

COVID-19 Update: Additional Relief from the DOL for Employers During the Pandemic Outbreak Period

On April 29, 2020, the Employee Benefit Security Administration ("EBSA") of the Department of Labor ("DOL") issued Disaster Relief Notice 2020-01 ("Notice 2020-01"),¹ in response to the COVID-19 outbreak which was declared a national emergency by Presidential proclamation on March 13, 2020 (the "National Emergency"). Notice 2020-01 has been coordinated with the Internal Revenue Service (the "IRS"), and the Department of Health and Human Services ("HHS").

Notice 2020-01 generally applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries and service providers subject to the Employee Retirement Income Security Act of 1974 ("ERISA"),² and provides an extension of certain deadlines for furnishing required notices, disclosures and other documents required by Title I of ERISA. The relief provided under Notice 2020-01 generally is not intended to overlap with, but is in addition to, the relief covered in the related joint notice IRS/DOL notice that was published in the Federal Register on May 4, and discussed in detail in our prior alert (available [here](#)).

Relief During Outbreak Period

Notice 2020-01 has effect from March 1, 2020 until 60 days after the announcement of the end of the National Emergency, or such other date announced by the Department of Labor (the "Outbreak Period").³

Good Faith Delay

Notice 2020-01 states that an employee benefit plan and the responsible plan fiduciary will not violate ERISA by failing to furnish a notice, disclosure or document that must be furnished during the Outbreak Period, provided that the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Some of the notices, disclosures and documents covered by this relief could include summary annual reports, summary plan descriptions and summaries of material modifications, annual funding notices, fee disclosures and qualified default investment alternative notices. Good faith efforts will include using electronic forms of communication with plan participants and beneficiaries whom the fiduciary reasonably believes have access to such electronic form of communication. Electronic forms of communication may include email, text messages, and continuous access websites.

Plan Loans and Distributions

Failure by a plan to follow certain verification procedures with respect to plan loans or distributions imposed by the terms of the plan will not be treated by the DOL as a failure, provided 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 the plan procedures, and the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling missing documentation, as soon as administratively practicable. This relief is limited to verification requirements imposed by Title I of ERISA that are within the interpretative authority of the DOL, and specifically excludes spousal consents and other requirements imposed by the IRS.

Participant Contributions and Loan Repayments

Generally, amounts paid by a plan participant (or withheld from their compensation) as plan contributions or plan loan repayments constitute plan assets, which must be forwarded to the plan on the earliest date they can be reasonably segregated from the employer's general assets, but no later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer.

¹ The EBSA Disaster Relief Notice 2020-01 is available [here](#).

² HHS has indicated that it will adopt a temporary policy of measured enforcement to extend similar timeframes to non-Federal governmental group health plans and insurance offerors under the Public Health Services Act.

³ Notice 2020-01 also provides that if the National Emergency ends at different times in different parts of the country, the Agencies will issue additional guidance.

Notice 2020-01 provides that the DOL will not take enforcement action with respect to temporary delays in forwarding plan contributions or loan repayments during the Outbreak Period if the delay is **solely attributable to the COVID-19 outbreak** and the employers and service providers act reasonably, prudently and in the interest of employees to comply as soon as administratively practicable under the circumstances. Note that there is some lack of clarity with respect to the related excise tax under the Internal Revenue Code, but it appears that it is not intended that such tax would be imposed at this time.

Blackout Notices

Plan administrators of individual account plans whose participants rights under the plan will be temporarily suspended, limited, or restricted by a blackout period must generally provide 30 days' advance notice of such blackout period.⁴ An exception to this rule occurs when the advance notice is unable to be provided due to circumstances beyond the plan administrator's control and this is confirmed in writing by a fiduciary. Notice 2020-01 clarifies that the blackout notices are covered under the "Good Faith Delay" provisions described above. It also states that a fiduciary's written determination will not be required in this circumstance, as pandemics are, by definition, outside of the plan administrator's control.

General ERISA Fiduciary Compliance and Claims Processing

Notice 2020-01 indicates that the guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families, and that plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.

The DOL notes in Notice 2020-01 that plans and service providers may be unable to process claims and fulfill other ERISA requirements in a full and timely basis, and that the DOL will emphasize compliance assistance and provide grace periods and other relief where appropriate, citing, in particular when physical disruption to a plan or service provider's place of business has made compliance with claims or disclosures timeframes impossible.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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⁴ Examples of circumstances which would trigger a blackout notice include a period of suspension, limitation, or restriction of more than three consecutive business days on a participant's ability to direct investments, obtain loans or obtain other distributions from the plan.