishing a separate joint notice in the Federal Register to announce an extension for a number of deadlines so plan participants, beneficiaries, and employers have additional time to make critical health coverage and other decisions affecting benefits during the COVID-19 outbreak. For group health plans, subject to ERISA or the Internal Revenue Code, the relief provides additional time to comply with certain deadlines affecting COBRA continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims, and external review of certain claims. With regard to disability, retirement, and other plans, the joint notice provides additional time for participants and beneficiaries to make claims for benefits and appeal denied claims. Without the extension, individuals might miss key deadlines during the COVID-19 outbreak that could result in the loss or lapse of group health coverage or the denial of a valid claim for benefits.

The joint notice also announces the adoption of a temporary policy of relaxed enforcement by HHS to extend similar timeframes otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants, beneficiaries, and enrollees under applicable provisions under the PHS Act.

Section 518 Relief Covered by this Notice

In addition to the relief provided in the joint notice, the Department is separately announcing in this notice an extension of deadlines for furnishing other required notices or disclosures to plan participants, beneficiaries, and other persons so that plan fiduciaries and plan sponsors have additional time to meet their obligations under Title I of ERISA during the COVID-19 outbreak. This extension applies to the furnishing of notices, disclosures, and other documents required by provisions of Title I of ERISA over which the Department has interpretive and regulatory authority, except for those notices and disclosures addressed in the Section 518 joint notice issued by the Department and the Treasury Department/IRS. Subject to the duration limitation in

ERISA section 518, 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. Good faith acts include 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.

The Department believes that such relief is immediately needed to preserve and protect private-sector employee benefit plans. Accordingly, the Department has determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), that there is good cause for granting the relief provided by this notice effective immediately upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to the public interest.³

Plan Loans and Distributions

Verification Procedures

If an employee pension benefit plan fails to follow procedural requirements for plan loans or distributions imposed by the terms of the plan, the Department will not treat it as a failure if:

- 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.

This relief for verification procedures imposed by the terms of the plan is limited to verification requirements required under provisions of Title I of ERISA that are within the interpretive and regulatory authority of the Department, and, for example, does not include spousal consent or other statutory or regulatory requirements under the jurisdiction of the Treasury Department/IRS. See <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments> or call 1-877-829-5500 for questions about Treasury Department/IRS coronavirus relief or other guidance.

Participant Loans under the CARES Act

Section 2202(b)(1) of the CARES Act provides that during the period beginning on March 27, 2020, and ending on September 22, 2020 (the “loan relief period”), in applying section 72(p) of

³ Good cause exists for the same reasons underlying the issuance of the March 13, 2020 Proclamation on Declaring a National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Outbreak and the determination, under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, that a national emergency exists nationwide as a result of the COVID-19 pandemic, and the same reasons underlying the issuance of the January 31, 2020 declaration that a public health emergency exists under section 319 of the PHS Act.

the Internal Revenue Code to a plan loan of a qualified individual, the \$50,000 aggregate limit in section 72(p)(2)(A)(i) is increased to \$100,000 and the limit in section 72(p)(2)(A)(ii) on the aggregate amount of loans is increased from one-half of the employee's vested accrued benefit to 100 percent of the employee's vested accrued benefit. A qualified individual is an individual described in section 2202(a)(4)(A)(ii) of the CARES Act.

Section 2202(b)(2) of the CARES Act provides that any repayment of a plan loan made to a qualified individual that is due during the period beginning on March 27, 2020 and ending December 31, 2020, may be delayed for up to one year without violating section 72(p) of the Internal Revenue Code if subsequent repayments are adjusted to reflect the delay in the manner described in section 2202(b)(2)(B) of the CARES Act.

The Department has advised the Treasury Department and IRS that it will not treat any person as having violated the provisions of Title I of ERISA, including the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b-1, 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.

Certain Plan Amendments Related to the COVID-19 Outbreak

If an employee pension benefit plan is amended to provide the relief for plan loans and distributions described in section 2202 of the CARES Act, the Department will treat the plan as being operated in accordance with the terms of such amendment prior to its adoption if: (1) 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 (or the Secretary's delegate), and (2) the amendment meets the conditions of section 2202(c)(2)(B) of the CARES Act.

Participant Contributions and Loan Repayments

Under 29 CFR § 2510.3-102, amounts that a participant or beneficiary pays to an employer, or amounts withheld from the participant's wages by an employer, for contribution or repayment of a participant loan to an employee pension benefit plan constitute plan assets. Generally, these amounts 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 Department recognizes that some employers and service providers may not be able to forward participant payments and withholdings to employee pension benefit plans within prescribed timeframes during the period beginning on March 1, 2020, and ending on the 60th day following the announced end of the National Emergency. In such instances, the Department 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. Employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

Blackout Notices

In general, the administrator of an individual account plan is required to provide 30 days' advance notice to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by a blackout period under 29 CFR 2520.101-3. For instance, a period of suspension, limitation, or restriction of more than three consecutive business days on a participant's ability to direct investments, obtain loans or obtain other distributions from the plan results in a blackout period and triggers the advance notice. The regulations provide an exception to the 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. The above relief under Section 518 applies to blackout notices that are required to be provided under the regulation, including those required to be provided after the blackout period begins. Further, the Department will not require the written determination by a fiduciary pursuant to the regulation for blackout notices covered by this notice, as pandemics are by definition beyond a plan administrator's control.

Form 5500 and Form M-1 Filing Relief

Form 5500 Annual Return/Report filing relief is provided in accordance with guidance published by the Treasury Department and the IRS on the IRS COVID-19 emergency website: <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments>. See Treasury Regulations under Internal Revenue Code § 7508A and Section 8 of Rev. Proc. 2018-58, 2018-50 I.R.B. 990 and IRS Notice 2020-23 *Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic* at <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>.

Form M-1 filings required for multiple employer welfare arrangements (MEWAs) and certain entities claiming exception (ECEs) are provided relief for the same period of time as the Form 5500 Annual Return/Report filing relief.

General ERISA Fiduciary Compliance Guidance

The Department recognizes that affected plan participants and beneficiaries may encounter problems due to the COVID-19 outbreak. The guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.

In addition, the Department acknowledges that there may be instances when plans and service providers may be unable to achieve full and timely compliance with claims processing and other

ERISA requirements. 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.

Additional/Extension of Relief

The Department will continue to monitor the effects of the COVID-19 outbreak and may provide additional relief as warranted.

Contact Information

The Department will continue to monitor and respond to the situation as appropriate. For more information, visit the Department's Employee Benefits Security Administration's (EBSA) Disaster Relief pages for Employers and Advisers or Workers and Families at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief> and <https://www.dol.gov/agencies/ebsa/workers-and-families/disaster-relief>, or contact EBSA at <http://www.askebsa.dol.gov> or 1-866-444-3272. Questions about IRS guidance should be directed to the IRS at <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments> or 1-877-829-5500.