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Benefit Plans Get Disclosure and Filing Relief in COVID-19 Emergency

By Sheila Ninneman

On April 29th, the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) issued [EBSA Disaster Relief Notice 2020-01](#) (Notice) to provide employers with additional relief as they make their way through the national emergency due to the Novel Coronavirus Disease (COVID-19) Outbreak. The guidance applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants, beneficiaries, and service providers subject to ERISA from March 1, 2020 until 60 days after the announcement that the national emergency is over, or such other date announced by the DOL. Additional guidance can be found in [29 CFR Parts 2560 and 2590 and 26 CFR Part 54](#).

The Notice was a coordinated effort of the Department of Labor's EBSA, the Internal Revenue Service (IRS) and the [Department of Health and Human Services \(HHS\)](#). Specifically, HHS intends to exercise enforcement discretion and extend timeframes (similar to those announced by EBSA) applicable to group health plans and health insurance issuers offering coverage as to group health plans, their participants, beneficiaries and enrollees. HHS is also urging states and health insurance issuers offering coverage as to group health plans to operate in a manner consistent with the Notice.

Extension of Deadlines

Specifically, the Notice extends the time for furnishing benefit statements, annual funding notices, as well as other notices and disclosures (e.g. summary plan descriptions, summaries of material modification) required by [Title I of ERISA](#), provided that the efforts to issue such notices and disclosures are made in good faith. The Notice specifies that an employee benefit plan and the plan fiduciary will not violate ERISA for failing to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020 and 60 days following the announced end of the COVID-19 national emergency.

Expansion of Electronic Delivery of Notices or Disclosures

The DOL specifies that acting in good faith includes use of electronic means of communicating with plan participants and beneficiaries if the plan fiduciary reasonably believes that participants and beneficiaries have effective access to such electronic communication means as email, text message and continuous access websites.

Relief for Deadlines in ERISA's Claims Procedures

For group health plans subject to ERISA or the Internal Revenue Code, the additional time gives employers, participants and beneficiaries additional time to comply with certain deadlines affecting COBRA continuation coverage, special enrollment periods, benefit claims, appeal claims and the external review of certain claims.

For disability, retirement and others plans subject to ERISA's claim procedures, participants and beneficiaries are given additional time to comply with deadlines for benefit claims and the appeal of denied claims.

Specific Areas of Relief in the Notice

The Notice provided specific guidance in connection with plan loans and distributions, participant contributions and loan repayments, blackout notices, Form 5500 and Form M-1 filings.

Form 5500 and Form M-1 Filings.

Relief for Form 5500 and PBGC deadlines was described in Findley's article [Filing Extension to July 15th for Approaching Form 5500 and PBGC Deadlines](#). The deadlines for Form M-1 filings required for multiple employer welfare arrangements (MEWAs) and certain entities claiming exception (ECEs) are extended for the same period of time as the Form 5500 filings.

Plan Loans and Distributions.

The Notice provides relief to an employee pension benefit plan that fails to follow procedural requirements for plan loans or distributions provided in the plan's provisions. The relief is conditioned on the following factors:

- The failure is solely attributable to the COVID-19 emergency;
- The plan administrator's efforts to comply with the requirements are made in good faith;
- The plan administrator makes reasonable efforts to correct any procedural deficits as soon as administratively practicable (e.g. obtaining missing documentation).

The relief for verification requirements is limited to those proscribed by Title I of ERISA. The relief does not extend to statutory or regulatory requirements under the jurisdiction of the IRS, such as spousal consent requirements.

Participant Loan Repayments and Contributions

Currently, amounts withheld from a participant's wages by the employer for contributions or plan loan repayments are considered plan assets that must be forwarded to the plan on the earliest date on which those amounts can reasonably be segregated from the employer's general assets. In any event, the amounts cannot be forwarded to the plan later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer. In this Notice, DOL announces that it will not take enforcement action with respect to a temporary delay in forwarding those contributions and loan repayments, as long as such delay is attributable to the COVID-19 emergency. Employers and service providers must act as soon as administratively practicable, and in the

interest of the employees, to forward the delayed amounts.

Blackout Notices.

Currently, 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, or restricted by a blackout period. The advance notice is triggered by a period of suspension or restriction of more than three consecutive business days on a participant's ability to direct investments, obtain loans or other distributions from the plan. An exception to the advance notice requirement is provided when the inability to provide the notice is due to events beyond the plan administrator's reasonable control. In this Notice, DOL announces that it will not take enforcement action with respect to a temporary delay in providing required blackout notices, including those required to be provided after the blackout period begins. The currently required written determination by a fiduciary for blackout notices will not be required during the COVID-19 emergency.

General ERISA Fiduciary Guidance

In this Notice the DOL provides that the guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families, including making reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments. Plans should minimize the possibility of individuals losing benefits because of a failure to comply with the deadlines discussed above. The DOL's approach to enforcement will emphasize compliance assistance and include grace periods and other relief where appropriate.

Questions? Please contact the Findley consultant you regularly work with or Sheila Ninneman at Sheila.Ninneman@findley.com, or 216.875.1927.