

# Voya Alert!

May 2020

## DOL Provides Relief for Certain Obligations of ERISA Retirement Plans

On April 28, 2020, the Employee Benefits Security Administration (EBSA), an agency under the Department of Labor (DOL), issued EBSA Disaster Relief Notice 2020-01 (Notice), to provide relief for Employee Retirement Income Security Act (ERISA) obligations under Title I of ERISA. The CARES Act had provided the authority for the DOL to provide such relief from such deadlines for up to one year. According to EBSA, the Notice has been coordinated with and reviewed by both the Department of the Treasury and the Internal Revenue Service (IRS).

Except as otherwise provided, the Notice applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and service providers subject to ERISA from March 1, 2020, the beginning of the national emergency declared by the President, until 60 days after the announcement of the end of the COVID-19 National Emergency or such other date as the DOL may announce in future guidance. This extension is available, provided that the ERISA plan and responsible fiduciary act in good faith and furnish any notice, disclosure, or document (as applicable) as soon as administratively practicable under the circumstances. EBSA notes that good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

This Notice is separate and distinct from relief provided under the CARES Act.

### **Retirement Plans Covered by the Notice**

An "employee benefit pension plan" is subject to Title I of ERISA unless it meets one of the following exceptions:

- A 401(a), 401(k), 403(b) or 457(b) plan of a governmental employer (including a public school);
- A Top hat 457(b) plan of a nonprofit organization;
- A 401(a), 401(k), and 403(b) plans of a church or church-related entity unless the plan administrator has irrevocably elected into ERISA for that plan;
- A 403(b) plan of nongovernmental/non-church 501(c)(3) organization that meet the non-ERISA regulatory safe harbor rules; and
- IRAs that do not have employer contributions or employer active involvement.

The Notice provides relief from the following ERISA requirements:

### **Verification Procedures for Plan Loans and Distributions**

If an employee pension benefit plan fails to follow procedural requirements for plan loans or distributions imposed by the terms of the plan, the DOL will not treat it as a failure if:

- the failure to follow such procedures is solely attributable to the COVID-19 outbreak;
- the plan administrator makes a good-faith diligent effort under the circumstances to comply with those requirements; and

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- the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

EBSA cautions that this relief does not extend to spousal consent requirements, which are under the jurisdiction of the Treasury Department and the IRS.

### **Participant Loans under the Enhanced Loan Limits**

The CARES Act increased the maximum loan available limit for eligible plan participants during the 180-day period following March 27, 2020 to the lesser of \$100,000 of the vested account balance (taking into account the outstanding balance of all other loans taken from plans of the employer) or 100% of the nonforfeitable value of the participant's account under the plan. In addition, the CARES Act and IRS guidance have permitted plan participants to defer loan repayment dates.

The Notice provides that the DOL will not treat any person as having violated the provisions of Title I of ERISA, including the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b-1, solely because: (1) the person made a plan loan to a qualified individual during the loan relief period in compliance with the CARES Act and the provisions of any related IRS notice or other published guidance; or (2) a qualified individual delayed making a plan loan repayment in compliance with the CARES Act and the provisions of any related IRS notice or other published guidance.

### **CARES Act Plan Amendments**

If an employee pension benefit plan is amended to provide the relief for plan loans and distributions described in section 2202 of the CARES Act, the DOL will treat the plan as being operated in accordance with the terms of such amendment prior to its adoption if: (1) the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date prescribed by the Secretary of the Treasury (or the Secretary's delegate), and (2) the amendment meets the conditions of section 2202(c)(2)(B) of the CARES Act.

### **Remittance of Participant Contributions and Loan Repayments**

ERISA provides that plan contributions and loan repayments taken from participant wages must be remitted to the plan's investment vehicle as soon as administratively feasible, but in no event later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer. DOL regulations provide safe harbors for remitting such amounts for ERISA plans with less than 100 participants and for ERISA plans with at least 100 participants. If the remittance is delayed solely due to the COVID-19 outbreak, the DOL will not take enforcement action with respect to such delay. The DOL cautions that employers and service providers remain obligated to act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

### **Blackout Notices**

In general, the administrator of a defined contribution plan subject to ERISA is required to provide 30 days' advance notice to participants and beneficiaries whose rights under the plan to direct or diversify assets credited to their accounts or to obtain loans or distributions will be temporarily suspended, limited, or restricted by a blackout period for more than three consecutive business days. The DOL will not require that blackout notices be provided in advance (including those required to be provided after the blackout period begins) or that the notice include a

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fiduciary's written determination of the blackout period's expected beginning and end dates. Further, the DOL will not require the written determination by a fiduciary pursuant to the regulation for blackout notices covered by this notice, as pandemics are by definition beyond a plan administrator's control.

**Form 5500**

Ordinarily IRS Form 5500 must be filed by the last day of the 7th month following the close of the plan year. The Notice provides that ERISA plans required to file a Form 5500 (Annual Return/Annual Report) between April 1, 2020 and July 14, 2020 have an extension of the due date to July 15, 2020. The IRS had previously provided this relief for Form 5500 filers within the IRS jurisdiction. To date, neither the IRS nor the DOL have provided additional relief for the deadline for Form 5500 returns for 2019 calendar-year plans remains July 31, 2020.

**General DOL Fiduciary Guidance**

In accordance with fiduciary obligations to act prudently, the DOL notes that plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefit payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.

Recognizing that there may be instances when plans and service providers may be unable to achieve full and timely compliance with claims processing and other ERISA requirements, the DOL notes that its enforcement policy will emphasize compliance assistance and include grace periods and other relief where appropriate, including when physical disruption to a plan or service provider's principal place of business makes compliance with pre-established timeframes for certain claims' decisions or disclosures impossible.

Voya will continue to monitor closely any additional IRS and DOL guidance.



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