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SSG COMPLIANCE ADVISOR

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Employee Benefits Security Administration Disaster Relief Notice 2020-01

On March 13, 2020, President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak and by a separate writing made a determination, under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a national emergency exists nationwide beginning March 1, 2020, as the result of the COVID-19 outbreak.

The Department of Labor (DOL) recognizes that the COVID-19 outbreak may impede efforts to comply with various requirements and deadlines under the Employee Retirement Income Security Act (ERISA). As a result, the DOL's Employee Benefits Security Administration (EBSA) issued [Notice 2020-01](#) (Notice) that applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants, beneficiaries, and covered service providers. The Notice supplements the extended timeframes final rule issued by the DOL and the Department of the Treasury (Treasury). See our [Advisor on the final rule](#).

ERISA Notice and Disclosure Relief

In addition to the final rule, the Notice provides an extension on deadlines for furnishing other required notices or disclosures to plan participants, beneficiaries, and other persons to grant plan fiduciaries and plan sponsors additional time to meet their obligations under Title I of ERISA during the COVID-19 outbreak. This extension applies to the furnishing of notices, disclosures, and other documents required by provisions of Title I of ERISA over which the DOL has authority, except for those notices and disclosures addressed in the final rule. See the [DOL Reporting and Disclosure Guide for Employee Benefit Plans](#) for an overview of the various notice and disclosure requirements under Title I of ERISA.

Under the Notice, an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries whom 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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ERISA Notice and Disclosure Relief *(continued)*

The Notice specifically provides that relief is available for Form M-1 filings required for multiple employer welfare arrangements (MEWAs) and certain entities claiming exceptions for the same time period as the Form 5500 filing relief that is provided under Internal Revenue Service (IRS) [Notice 2020-23](#). See our [Advisor](#) for information on the Form 5500 filing relief.

Plan Loans and Distributions

The DOL has taken a temporary non-enforcement position on retirement plan loan and distribution procedural deficiencies. Under the Notice, retirement plans that do not follow procedural requirements for plan loans or distributions imposed by the terms of the plan, will not be treated as in violation of Title I of ERISA if: 1) the failure is solely attributable to the COVID-19 outbreak; 2) the plan administrator makes a good-faith diligent effort under the circumstances to comply with those requirements; and 3) the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable. The relief is limited to the DOL's authority under Title I of ERISA and does not extend to Title II of ERISA, which contains provisions analogous to those under the Internal Revenue Code and subject to the jurisdiction of the IRS, such as the spousal consent rules for distributions.

Under the Notice, the DOL will not consider any person to have violated Title I of ERISA, including the requirement that the loan be adequately secured by the account balance, solely because: 1) the person made a plan loan to a qualified individual during the loan relief period in compliance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the provisions of any related IRS notice or other published guidance; or 2) 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 Notice provides that an employee pension benefit plan may be amended to provide the relief for plan loans and distributions described in section 2202 of the CARES Act and the DOL will treat the plan as being operated in accordance with the terms of the amendment prior to its adoption if: 1) the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date prescribed by the Secretary of the Treasury, and 2) the amendment meets the conditions of section 2202(c)(2)(B) of the CARES Act.

Participant Contributions and Loan Repayments

Under the Notice, the DOL will not take enforcement action with respect to a temporary delay in forwarding participant payments and withholdings to employee pension benefit plans during the period from March 1, 2020, and ending on the 60th day following the announced end of the national emergency if the delay is solely attributable to the COVID-19 outbreak. However, employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

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Blackout Notices *(continued)*

The Notice provides individual account plan administrators with relief from the requirement that 30 days' advance written notice be provided to participants before implementing a blackout period that restricts participants' ability to direct investments and to obtain loans and other distributions from the plan. The relief is available when a plan administrator is unable to comply with the advance notice requirement due to events beyond the reasonable control of the plan administrator. The DOL will not require plan administrators to make a written determination when seeking relief from the 30 days' advance notice requirement due to a pandemic, such as COVID-19.

General ERISA Fiduciary Compliance

The Notice provides that plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes. The DOL recognizes 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. The DOL notes that it will implement 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 pre-established timeframes for certain claims' decisions or disclosures impossible.

The DOL will continue to monitor the effects of the COVID-19 outbreak and may provide additional relief when necessary.

5/4/20

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