



ALERTS

Relief Granted To Plan Sponsors And Fiduciaries During COVID-19 National Emergency

May 14, 2020

Highlights

The Department of Labor and the Treasury Department granted relief to plan sponsors and plan fiduciaries during the COVID-19 National Emergency

Strict deadlines for providing notices and disclosures and making participant contributions to qualified plans will not be enforced, subject to good faith compliance

Inability to follow plan loan and distribution terms will not result in a failure if fiduciary makes good faith efforts to comply with requirements

In all cases, plan sponsors and fiduciaries must act in good faith to take required actions related to benefit plans and correct any deficiencies as soon as practicable

In the wake of the COVID-19 National Emergency, employee benefit plan sponsors and fiduciaries were granted additional time for providing certain participant notices (including blackout notices) and disclosures, making participant contributions to a plan and authorizing and implementing plan loans and distributions. The [guidance was issued](#) by the Employee

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Lori L. Shannon

Partner
Chicago

P 312-214-5664
F 312-759-5646
lori.shannon@btlaw.com



Nicole D. Bogard

Partner
Atlanta, Southeast Michigan

P 404-264-4016
F 404-264-4033
nicole.bogard@btlaw.com

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Benefit Security Administration of the Department of Labor (DOL) as part of a coordinated effort with the Department of the Treasury and the Internal Revenue Service.

Separately, a joint notice was issued by the DOL and the Treasury Department, which extended certain deadlines so participants and beneficiaries in group health plans, disability and other welfare plans and pension plans have additional time to make health coverage and other decisions affecting benefits during the COVID-19 National Emergency.

This alert addresses the relief provided under EBSA Disaster Relief Notice 2020-01. We will address the guidance provided in the joint notice in a separate alert.

Notices and Disclosures

Plan sponsors and fiduciaries will not be in violation of ERISA for failure to provide notices, disclosures or documents timely that must be provided between March 1, 2020 and 60 days after the announced end of the COVID-19 National Emergency, if the plan sponsor or fiduciary acts in good faith and provides the notice, disclosure, or document as soon as administratively practicable under the circumstances. Some examples of the notices and disclosures impacted by this relief include:

- Summary plan descriptions
- Summaries of material modifications
- Summary annual reports
- Qualified domestic relations orders
- Mapping notices
- Adverse benefit determinations (benefit claims and appeals denials)
- Annual funding notices
- Disclosures related to participant-directed retirement plans
- Qualified default investment alternative notices
- Blackout notices

For purposes of providing notices and disclosures, plan sponsors and plan administrators may use electronic alternative means of communicating with plan participants and beneficiaries who are reasonably believed to have effective access to electronic means of communication, including e-mail, text messages, and continuous access websites and will be considered to have acted in good faith.

CARES Act Retirement Plan Provisions

The notice provides relief to fiduciaries in connection with participant loans made to qualified individuals under the increased loan limits permitted (i.e., up to \$100,000 and up to 100 percent of an employee's

vested account balance) from March 27, 2020, through Sept. 22, 2020. It also allows for the delay of participant loan repayments by qualified individuals that are due between March 27, 2020, and Dec. 31, 2020, for up to one year if subsequent repayments are adjusted to reflect the delay, as provided under the CARES Act.

Consistent with IRS guidance, this notice provides that plans may be currently operated in accordance with the CARES Act special retirement plan provisions and amended retroactively for the special loan and distribution provisions by the last day of the first plan year beginning on or after Jan. 1, 2022 (or such later date, as applicable).

Participant Contributions and Loan Repayments

Strict timing requirements apply under ERISA for forwarding a participant or beneficiary payments 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's trust. However, during the COVID-19 National Emergency, employers and plan service providers may not be able to forward participant payments and withholdings to plan trusts within prescribed timeframes.

The notice provides that the DOL will not take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan solely because of a failure attributable to the COVID-19 National Emergency. Employers and service providers must act reasonably, prudently and in the interest of plan participants to comply as soon as administratively practicable under the circumstances.

This relief does not address the potential excise tax liability related to such late contributions to a qualified plan trust, but the IRS may grant similar relief to address this issue.

Plan Loan and Distribution Verification Procedures

The notice provides that no failure occurs under Title I of ERISA if plan loan and distribution verification procedures deviate from plan terms or required procedures under certain circumstances. The relief applies if the deviations were due to COVID-19, the plan administrator made a good-faith diligent effort to comply with applicable plan terms and procedures, and the plan administrator made a reasonable attempt to correct the procedural deficiencies as soon as practicable. This relief does not apply to any statutory or regulatory requirements under the purview of the Treasury Department or IRS.

Blackout Notices

A plan administrator is generally required to provide 30 days' advance notice to participants and beneficiaries whose rights under an individual account plan will be temporarily suspended, limited, or restricted by a blackout period. A blackout period is 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 a plan. An exception to this rule applies 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.

During the COVID-19 National Emergency, “good faith” relief applies to the timing of blackout notices, including notices required during and after a blackout period begins. No written determination by a fiduciary is required for blackout notices during the COVID-19 National Emergency because a pandemic is beyond a plan administrator’s control.

Form 5500 Filing Deadline

Consistent with IRS guidance in Notice 2020-23, the deadline for filing Forms 5500 (Annual Return/Report) which would otherwise be due between April 1, 2020 and July 14, 2020 has been extended to July 15, 2020. This extension generally benefits non-calendar year employee benefit plans. To date, no change in the filing deadline for Forms 5500 for calendar year plans (i.e., generally July 31, 2020 or, with an extension filed by Form 5558, Oct. 15, 2020) has been made.

General Fiduciary Principles

The notice emphasizes that the primary focus for plan sponsors, plan administrators and fiduciaries during the pandemic should be to act reasonably, prudently and in the best interest of plan participants, in an effort toward good faith compliance. Additionally, plan administrators must make best efforts to avoid any loss of benefits and undue delays in benefit payments.

The DOL indicates that it will provide compliance assistance and allow for grace periods and other relief when plans and service providers are unable to achieve full and timely compliance with claims processing and other ERISA requirements during this period.

Plan Sponsor Action Steps to Consider

During these uncertain times, plan sponsors should consider the following best practices:

- Work with plan service providers to modify plan administration (and modify forms, if applicable) to incorporate the temporarily extended deadline
- Communicate with plan service providers and claims administrators to coordinate the electronic delivery of documents to participants when secure and reliable delivery is possible
- Communicate with plan participants regarding any changes to plan administration put in place during the COVID-19 National Emergency (e.g. exclusive availability of online or telephonic plan administration)
- Communicate with plan service providers and plan participants regarding plan changes specific to CARES Act and timely amend plans as required
- Communicate with plan participants and beneficiaries regarding the relief provided through such modified deadlines

- Coordinate timely virtual meetings of benefits committees with a focus on best practices and note any COVID-19 compliance matters in recorded minutes

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Lori Shannon at 312-214-5664 or lori.shannon@btlaw.com or Nicole Bogard at 404-264-4016 or nicole.bogard@btlaw.com.

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