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COVID-19 Disaster Relief Arrives for Private-Sector Retirement Plan Sponsors and Administrators



The Department of Labor (DOL) released guidance for sponsors and administrators of employee benefit plans subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (ERISA) in response to the COVID-19 outbreak in the United States. [EBSA Disaster Relief Notice 2020-01](#) provides important relief in a various areas over which the DOL has jurisdiction, including, but not limited to, those described below. The guidance reflects the DOL recognition that COVID-19, and the ensuing government response, is likely impairing most, if not all, plan sponsors' and administrators' ability to comply with certain requirements and deadlines under ERISA. Here are some of the high-level takeaways, particularly as they relate to retirement plans:

- The guidance retroactively applies from March 1, 2020, the date [President Trump technically declared the COVID-19 National Emergency](#), and expires 60 days after the cessation of the National Emergency or such other date as the DOL determines. The DOL leaves open the possibility of revising the expiration date of the guidance based on region, a nod to state regional pacts and the White House's [Guidelines for Opening Up America Again](#).
- Technical non-compliance with the verification procedures related to plan loans and distributions under the terms of the plan are not considered violations if the failure is solely attributable to

the COVID-19 outbreak, the plan administrator makes a good faith diligent effort (under the circumstances) to comply with the required procedures, and the plan administrator makes a reasonable attempt to correct any procedural deficiencies as soon as administratively practicable. This relief would not apply to statutory or regulatory requirements enforced by the U.S. Internal Revenue Service.

- [As we recently described](#), certain limitations related to participant loans were liberalized under the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Under the DOL's new guidance, the prohibited transaction relief provided in Section 408(b)(1) of ERISA will not be lost solely because 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 because 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.
- The DOL 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 contributions or repayments of loans to a plan, provided the employer or service provider, as the case may be, acts reasonably, prudently, and in the interest of employees to end such delay as soon as administratively practicable under the circumstances. These amounts must ordinarily 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.
- Under existing regulations, 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 certain circumstances, these notice requirements are not required due to events beyond the reasonable control of the plan administrator, and a fiduciary makes such a determination in writing. In response to COVID-19, the new guidance provides that the administrator will not violate such requirements if the plan and responsible fiduciary act in good faith and furnish the notice as soon as administratively practicable under the circumstances. For these purposes, "good faith" acts include the 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.

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Moreover, the requirement that the fiduciary makes a written determination that such delay is due to events beyond the reasonable control of the plan administrator will not be required, “as pandemics are by definition beyond the plan administrator’s control.”

- This relief is broad and flexible. Disclosure and notice requirements, including the provision of benefit statements, may be satisfied electronically, as described above.
- The DOL clearly recognizes that the primary goal at this point is for plans to take reasonable measures to prevent the loss or undue delay in benefits to participants and beneficiaries. Moreover, the guidance acknowledged that service providers are themselves facing headwinds from COVID-19, namely, the various state and local shutdown orders on businesses. To that end, the guidance signals that DOL enforcement in this area will emphasize compliance assistance. The DOL did not rule out additional relief in the future.
- The DOL separately released [COVID-19 FAQs for Participants and Beneficiaries](#). Also, the DOL and Department of Treasury published a [joint notice](#) to address coverage issues under COBRA and to announce an extension for certain deadlines related to health and retirement plans, including additional time to file claims, resulting from the COVID-19 outbreak.