

CARES Act Update on EBSA Disaster Relief Notice 2020-01

April 30, 2020

On April 29 2020, the Employee Benefit Security Administration (“EBSA”), a division of the Department of Labor (“DOL”), issued [Disaster Relief Notice 2020-01](#), which contains items impacting retirement plans subject to ERISA. This communication provides a summary of those items.

<p>Under the CARES Act, the DOL was granted authority to extend filing deadlines – have they done so?</p>	<p>Yes. EBSA Disaster Relief Notice 2020-01 contains two extensions of filing deadlines:</p> <ul style="list-style-type: none"> • The Form 5500 filing requirement was extended by the IRS until July 15, 2020, for any filings due on or before July 15, 2020. The DOL has provided guidance that they concur with the extension; • The Form M-1 due dates prior to July 15, 2020, for Multiple Employer Welfare Arrangements (MEWAs) have been extended until July 15, 2020, by the DOL. <p>Plan Sponsor Takeaway: Plan Sponsors have additional time to file these forms.</p>
<p>Was there any relief provided with respect to participant notifications?</p>	<p>Yes. The DOL has extended the deadline to provide certain notices, disclosures, and other documents required by Title I of ERISA which are due on or after March 1, 2020, until 60 days after the announced end of the Covid-19 National Emergency. The notices, disclosures, and other documents includes all types of documents that are not due under a joint jurisdiction agreement, such as Form 5500.</p> <p>Plan Sponsor Takeaway: Disclosure notices such as Summary Plan Descriptions, Summaries of Material Modifications, Summary Annual Reports, and Participant Statements due on or after March 1, 2020, will be eligible for the extension until 60 days after the announced end of the Covid-19 National Emergency. As discussed below, blackout notices are treated differently but did receive some separate relief.</p>
<p>Was there any relief provided with respect to notification of black-out periods?</p>	<p>Yes. In addition, EBSA notice 2020-01 addressed blackout notices. Blackout notices are generally required to be provided 30 days in advance of the blackout period. There is an exemption to the 30-day advance notice in the regulations for circumstances beyond the control of the plan administrator. The DOL has determined that Covid-19 is beyond the control of the plan administrator and therefore waives the formal written documentation requirement to support the “circumstances beyond the control.” As such, the notice can be provided less than 30 days before the beginning of the blackout period.</p> <p>Plan Sponsor Takeaway: Plan Sponsors considering changing investments in a plan are still required to meet the duty of prudence when making changes. Additionally, although the DOL provides relief on blackout notices, we recommend providing participants as much advanced notice as possible when changing investments in a plan.</p>
<p>Is there relief for Plan Sponsors submitting contributions and loan repayments to the plan?</p>	<p>Yes. The DOL extended the period the plan sponsor must remit participant contributions and plan loan repayments due on or after March 1, 2020 through 60 days after the announced end of the Covid-19 National Emergency. Such contributions must now be submitted as soon as administratively feasible under the circumstances, even if this is after the 15th day of the calendar month after the month such amounts were withheld from the participant’s payroll.</p> <p>Plan Sponsor Takeaway: Even with the extension, the funds must still be remitted as soon as administratively feasible. We recommend Plan Sponsors maintain a consistent contribution schedule, if at all possible. If there is a need to delay remitting contributions, Plan Sponsors are encouraged to document those circumstances in their fiduciary file. Cash flow is not a reasonable excuse.</p>

<p>Did the DOL provide any relief with respect to distributions and plan loans?</p>	<p>Yes. EBSA notice 2020-01 allows corrective actions for failure to follow the terms of the plan with regard to distributions and loans under the following circumstances:</p> <ul style="list-style-type: none"> • The failure is solely related to the Covid-19 outbreak; • The Plan Administrator makes good faith efforts under the circumstances to comply with the requirements of the plan; and • The Plan Administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable. <p>Additionally, with regard to plan loans, a plan will not be treated as violating the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b-1, solely because:</p> <ul style="list-style-type: none"> • 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 • A qualified individual delayed making a plan loan repayment in compliance with the CARES Act. <p>It is important to note that the relief is limited to areas in which the DOL has jurisdiction, and the guidance was clear that this relief does not apply to areas in which the IRS has jurisdiction including but not limited to spousal consent.</p> <p>Plan Sponsor Takeaway: Even though DOL provides “good faith” standards with the ability to take remedial action, there are no standards on what constitutes “good faith.” In addition, because areas that the IRS has jurisdiction are not covered by the relief, we recommend Plan Sponsors continue to require appropriate documentation and compliance in advance of any loan or distribution. To the extent the documentation is subsequently determined to be insufficient, use the DOL guidance to attempt to retroactively remediate the defect.</p>
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As always, if any member of our team be of further assistance to you please contact us by calling (844) 776-2966.

Best Regards,

Procyon Partners

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