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New DOL and IRS Regulations for Employee Benefits Plans, Participants, and Beneficiaries

Notices, Distributions, Loans, HIPAA, New Model COBRA Forms, Fiduciary Compliance Guidance

WEDNESDAY, JULY 29, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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New DOL and IRS Regulations for Employee Benefits Plans, Participants, and Beneficiaries

Wednesday,
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1:00pm EDT



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Meet the Speakers



Overview of DOL and IRS Guidance to COVID-19

- EBSA Notice 2020-01
 - Grants Broad Relief for Certain Requirements and Deadlines under ERISA.
 - Applies from March 1, 2020 until 60 days after the end of the “Outbreak Period”.
- Final Rule – Joint Notice Issued by IRS and DOL
 - Extension of certain timeframes for plans as well as deadlines for participants.
- IRS Notice 2020-29
 - Guidance for 125 Plans including Health FSAs, Dependent Care FSAs.



Overview of DOL and IRS Guidance to COVID-19

- IRS Notice 2020-33
 - Increases Health FSA carryover limit and allows HRAs to reimburse individual insurance policy premium reimbursement.
- IRS Notice 2020-50
 - Provides Guidance on CARES Act Coronavirus Related Distribution (“CRD”) and Loan Provisions.
- IRS Notice 2020-51
 - Provides Guidance on Required Minimum Distribution Waiver and Rollover Relief.



Overview of DOL and IRS Guidance to COVID-19

- IRS Notice 2020-52
 - Provides Guidance on Mid-Year Amendments to Certain Safe Harbor Plans.



Impact on Retirement Plans and Administration – EBSA Disaster Relief Notice 2020-01

- EBSA Disaster Relief Notice 2020-01
 - Outbreak Period – March 1, 2020 to 60 days after the announcement of the end of the National Emergency.
 - Notices and disclosures.
 - Timing of participant contributions.
 - Loan and distribution verification.



Impact on Retirement Plans and Administration – EBSA Notice 2020-01- General Guidance

- Limited Relief – Not a waiver of requirements.
- Amendment due date December 31, 2022 for calendar year plans.
- Act reasonably, prudently and in the interest of participants.
- Enforcement will emphasize compliance assistance and physical disruption to business.



Impact on Retirement Plans and Administration – EBSA Notice 2020-01-Notice and Disclosure

- No ERISA violation for failure to timely provide a notice if provide as soon as practicable.
- Includes disclosures required by Title I – includes blackout notice.
- Good faith includes electronic alternatives including email, text message and intranet sites.



Impact on Retirement Plans and Administration – EBSA Notice 2020-01 – Participant Contributions and Repayments

- Failure to follow plan verification procedures will be excused, but does not include spousal consent.
- Failure must be solely because of the COVID-19 outbreak.
- Use good faith diligent effort.
- Correct as soon as practicable.



Impact on Retirement Plans and Administration – EBSA Notice 2020-01 – Participant Contributions and Repayments

- General rule – as soon as possible.
- Remittance may be temporarily delayed.
- Must be related to COVID-19 outbreak.



Impact on Retirement Plans and Administration – EBSA Notice 2020-01 – Form 5500 and M-1 Filing

- Form 5500
 - No extension for calendar year plans.
 - IRS Notice 2020-23 extended Form 5500 filing deadline to July 15, 2020 for non-calendar year plans with deadlines falling on or after April 1, 2020 and before July 15, 2020.
- M-1 Filing
 - EBSA Notice 2020-01 provide M-1 filing relief for multiple employer welfare arrangements and certain entities claiming exception for the same period of time as the Form 5500 Annual Return/Report filing relief under IRS Notice 2020-23.



Impact on Retirement Plans and Administration – Final Rule

- Extends Claims Procedure Timeframes for Benefit Claims, Appeals and Denials.
 - Disregard Outbreak Period for all plan participants, beneficiaries and claimants.



Impact on Retirement Plans and Administration – IRS Notice 2020-50-Plan Loan and Distributions

- Optional Coronavirus Related Distributions
 - During 2020, expands distribution options and favorable tax treatment from qualified retirement, 403(a), 403(b) and government 457(b) plans and IRAs.
- Must be a Qualified Individual (Expanded by IRS Notice 2020-50)
 - A participant, the participant's spouse or dependent who is diagnosed with COVID-19
 - A participant, the participant's spouse or a member of the participant's household (someone who shares the principal residence) who experiences adverse financial consequences because of **one of the following events that occurred in connection with the COVID-19 pandemic:**



Impact on Retirement Plans and Administration – IRS Notice 2020-50-Plan Loan and Distributions

1. Being quarantined, furloughed, laid-off or having work hours reduced
 2. Having a reduction in pay or self-employment income
 3. Having a job offer rescinded or start date for a job delayed
 4. Being unable to work due to lack of childcare
 5. Closing or reducing hours of a business owned or operated by such individual
- CRDs up to \$100,000 between January 1, 2020 and December 31, 2020
 - Not subject to 10% early distribution tax.
 - Taxation can be pro-rated for 3 years.
 - Qualified Individual may repay the CRDs over 3 year period and reverse tax consequences of distribution.



Impact on Retirement Plans and Administration – IRS Notice 2020-50-Plan Loan and Distributions

- CRDs include loan offsets.
- CRD Repayment if permitted by the Plan Administrator is treated as a rollover contribution.
- No Section 402(f) rollover notice required.
- CRD is reported on 1099-R, using Code 1 or 2 in box 7 and subject to mandatory 10% withholding.
- For Qualified Individual to receive favorable tax treatment, the CRD must be reported on Form 8915-E.
 - Qualified Individual may take advantage of favorable tax treatment regardless of whether the Plan Administrator elects CRDs.



Impact on Retirement Plans and Administration – IRS Notice 2020-50-Plan Loan and Distributions

- Plan Administrator may rely on the individuals certification, unless the Plan Administrator has “actual knowledge” to the contrary.
- Safe Harbor for Plan Loan Suspensions for Plan Administrators who elect Loan Suspensions.
 - Applies to loan outstanding on or after March 27, 2020 or the due date of the loan occurs during the period beginning on March 27, 2020 and ending on December 31, 2020.
 - Plan loan repayment suspended for any period beginning no earlier than March 27, 2020 and ending no later than December 31, 2020.



Impact on Retirement Plans and Administration – IRS Notice 2020-50-Plan Loan and Distributions

- Loan repayments begin no later than January 1, 2021 and term of loan may be extended by 1 year from the date the loan was originally due to be repaid.
- Loan must be reamortized, including the interest accrued during suspension, over a period that is up to 1 year longer than the original term of the loan.
- **Nonqualified Deferred Compensation Relief**
 - CRD is deemed a hardship distribution for purposes of Code Section 409A allowing for the cancellation of deferral election.



Impact on Retirement Plans and Administration – IRS Notice 2020-50-Plan Loan and Distributions

- Safe Harbor for Plan Administrators Electing Plan Loan Suspensions.
 - Plan loan repayments may be suspended from March 27, 2020 through December 31, 2020.
 - Plan loan dollar amounts is increased from \$50,000 to \$100,000.



Impact on Retirement Plans and Administration – IRS Notice 2020-51-Required Minimum Distributions

- Rollover Treatment for certain RMDs.
 - Rollover into a qualified retirement plan for the following:
 - Distributions from a defined contribution plan paid in 2020 (or paid in 2021 for the 2020 calendar year for an employee who has a required beginning date of April 1, 2021) if the payments:
 - Equal the amounts that may have been RMDs in 2020 except for the CARES Act waiver, or
 - Are one or more payments that include the 2020 RMDs as part of substantially equal periodic payments made at least annually for the life of the participant or the joint lives of the participant and beneficiaries, or for a period of at least 10 years; and
 - Distributions that are paid in 2021 for a participant with a required beginning date of April 1, 2021, except for the CARES Act waiver.



Impact on Retirement Plans and Administration – IRS Notice 2020-51-Required Minimum Distributions

- 60-day rollover period extended through August 31, 2020 for participants who received distributions in 2020 as described on the previous slide.



Impact on Retirement Plans and Administration – IRS Notice 2020-52-Relief for Safe Harbor 401(k) Plans

- Allows mid-year suspension of employer contributions made on behalf of highly compensated employees (“HCEs”).
 - Any mid-year change that reduces only HCE contributions is not a reduction or suspension of safe-harbor contributions and will not cause the plan to lose safe-harbor status.
 - Updated safe harbor notice and an election opportunity must be provided to HCEs to whom the mid-year change applies.



Impact on Retirement Plans and Administration – IRS Notice 2020-52-Relief for Safe Harbor 401(k) Plans

- Temporary Relief for Mid-Year Reduction of Safe Harbor Contributions.
 - A Plan Amendment may be adopted between March 31, 2020 and August 31, 2020 reducing or suspending safe harbor contributions regardless of whether the employer is operating at an economic loss, or included the required suspension language in the safe harbor notice.
 - A Plan Amendment that is adopted between March 31, 2020 and August 31, 2020 reducing or suspending safe harbor non-elective contributions, must provide the supplemental safe harbor contribution by August 31, 2020 and the amendment cannot be retroactive.



Health and Welfare Plan Rules Coverage and Claims Procedure-Final Rule

- Claims Procedure – Benefit Claims, Appeals and Reimbursement Requests Deadlines do not begin to run until the Outbreak Period ends.
 - During the Outbreak Period there are no deadlines to file benefit claims or appeals.
- Extends External Review Request and for Perfecting Request for External Review.
 - Disregard Outbreak Period when determining the deadline within which the claimant must file an external review request or for perfecting external review request.



Health and Welfare Plan Rules Coverage and Claims Procedure-Notice 2020-29

- A Plan Sponsor may allow *prospective* election changes to employer sponsored health plans, health flexible spending accounts (FSAs) and dependent care FSAs.
 - Permitted during 2020 calendar year.
 - The basis for the election change does not need to satisfy the requirements under the Code Section 125 regulations.
 - Applies to all employees eligible to participate in the cafeteria plan.



Health and Welfare Plan Rules Coverage and Claims Procedure-Notice 2020-29

- Claims Period for Health FSAs and Dependent Care FSAs extended.
 - Plan Sponsor may allow participants to apply unused health FSA and dependent care FSA amounts remaining at the end of the grace period ending in 2020 or a plan year ending in 2020 (fiscal year plan year) to pay or reimburse health FSA or dependent care FSA expenses incurred through December 31, 2020.
 - Applies to cafeteria plans that have a grace period and cafeteria plans that have a carryover.
 - No impact on calendar year cafeteria plans with a carryover.



Health and Welfare Plan Rules Coverage and Claims Procedure-Notice 2020-33

- Maximum carryover amount for health FSAs permanently increased to an amount equal to 20% of the salary reduction contribution limit under Code Section 125, rounded to the next lowest multiple of \$10.
 - For 2020, the maximum carryover is \$550 (20% of \$2,750 (2020 maximum salary reduction contribution limit)).



Health and Welfare Plan Rules HIPAA Special Enrollment-Final Rule

- Extends deadline to request enrollment in a group health plan due to a special enrollment event (i.e., birth, adoption or placement for adoption, marriage, loss of other coverage, etc.).
 - Disregard Outbreak Period when determining the time period by which an individual must notify of a HIPAA special enrollment request.



Health and Welfare Plan Rules COBRA-Final Rule

- Extends 60-Day Qualifying Event Notice and Disability Extension Notice.
 - Disregard Outbreak Period when determining the time period by which a qualified beneficiary must notify the plan that a qualifying event occurred and/or of the disability determination.



Health and Welfare Plan Rules COBRA-Final Rule

- Extends 60-Day COBRA Election Period.
 - Disregard Outbreak Period when determining the time period by which a qualified beneficiary must elect COBRA continuation coverage.



Health and Welfare Plan Rules

COBRA-Final Rule

- Extends COBRA Premium Payment Deadlines.
 - Disregard Outbreak Period when determining the 45-day initial premium payment and 30-day subsequent payment deadlines to timely pay COBRA premiums.



Fiduciary Compliance Issues and Guidance- EBSA Notice 2020-01

- Act reasonably, prudently and in the interest of the covered workers and their families.
- Make reasonable accommodations.
- Enforcement will emphasize compliance assistance.
- Focus on physical disruption to business.



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