



# IRS, PBGC issue employee benefit plan relief for COVID-19 pandemic

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IRS [Notice 2020-23](#) extends until July 15, 2020, the deadline for certain employee benefit plan filings and other actions normally due from April 1 through July 14. The extension triggers PBGC's [disaster relief policy](#), which automatically applies any extended Form 5500 deadline to certain agency filings. While the extensions help employers and retirement plan service providers deal with business disruptions from the COVID-19 pandemic, more agency relief is needed. Key provisions of the IRS notice assist only certain noncalendar-year plans. In addition, the Department of Labor (DOL) has yet to issue any retirement plan relief — including for the upcoming April 29 deadline for annual funding notices and for plans offering loans under the Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)).

## IRS relief

The July 15 deadline applies to certain employee benefit plan filings and other acts listed in [Rev. Proc. 2018-58](#), which include the following:

- **Forms 5500 and 8955-SSA.** The [Form 5500](#) annual report and [Form 8955-SSA](#) annual registration statement for participants with deferred vested benefits are due on the last day of the seventh month after the plan year ends. However, the employer can receive an automatic 2-1/2 month extension by filing Form 5558 by the same deadline. (If an employer's tax and plan years align, an extension of the employer's corporate tax return deadline automatically extends the 5500 deadline without the need to file the Form 5558.) Notice 2020-23 helps only those employers with certain noncalendar-year plans whose filing deadlines fall within the April 1 through July 14 window. The notice provides no relief for calendar-year plans, which, absent further relief, still must file by July 31 (unless the employer receives an automatic extension).

- **ADP and ACP testing failures.** The July 15 deadline also applies to corrections of ADP and ACP testing failures. A failure in any plan year generally must be fixed by the end of the next plan year. Excess amounts are subject to a 10% excise tax, unless the plan distributes or recharacterizes the excess within 2-1/2 months (six months for eligible automatic contribution arrangements) after plan year-end. Alternatively, the employer can avoid the excise tax by making corrective contributions by the end of the plan year after the year of the failure. As for the 5500 filing, the extended deadline helps only those employers making corrections for some noncalendar-year plans that would have had deadlines falling within the relief period.
- **Excess deferrals.** The relief extends the deadline for refunding elective deferrals exceeding the limit under Section 402(g) of Internal Revenue Code. For excess deferrals in 2019, the original correction deadline was April 15, 2020, for all plans (regardless of plan year).
- **Required minimum distributions (RMDs).** The CARES Act waives all RMDs for 2020 from defined contribution plans, but not defined benefit (DB) plans. Notice 2020-23 extends until July 15 the original April 1 date to make the first RMD for DB plan participants. However, since IRS issued Notice 2020-23 after April 1, this extension may have little practical effect.
- **Rollover deadlines.** Participants have 60 days to complete rollovers of distributions not paid directly to the receiving plan or IRA in a trustee-to-trustee transfer. For plan loan offsets upon termination of employment or plan termination, the rollover deadline is the participant's tax filing deadline for the year of the offset. All rollovers originally due from April 1 through July 14, 2020, now must be completed by July 15.
- **Self-correction of operational failures.** Under Self-Correction Program ([SCP](#)) of the Employee Plans Compliance Resolution System ([EPCRS](#)), the deadline for a plan to correct a significant operational failure is the end of the second plan year after the year the failure occurred. The relief extends self-correction periods originally scheduled to end between April 1 and July 15 — i.e., for operational failures that occurred in plan years starting May 1, June 1 and July 1, 2017.
- **Cafeteria plan elections.** For cafeteria plan years beginning April 1, May 1, June 1 or July 1, employers may give employees until July 15 to make new elections, even absent a change-in-status event. The notice is unclear whether these new elections must be prospective only or can apply retroactively to the beginning of the plan year. In addition, employees hired from April 1 through July 14 may have until July 15 to make elections — retroactive to their date of hire. This is possible even if the election date is beyond the prescribed 30-day timeframe normally afforded new-hire elections under proposed cafeteria plan rules. However, a plan would need an amendment reflecting this change.
- **FSA use-or-lose extension.** Participants in health and dependent care flexible spending arrangements (FSAs) with a plan year (or grace period, if applicable) ending April 1 through July 14 may have until July 15 to incur reimbursable expenses. For example, if a health FSA's plan year ends

April 30 without any grace period, participants nevertheless may have until July 15 to incur eligible medical expenses and have them reimbursed from the 2019 FSA balance. A plan again would need an amendment reflecting this change.

- **Cashout of unused elective vacation days.** For cafeteria plan years ending April 30, May 31 or June 30, the deadline for participants to use elective vacation days or receive taxable cash payment for those unused days is extended to July 15. A plan once again would need an amendment reflecting this change.

## **PBGC relief**

PBGC's disaster relief policy states that whenever IRS extends the Form 5500 deadline, most PBGC due dates that fall during IRS's relief period are extended to the same deadline. Accordingly, certain PBGC filing deadlines due on or after April 1 are extended to July 15.

**ERISA Section 4010 filings.** PBGC's relief extends the 4010 filing deadline until July 15 for employers with fiscal years starting Jan. 1 through April 1. The July 15 deadline also applies for employers whose controlled-group members have different fiscal years.

**Premium filings.** Premium filings for single-employer DB plans are due on the 15th day of the 10th month of the plan year. PBGC's relief doesn't extend the deadline for calendar-year plans, whose filings aren't due until Oct. 15. However, the relief does apply to plans with plan years starting July 1, Aug. 1 and Sept. 1. For these plans, filings for plan years starting in 2019 were due April 15, May 15 and June 15, respectively.

**Filings not extended.** The automatic extension does not apply to certain filings PBGC considers particularly important or time-sensitive, and which may indicate a high risk of harm to pension plan participants or the agency's insurance program. However, employers can request individual extensions for the filings. These filings include:

- Advance notices of reportable events ([Form 10-Advance](#))
- Notices of large missed contributions ([Form 200](#))
- Post-event notices ([Form 10](#)) for the following five reportable events under ERISA Section 4043:
  - Failure to make required contributions under \$1 million
  - Inability to pay benefits when due
  - Liquidation

- Loan default
- Insolvency or similar settlement
- Actions related to distress terminations for which PBGC has issued a distribution notice

## DOL relief

DOL has already issued guidance, FAQs and a temporary regulation on the two new COVID-19 emergency paid leaves. In addition, DOL, along with IRS and the Department of Health and Human Services, have issued clarifying FAQs on the mandate for group health plans and issuers — but not retiree-only plans — to cover COVID-19 testing and related services (including serological tests for antibodies) without participant cost-sharing. However, additional DOL guidance would be helpful on a number of health plan issues, such as expanded midyear enrollment opportunities and flexible rules for telehealth programs.

## Retirement plan relief still lacking

In addition, DOL has yet to issue any relief for retirement plans and their sponsors. This may reflect the greater urgency for guidance on COVID-19–related leave benefits and health plan coverage. However, retirement plan sponsors need relief in several areas, including:

- **Annual funding notice (AFN).** In general, DB plan administrators must provide the AFN within 120 days after the notice year ends. For calendar-year plans, the deadline to provide the 2019 AFN is April 29, 2020. Under current DOL rules, administrators can deliver the AFN electronically, but only if they first obtain participants' consent. With the deadline fast approaching, administrators may have difficulty obtaining this consent from former employees who haven't already agreed to electronic communications. Office shutdowns or closures of third-party vendors may make it impossible for employers to print and mail paper copies of the notice.
- **CARES Act loans.** The CARES Act allows plans to make loans up to the lesser of \$100,000 or 100% of the participant's vested account balance — twice the normal limit — to participants who are diagnosed with COVID-19, have a spouse or dependent diagnosed with the disease, or experience certain adverse financial consequences due to the pandemic (regardless of any diagnosis). However, the increased loans could violate certain ERISA Title I requirements. Under Title I, plans must make loans available on a reasonably consistent basis and generally cannot use more than 50% of the vested account balance to secure the loan. In the past, DOL has granted relief from these requirements after Congress authorized identical loans for other disasters.
- **Participant contributions and loan repayments.** Retirement plan contributions or loan repayments withheld from an employee's wages must be forwarded to the plan as soon as those amounts can

reasonably be segregated from the employer's general assets, but no later than the 15th business day of the next month after the amounts were withheld by the employer. For past disasters, DOL granted relief from these deadlines, but the agency has yet to make any relief available for employers and service providers during the pandemic.

- **Blackout notices.** Plan administrators of individual account plans must provide 30 days' advance notice to participants and beneficiaries whose rights to direct investments or obtain loans or other distributions will be temporarily suspended, limited or restricted. DOL regulations provide an exception when a plan fiduciary makes a written determination that events beyond the administrator's control prevent advance notice. Again, DOL has provided relief from this written determination requirement for past disasters, but has yet to do so for the pandemic.

## Related resources

### Non-Mercer resources

- [Notice 2020-23](#) (IRS, April 9, 2020)
- [Press release: PBGC provides relief to mitigate effects of COVID-10 pandemic](#) (PBGC, April 10, 2020)
- [Pub. L. No. 116-136, CARES Act](#) (Congress, March 27, 2020)
- [Notice of PBGC disaster relief policy](#) (Federal Register, July 2, 2018)

### Mercer Law & Policy resources

Links to any resources on Mercer Link are accessible to Mercer consultants. Clients and prospects may contact their consultants for copies or access 2019 and later GRISTs via the Law & Policy Group's [webpage](#) and [library](#) on [www.mercer.com/our-thinking.html](http://www.mercer.com/our-thinking.html).

- [Delving into CARES Act relief for retirement plan participants](#) (April 10, 2020)
- [DOL and IRS issue COVID-19 guidance on emergency paid leave](#) (April 9, 2020)
- [SECURE, CARES acts change rules on required minimum distributions](#) (April 7, 2020)
- [CARES Act boosts telehealth, makes other health, paid leave changes](#) (March 27, 2020)
- [Stimulus bill give 2020 DB funding relief, access to DC savings](#) (March 26, 2020)
- [IRS extends income tax filing, HSA contribution deadlines](#) (March 25, 2020)

- [Mercer urges more healthcare, paid leave legislation and guidance](#) (March 24, 2020)
- [Virus aid legislation includes cost-sharing curbs, new leave rights](#) (March 18, 2020)

### Other Mercer resource

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

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