

Retirement guidance

DOL issues reporting and disclosure relief for retirement plans

On April 28, 2020, the Department of Labor (DOL) delayed certain deadlines for furnishing required notices or disclosures to plan participants and beneficiaries. Under Notice 2020-01, the DOL recognizes that the COVID-19 outbreak may temporarily impede plan sponsors' efforts to comply with various ERISA requirements.

Timing

This guidance is effective from March 1, 2020, when the president first declared a national emergency, until 60 days after the announced end of the COVID-19 National Emergency or such other date announced by the DOL (the "emergency period").

Good faith standard

A plan and the responsible plan fiduciary will not violate ERISA for failing to furnish a required notice, disclosure or document during the emergency period if they act in good faith and furnish the appropriate information as soon as administratively practicable. Good faith acts include using alternative electronic communications — email, text messages and continuous access websites — with plan participants and beneficiaries provided the plan fiduciary believes they have effective access to those platforms. This presumably applies to all required ERISA notices.

Loans and Distributions

If the plan fails to follow procedural requirements for plan loans or distributions imposed by the terms of the plan, relief will be available if:

1. That failure is solely attributable to the COVID-19 outbreak.
2. The plan makes a diligent, good faith effort under the circumstances to comply with those requirements.
3. The plan makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

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Participant loans under the CARES Act

The CARES Act provided for significantly increased participant loan amounts and a repayment delay beginning March 27, 2020 and ending Dec. 31, 2020, for up to one year. The DOL formally stated that it will honor these provisions and will not treat any plan or participant as having violated ERISA loan provisions for applying the CARES provisions.

Plan amendments related to the CARES Act

If a plan is amended to provide the relief for plan loans and distributions described in the CARES Act, the DOL will treat the plan as being operated in accordance with the terms of such amendment prior to its adoption if the amendment is made on or before the last day of the first plan year beginning on or after Jan. 1, 2022, or such later date prescribed by the Secretary of the Treasury.

Participant contributions and loan repayments

Generally, these amounts must be forwarded to the plan on the earliest date they 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 DOL recognizes that some employers and service providers may not be able to forward participant payments and withholdings to employee plans during the emergency period. In such instances, the DOL will not — if the failure is attributable to the COVID-19 outbreak — take enforcement action. Employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable.

Blackout notices

Generally, a defined contribution plan administrator must 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. However, the regulations provide an exception to the advance notice requirement when events beyond the plan administrator's reasonable control prevent the notice's delivery and a fiduciary so determines in writing. Thus, the DOL will not require a fiduciary's written determination pursuant to the blackout notices regulation as pandemics are, by definition, beyond a plan administrator's control.

Form 5500 relief

The Treasury Department and the IRS published Form 5500 Annual Return/Report filing relief guidance on the IRS COVID-19 emergency website. Under Notice 2020-23, the filing of the Form 5500 is extended for plan sponsors that have a filing deadline falling on or after April 1, 2020, and before July 15, 2020. The extension will help only those plans with a June 30 plan year-end that had filed for an extended deadline of April 15 (the regular Jan. 31 deadline plus 2.5 months). These plans will now have until July 15 to file. As of now, for plan sponsors with calendar year plans, the July 31 deadline is fast approaching.

A plan sponsor who misses the deadline should consider using the DOL's Delinquent Filer Voluntary Compliance Program (DVFCP). It can reduce penalties but does not waive them.

General ERISA fiduciary compliance guidance

The DOL recognizes that affected plan participants and beneficiaries may encounter problems due to the COVID-19 outbreak. A fiduciary's guiding principle must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their retirement plans for their economic well-being. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments and should minimize the risk that individuals lose benefits due to a compliance failure. In addition, the DOL 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. They will allow 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 preestablished time frames impossible.

Lockton's take

While this is welcomed relief, plan sponsors and fiduciaries should still diligently adhere to fiduciary processes in effect prior to the emergency period. Plan sponsors should expect the DOL to relax enforcement standards during the emergency period and relax standards for employers operating in good faith. We suggest that you document any delays in notices or — especially — late contributions related to COVID-19 circumstances and specifically note efforts made to remedy them as soon as administratively feasible. If you have questions, please contact your Lockton Retirement Team.