



May 2020

PENSION ANALYST COMPLIANCE BULLETIN



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DOL and IRS provide COVID-19 relief and guidance

In early April, the IRS and the PBGC extended certain deadlines in response to COVID-19. On April 28, the DOL also announced guidance for plan sponsors and participants in defined benefit and defined contribution plans that extends certain deadlines and provides other relief due to the outbreak. Some of this relief is similar to DOL guidance issued following past disasters. This publication will discuss the relief most relevant to retirement plan sponsors, [EBSA Disaster Relief Notice 2020-01](#) and the [Joint Notice issued by both the DOL and Department of the Treasury](#).

On May 4, the IRS posted [14 questions and answers](#) (Q&As) on its website regarding the special coronavirus-related distributions (CRDs) and loan provisions made available as a result of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). While the IRS Q&As address some questions regarding CARES Act administration, the IRS expects to issue additional formal guidance on CARES Act provisions in the near future to address additional questions.

Overview of DOL guidance and Joint Notice

DOL extended deadlines for ERISA disclosures

Under [the CARES Act](#), the DOL was granted authority to delay ERISA deadlines for up to one year due to the public health emergency. Under the relief in EBSA Notice 2020-01, the DOL provides good faith relief for furnishing certain required notices or disclosures to plan participants, beneficiaries and other persons that are due to be provided between March 1, 2020 and 60 days after the announced end of the outbreak. This period is called “the Outbreak period.” The plan and fiduciary must act in good faith and must provide notices *as soon as reasonably practicable under the circumstances*. 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.

Examples of ERISA disclosures subject to the relief include:

- Annual Funding Notices
- Summary Annual Reports (SARs)
- Summary Plan Descriptions (SPDs) and Summaries of Material Modifications (SMMs)
- Periodic benefit statements
- Participant fee disclosures
- Qualified default investment alternative (QDIA) notices
- Mapping notices
- Notices of Adverse Benefit Determinations and Appeals
- Blackout notices

In addition to the good faith relief described above, the DOL also provided relief from the blackout notice requirement that a plan administrator and fiduciary must make “a written determination” that the events are beyond the reasonable control of the plan administrator.

Notably, the DOL referred to the Form 5500 relief already provided in IRS Notice 2020-23 for filings due between April 1, 2020, and July 14, 2020, and did not provide a special extension for the Form 5500 deadline for calendar year plans.

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Plan loan and distribution procedures

For plan fiduciaries that fail to follow procedural requirements for plan loans and distributions under the terms of the plan, the DOL will not treat it as a failure if the below conditions are met:

- 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 those requirements; and
- The plan administrator makes a reasonable attempt to correct any procedures deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

This relief is limited to procedures under Title I of ERISA and does not extend to spousal consent or other IRS requirements.

The guidance also provides relief from the DOL's "adequate security" and "reasonably equivalent" requirements for plan loans for CARES Act loans and delayed loan repayments. As a result, the plan administrator will not need to obtain additional security for increased loan amounts that are consistent with CARES Act provisions.

Participant contribution and loan repayment timing

In addition, the DOL will not enforce the standard contribution timing requirements with respect to employee contributions or loan repayments that are temporarily delayed by plan sponsors or service providers (e.g. payroll processing services) due to COVID-19. Generally, these amounts must otherwise be forwarded to the plan on the earliest date the amounts can be reasonably segregated from the employer's general assets. Under the relief, plan sponsors and service providers must still act reasonably, prudently and in the interest of participants to remit these contributions as soon as practical under these circumstances.

General fiduciary compliance guidance

The DOL recognizes that affected participants and beneficiaries may encounter problems due to the COVID-19 outbreak. As a result, the guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefit payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with deadlines. The DOL also 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. The DOL's enforcement approach will emphasize compliance assistance and include grace periods and other relief where appropriate.

The Joint Notice also extends the timeframe during which certain actions must take place in connection with the plan's claims procedures. Specifically, all ERISA-covered plans must disregard the Outbreak period for all plan participants, beneficiaries, and claimants in determining the deadlines for filing a claim for benefits and for filing an appeal of an adverse benefit determination.

IRS questions and answers

In the series of Q&As posted to the IRS website, the following clarifications were made:

- The dates CRDs can be made include January 1, 2020 to December 30, 2020. Thus, the Q&A clarifies that a distribution made on December 31, 2020 will not be treated as a CRD. Likewise, the IRS clarified that the increased loan limits are available until September 22, 2020 (not September 23, as originally expected).
- The IRS is working on additional guidance for the retirement plan relief provided by the CARES Act and anticipates that the CARES Act guidance will apply the principles of guidance provided in [Notice 2005-92](#), which was provided following the Katrina Emergency Tax Relief Act of 2005 (KETRA).

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- The Treasury and IRS may issue guidance expanding the list of factors to be taken into account to determine whether an individual is a qualified individual as a result of experiencing adverse financial consequences. The agencies have received and are reviewing comments from the public requesting that the list of factors be expanded.
- A CRD-qualified participant is able to treat a distribution as a CRD for tax purposes, even if the plan chooses not to offer them.
- The IRS expects to issue a Form 8915-E before the end of the year, which the participant may use when filing his or her federal income tax return to determine the amount of any CRD includible in income for a year and to report any repayment of a CRD. The CRD can be taxed entirely in 2020 or ratably over three years. The participant can repay within three years. If taxes have been paid before the repayment is made, the participant may file amended returns to claim a refund of the tax paid in prior years.
- A CRD is treated as meeting the distribution restrictions for a 401(k), 403(b), or 457(b) plan, even if it would occur before an otherwise permitted distributable event (such as severance from employment, disability, or age 59 1/2). However, the CARES Act did not otherwise change limits on when plan distributions may be made from employer-sponsored retirement plans. For example, a pension plan (including money purchase plans) may not make a distribution before an otherwise permitted distributable event merely because the distribution would qualify as a CRD. Also, pension plans must continue to follow qualified joint and survivor annuity rules.
- Repayments of CRDs are to be treated as rollover contributions. However, plans that do not currently accept rollover contributions are not required to change plan terms to accept them. Additional guidance will be necessary to determine whether plans that accept rollover contributions must also accept CRD repayments.

Next steps

The DOL will continue to monitor the effects of the COVID-19 outbreak and may provide additional relief as warranted. The IRS also expects to provide additional guidance on CARES Act provisions. Prudential will keep you posted as additional relief and guidance is expected.

Compliance Bulletin by Prudential Retirement

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