

DOL and IRS Relief on Deadlines

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The DOL and IRS have issued relief for employers, participants, and beneficiaries regarding a number of deadlines with respect to employee benefit plans. This update reviews three recent pieces of guidance that provide relief.

Background

Section 518 of ERISA (as amended by section 3607 of the CARES Act) provides in the event of a Presidentially declared disaster or a public health emergency, the Secretary of Labor (DOL) may issue guidance suspending deadlines for affected plan administrators, participants, and beneficiaries for a period of up to one year. In addition, section 7508A of the Internal Revenue Code provides in the event of a Presidentially declared disaster the Secretary of the Treasury may issue guidance suspending deadlines for affected plan administrators, participants, and beneficiaries for a period of up to one year. In response to the coronavirus pandemic, the agencies have exercised this authority.

DOL and IRS Final Regulations

DOL and IRS final regulations (published in the federal register on May 4, 2020) suspend several employee benefit plan deadlines for the period from March 1, 2020 until 60 days after the announced end of the National Emergency (the “Outbreak Period”). Much of the relief is for participants and beneficiaries. The deadlines then commence (or resume) to run as of that date. The affected plans and affected deadlines:

- Health plans – The HIPAA 30- or 60-day special enrollment period.
- Health plans – The COBRA 60-day election period.
- Health plans – The COBRA 45-day initial premium payment period.
- Health plans – The COBRA 30-day grace period for subsequent premiums.
- Health plans – The COBRA notification date for a qualifying event or disability determination.
- Health plans – External review: The request for external review date by which a claimant is to file a request for an external review after receipt of an adverse determination.
- Health plans – External review: The date within which a claimant may file information

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to perfect a request for external review upon a finding that the request was not complete.

- Health and retirement plans – ERISA claims.
- Health and retirement plans – ERISA claim appeals.

The regulations contain examples that, when combined below, illustrate how COBRA premium payments work under the suspended deadlines. The examples suppose a terminated participant (suppose terminated as of February 1, 2020) timely elects COBRA and makes the February COBRA premium payment. Suppose the National Emergency ended April 30, 2020, in which case the suspension period would end June 29, 2020. The participant is not required to make the COBRA premium payments for March, April, May, or June until July 29, 2020 (rather than the first day of each of these months). Thus, the 30-day grace period for the payments for these months is July 29, 2020 (30 days after June 29, 2020). The participant is entitled to coverage under the group health plan until the premium payments are due. If by July 29, 2020 the participant has only paid two months of premium payments, these are applied to March and April 2020 and the participant is then not covered after April 2020.

The regulations are available at:

<https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>.

EBSA Disaster Relief Notice 2020-01

The DOL has issued EBSA Notice 2020-01 which provides relief from a number of deadlines.

First, the notice provides relief for deadlines related to providing certain required notices or disclosures to participants and beneficiaries during the same Outbreak Period noted above if the employer has acted in good faith in working to provide the notices. This relief does not mean that plan administrators are not required to provide the notices noted below, but rather that if they are unable to provide them due to the coronavirus. This relief extends to the following ERISA disclosures:

- Annual funding notices required by ERISA section 101(f).
- Summary annual reports (SARs).
- Summary plan descriptions (SPDs) and summaries of material modifications (SMMs).
- QDRO notices.
- Periodic pension benefit statements required by ERISA section 105.
- General plan notices (such as plan fee disclosures).
- Qualified default investment alternative (QDIA) notices.
- Notices of adverse benefit determinations and appeals.
- Blackout notices.

Note that the notice does not provide relief with respect to Form 5500 filings (IRS Notice 2020-23 provides some relief with respect to non-calendar year plans).

Second, the notice indicates that the DOL will not take enforcement action in connection with a temporary delay in forwarding elective contributions and loan repayments to a

retirement plan trustee during the Outbreak Period, if the failure is solely attributable to the coronavirus outbreak. Again, employers and plan administrators should work to forward the elective contributions and loan payments as soon as practicable.

The notice ends with the DOL acknowledging that the coronavirus may cause problems with fiduciary compliance. The DOL indicates it will focus on compliance assistance instead of enforcement during this time. The notice is available at:

<https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01.pdf>.

IRS Notice 2020-23

The IRS has issued Notice 2020-23 which also provides relief.

Notice 2020-23 extended retirement plan deadlines due on April 1 through July 14 to July 15, 2020, including the following:

- Plan loan repayments due during the period April 1, 2020 to July 14, 2020.
- The 60-day window to roll over an eligible rollover distribution received from an eligible retirement plan, so that the participant will have until the later of (i) 60 days after receipt of the distribution or (ii) July 15, 2020 to complete the rollover.
- The April 15, 2020 deadline for a plan to distribute employee deferrals in excess of the Internal Revenue Code section 402(g) limit (plus associated earnings) for calendar year 2019.
- The 90-day deadline to elect a permissible withdrawal from an eligible automatic contribution arrangement (EACA) after the date of the employee's first elective contribution under the EACA.
- The deadline for restating a retirement plan by the close of its remedial amendment period.

Non-calendar year plans may also be able to use the extension with respect to the following deadlines:

- The 2½-month period after the close of the plan year deadline to distribute excess contributions (ADP testing) and excess aggregate contributions (ACP testing), and related earnings on both, to avoid the 10% excise tax imposed on such excess amounts.
- The end of the following plan year deadline to correct ADP and ACP test failures by distributing excess contributions and excess aggregate contributions to highly compensated employees.
- The Form 5500 series and the Form 8955-SSA filing deadline.

The notice is at 2020-18 IRB 742 (April 27, 2020), which is available at:

<https://www.irs.gov/pub/irs-irbs/irb20-18.pdf>.

Next Steps

With all of these extensions, the best course for plan administrators is to continue to comply with the timing requirements for distributing notices and to provide relief to participants with respect to the deadlines if they miss one of the deadlines. The relief does not require employers to issue a broad-based notice about the suspension of the

deadlines or to change forms. Employers will need to review processes (for example, if an employer in the past sent a participant who had not paid a COBRA premium on time a communication that COBRA would be discontinued for failure to pay premiums within the grace period, the employer needs to modify this practice during the Outbreak Period). Hopefully, the DOL and IRS will provide additional guidance on implementing the relief.

Please contact the attorney you work with at Dorsey with questions and for further assistance. For further updates on the impact of coronavirus (COVID-19), please visit Dorsey's [Coronavirus Resource Center](#).