

CLIENT ALERT: Employee Benefits Update – DOL Guidance

CLIENT ALERT | 05.2020

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Employee Benefits

One of the major challenges presented by COVID-19 is complying with time-sensitive deadlines. Following the lead of other agencies, the Department of Labor (“**DOL**”) recently issued a notice (the “**Notice**”) and FAQs providing deadline relief and guidance to employee benefit plans, sponsors, fiduciaries, participants and beneficiaries subject to the Employee Retirement Income Security Act (“**ERISA**”). The Notice generally applies to the period between March 1, 2020 and 60 days after the announcement of the end of the COVID-19 national emergency or such other date as announced by the DOL in future guidance. We note that the end of the COVID-19 national emergency has not been announced yet.

A. Extension of Certain Timeframes for Employee Benefit Plans

The Notice extends the deadlines for notices, disclosures and other documents required by Title I of ERISA. It is important to note that this extension only applies to documents over which the DOL has sole interpretative and regulatory authority (documents and certain extensions that are subject to both ERISA and the Internal Revenue Code are outside the scope of the Notice). Some of the more common documents that are within the scope of the Notice include:

- Summary Plan Descriptions;
- Summaries of Material Modifications;
- Summary Annual Reports;
- QDRO notices;
- Periodic pension benefit statements;
- QDIA notices;
- Mapping notices;
- Notices of Adverse Benefit Determinations and Appeals;

- Notification of Benefit Determination; and
- Annual Funding Notices.

The plan and responsible fiduciary must act in good faith and provide the required document as soon as administratively practicable under the circumstances. “Good faith” in this context includes the use of electronic communication such as email and text messages.

B. Noncompliance Relief for Verification Requirements for Plan Loans and Distributions

An employee pension benefit plan that does not follow the procedural requirements (as set out in the terms of the plan) will not be treated as a failure provided that (i) the failure is solely attributable to COVID-19; (ii) the plan administrator makes a good faith, diligent effort under the circumstances to comply with the requirements; and (iii) the plan administrator makes a reasonable attempt to correct any procedural deficiencies as soon as administratively practicable. As above, this provision only applies to verification requirements over which the DOL has sole interpretative and regulatory authority.

C. Coordination with CARES Act

The CARES Act temporarily changed some of the requirements with respect to plan loans. The Notice confirms that these changes will not violate ERISA. Furthermore, a plan will be considered as operating in accordance with the terms of an amendment that provides for the relief described in Section 2202 of the CARES Act if such amendment is made on or before the last day of the first plan year beginning after on or after January 1, 2022 (or a later date prescribed by the Department of the Treasury) and complies with the requirements as set forth in the CARES Act.

D. Limited Enforcement Moratorium

The DOL will not take enforcement action against employers who fail to timely forward participant contributions or loan repayments to a plan if the failure is solely attributable to COVID-19 and the employer must “act reasonably, prudently, and in the interest of employees” to comply as soon as administratively practicable under the circumstances.

E. Blackout Notice Relief

The administrator of an individual account plan is required to provide 30-day advance notice to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited or restricted by a blackout period, but there is an exception available if the inability to provide advance notice is due to an event beyond the reasonable control of the plan administrator. The extension relief discussed in A above applies to blackout notices. The DOL also explicitly states that pandemics are by definition beyond the plan administrator’s control.

F. Form M-1 Relief

The due date for filing Form M-1 (for multiple employer welfare arrangements and certain entities claiming exception) that was originally due between April 1, 2020 and July 14, 2020 is extended to July 15, 2020 (in accordance with earlier relief granted to Form 5500 filings).

G. Conclusion

COVID-19 has caused problems for plan participants and for plan administrators. The DOL recognizes this and states that the “guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing.” During this time, the DOL will work with plan participants and plans in general to provide “grace period and other relief where appropriate.” Despite the generous relief provided, plan administrators do not have carte blanche to disregard their duties and must act with good faith to the extent possible during these tumultuous times.

We are continuously monitoring changes and guidance, and we will provide updates as they become available.

Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the CARES Act stimulus programs (i.e., the PPP and EIDL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage and litigation.

Please contact the Olshan attorney with whom you regularly work or one of attorneys listed below if you would like to discuss this client alert or have questions about its content.

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