



# DOL gives retirement plans and participants pandemic relief

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Retirement plan sponsors, service providers and participants will welcome some anxiously awaited COVID-19 relief from the Department of Labor (DOL). The relief comes in two parts:

- [Notice 2020-01](#) grants plan sponsors and service providers extra time to provide required notices and disclosures — including the annual funding notice for defined benefit plans, which would have been due April 29 for calendar-year plans — and to complete certain other plan-related actions. The notice also provides relief from ERISA’s plan loan requirements for loans issued or suspended under the Coronavirus Aid, Relief, and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)).
- A [final rule](#) issued jointly with the Treasury Department gives participants and beneficiaries additional time to file benefit claims and appeal adverse benefit determinations (in addition to extending several other deadlines for health plans and their participants).

DOL has also issued a set of [FAQs](#) to help retirement and health plan participants, beneficiaries and sponsors understand their rights and responsibilities under ERISA. This article focuses on the relief for retirement plans; a separate GRIST will review provisions for health and welfare plans.

## Relief during the outbreak period

The relief generally applies during the “outbreak period,” defined as the period from March 1 through 60 days after the announced end of the COVID-19 national emergency. If the outbreak period ends at

different dates in different parts of the country, DOL will issue additional guidance regarding the application of the relief.

Notice 2020-01 also points out the Form 5500 deadline relief previously announced by IRS. That relief extends until July 15 the deadline for any Form 5500 filings otherwise due on or after April 1 through July 14. DOL's new guidance doesn't provide any additional filing extension for Form 5500.

## **Relief for required notices and disclosures**

Under Notice 2020-01, a plan and its responsible fiduciary will not be treated as violating ERISA for failing to deliver any ERISA notice or disclosure due during the outbreak period, as long as they make a good-faith effort to deliver the notice or disclosure "as soon as administratively practicable." Plan sponsors may not rely on this to relief to delay notices indefinitely, but won't be penalized if circumstances make meeting delivery deadlines impossible during the national emergency. This guidance applies to employee benefit plans, including retirement, health and welfare plans.

### **E-delivery allowed**

As part of a good-faith effort to deliver required documents, plan sponsors and administrators may use electronic-delivery methods, such as text messages, emails or websites, as long as the plan fiduciary reasonably believes recipients have effective access to those means of communication. Sponsors and administrators can apparently use electronic delivery even if DOL's current rules or 2019 proposed regulations wouldn't allow it.

### **Notices and disclosures covered**

The relief applies to all notices and disclosures (except those addressed in the joint DOL and Treasury Department final rule) required under Title I of ERISA and subject to DOL's interpretive and regulatory authority. For retirement plans, these documents include but are not limited to the following (see DOL's [Reporting and disclosure guide for employee benefit plans](#) for a comprehensive list):

- **Notices and disclosures that typically apply to defined benefit and defined contribution plans**

- Individual benefit statements
- Statement of accrued and vested benefits for terminated participants
- Summary plan description (SPD), plan documents and summary of material modifications (SMM)

- **Notices and disclosures that typically apply to defined benefit plans**

- Annual funding notice

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- Notice of significant reduction in future benefit accruals (ERISA Section 204(h) notice)
- Notice of funding-based benefit restrictions under Internal Revenue Code Section 436
- Suspension of benefits notice
- **Notices and disclosures that typically apply to defined contribution plans**
  - Notice of blackout periods
  - Qualified default investment alternative notice
  - Automatic contribution arrangement notice
  - Section 404(c) disclosures for participant-directed accounts
  - Plan and investment fee disclosures
  - Plan service provider disclosures

### **Relief for other plan-related acts**

The notice also provides relief from certain requirements for remitting participant contributions or loan repayments, verifying that loans and distributions conform to plan terms, and providing advance notice of blackout periods.

### **Participant contributions and loan repayments**

DOL won't pursue enforcement action against an employer for a temporary delay — due solely to the COVID-19 pandemic — in forwarding participant contributions or loan repayments to a plan. This usually must occur by the 15th business day of the month after the month in which the amounts were paid to or withheld by the employer. However, employers and service providers still must act reasonably, prudently and in the interest of employees to forward amounts as soon as practicable under the circumstances.

### **Verification procedures**

DOL will not treat a plan as failing to follow its procedural requirements for plan loans and other distributions if the failure is solely attributable to the COVID-19 outbreak, and the plan administrator makes a good-faith, diligent effort under the circumstances to comply with the requirements. The administrator must also make a reasonable attempt to correct any deficiencies (e.g., assembling missing documentation) as soon as administratively practicable. This relief applies only to verification

requirements under Title I of ERISA, and not to any procedural requirements enforced by Treasury or IRS (e.g., obtaining spousal consent).

### **Blackout notices**

ERISA requires the plan administrator of an individual account plan to provide 30 days' advance notice of a blackout period suspending participants' ability to direct investments or obtain plan loans or other distributions. An exception applies when a plan fiduciary determines in writing that events beyond the administrator's reasonable control prevent sending advance notice. The relief for participant disclosures discussed above applies to blackout notices, and DOL won't require a written determination from a fiduciary.

### **CARES Act loans and suspensions**

Until Sept. 22, the CARES Act allows plans to make loans to up to the lesser of \$100,000 or 100% of a qualified individual's vested benefit (instead of the usual limit of \$50,000 or 50% of the vested benefit). The act also allows qualified individuals to suspend repayment of any plan loan for the remainder of 2020, if subsequent payments are adjusted for the delay. ERISA requires plan loans to be available on a reasonably equivalent basis and adequately secured, with no more than 50% of a participant's account used as security. DOL will not treat a plan as violating ERISA's plan loan requirements solely because the plan made loans or suspended loan repayments under the CARES Act.

### **Fiduciary compliance guidance**

The notice explains DOL's general approach to enforcement during the COVID-19 emergency. To prevent loss or undue delay of benefits due to failure to meet established deadlines, the notice advises plan sponsors to make "reasonable accommodations" for participants and beneficiaries adversely affected by the COVID-19 outbreak. But DOL understands that plans and service providers may not be able to fully comply with requirements for claims processing and other actions required by ERISA. The agency will emphasize compliance assistance (rather than penalties) and provide grace periods and other relief where appropriate.

### **Rule extends time to file claims**

The new rule extends the time for retirement plan participants and beneficiaries to take action under a plan's claims procedures. The relief requires plan sponsors and administrators to disregard the outbreak period when determining participant deadlines for filing initial claims, appealing adverse benefit determinations, and requesting external review of an adverse benefit determination (or providing information to perfect such a request).

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*Example.* Assume the national emergency ends May 31, so the outbreak period ends 60 days later on July 30. On April 15, a participant received a notice of an adverse benefit determination, with 60 days to file an appeal. The participant ordinarily would have to file the appeal by June 14. However, under the relief, the 60-day appeal period begins after the outbreak period ends, so the participant has until Sept. 28 to appeal.

### Related resources

#### Non-Mercer resources

- [Final rule](#): Extension of certain timeframes for employee benefit plans, participants and beneficiaries affected by the COVID-19 outbreak (Federal Register, May 4, 2020)
- [Disaster relief notice 2020-01](#) (DOL, April 29, 2020)
- [News release](#) (DOL, April 29, 2020)
- [COVID-19 FAQs for participants and beneficiaries](#) (DOL, April 29, 2020)
- [Reporting and disclosure guide for employee benefit plans](#) (DOL, September 2017)

#### Mercer Law & Policy resources

- [IRS, PBGC issue employee benefit plan relief for COVID-19 pandemic](#) (April 16, 2020)
- [Delving into CARES Act for retirement plan participants](#) (April 10, 2020)
- [Stimulus bill gives 2020 DB funding relief, access to DC savings](#) (March 26, 2020)

#### Other Mercer resources

- [Stay informed on the coronavirus](#) (regularly updated)

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