

## COVID-19 Extensions of Time Provide Relief for Employee Benefit Plans

May 4, 2020

*Holland & Knight Alert*

[Robert J. Friedman](#) | [Christopher K. Buch](#) | [Betsy L. Luxenberg](#)

### Highlights

- The Internal Revenue Service (IRS) and Employee Benefits Security Administration (EBSA) have issued key notices and guidance providing extensions for filing deadlines and other administrative timeline requirements imposed on employee benefit plans.
- This Holland & Knight alert summarizes the important aspects of IRS Notice 2020-23, the IRS FAQ for Notice 2020-23, IRS Rev. Proc. 2020-29 and EBSA Disaster Relief Notice 2020-01, which aim to provide companies with relief on the stringent guidelines and deadlines ordinarily in place while ensuring companies remain compliant with applicable law during the coronavirus (COVID-19) pandemic.

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In response to COVID-19, the Internal Revenue Service (IRS) and Employee Benefits Security Administration (EBSA) have issued key notices and guidance that provide companies with extensions for filing deadlines and other administrative timeline requirements imposed on employee benefit plans. While the IRS Notices address deadline extensions for a multitude of employee benefit plans, the EBSA Notice specifically addresses modified timelines for employee benefit plans governed by the Employee Retirement Income Security Act of 1974, as amended (ERISA).

### IRS Notice 2020-23 and IRS Rev. Proc. 2020-29

[IRS Notice 2020-23](#) (Notice 2020-23) updates IRS Notice 2020-18 (Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic) as it pertained to the extension of certain deadlines for IRS Form 5500, including corrections of excess retirement plan contributions, plan loan repayments and rollover periods. Notice 2020-23 focuses on actions plan administrators may take in light of COVID-19. Foremost, Notice 2020-23 addresses extensions of the filing deadline for IRS Form 5500 for benefit plans whose plan year ended in September, October and November 2019 until July 15, 2020.

Prior to IRS Notice 2020-23, IRS Form 5500 filings were due to the IRS on the last day of the seventh month following the end of the benefit plan's plan year (For calendar year plans, that deadline is the subsequent July 31, though plan sponsors typically request an extension). The IRS Notice extends the Form 5500 filing deadline for any benefit plans whose plan year ended in September, October or November 2019 (which would have ordinarily been due in April, May and June 2020, respectively), as well as other plans that were permitted a filing extension during the April 1 and July 15 time frame, to July 15, 2020. It should be noted, however, that the IRS Notice did not extend the Form 5500 annual filing deadline for plans with a plan year ending of Dec. 31, 2019 (Calendar Year Plan). All Calendar Year Plans, as of the date of this writing, are still due to the IRS on July 31, 2020, unless the Calendar Year Plan has already been approved for a regular extension using IRS Form 5558. The regular extension for Calendar Year Plans extends the filing deadline until Oct. 15.

The IRS Notice also duly extended other deadlines to July 15, 2020, as follows:

- **Excess Contributions and Deferrals.** The deadline for companies to correct excess retirement plan contributions

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in connection with nondiscrimination testing failures and deferrals in excess of IRS limits for 2019, which are normally due by April 15, 2020, is extended to July 15, 2020.

- **Plan Loan Repayment.** Participants in defined contribution retirement plans can delay the repayment due on an existing plan loan, that was originally due between April 1, 2020, and July 14, 2020, until July 15, 2020.
- **60-Day Rollover Period.** Any participants rolling over funds from one defined contribution retirement plan into another, where the regular 60-day timeline falls between April 1, 2020, and July 14, 2020, may roll over those funds into the new plan until July 15, 2020.
- **83(b) Elections.** In connection with an individual's receipt of restricted property, including for certain equity rights such as restricted stock, the individual can choose to file an 83(b) election, pursuant to which he/she pays taxes on the total fair market value of the restricted property at the time it is received. Ordinarily, an 83(b) election must be made no later than 30 days after the date the restricted property was transferred. Notice 2020-23 extends this deadline to July 15, 2020, if the 30-day election period would end between April 1, 2020, and July 14, 2020.
- **Employee Stock Ownership Plans (ESOPs).** A number of ESOP provisions were also extended, including those related to: 1) diversification election periods, 2) distribution of C corporation stock dividends, 3) providing or exercising put options on employer stock distributed from the ESOP, 4) repurchasing employer stock following either a total or installment distribution, 5) the commencement of participant distributions and 6) the ability of a selling shareholder to purchase qualified replacement property for Code Section 1042 purposes.
- **HSAs and Archer MSAs.** Companies can advise participants that they can contribute to their Health Savings Accounts (HSAs) or Archer Medical Savings Accounts (MSAs) at any time up to July 15, 2020.

The IRS also notably expanded on its earlier Rev. Proc. 2020-1, which temporarily permitted electronic submission of requests for letter rulings, closing agreements, termination letters and information letters from the IRS Large Business and International Division (IRS LB&I). Note that [Rev. Proc. 2020-29](#) does not address requests for advice from the Small Business/Self-Employed Division, Wage and Investment Division, or Tax Exempt & Government Entities Division, for which the corresponding procedures were set forth in earlier revenue procedures, and are not addressed in this alert.

IRS Rev. Proc. 2020-29 creates the opportunity for companies to electronically submit requests for advice to the IRS LB&I if the submissions are: 1) transmitted by fax or compressed and encrypted email as permitted in section 4 of the revenue procedure, and 2) signed using the electronic signature procedures as set forth in section 5 of the revenue procedure. The revenue procedure ensures that there is still an option for paper submission. However, it is noted that paper submissions may delay the processing time, and as a result the IRS is encouraging electronic submissions. If companies have submitted paper filings to the IRS LB&I, but have not yet received a response, they are encouraged to submit a duplicate application electronically.

## EBSA Disaster Relief Notice 2020-01

As permitted by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the U.S. Department of Labor (DOL) maintains the authority under Section 518 of ERISA to postpone certain filing deadlines for a period of up to one year in the case of a public health emergency, such as the COVID-19 pandemic (See previous Holland & Knight alert, ["Implications for Retirement Plans Under the CARES Act, March 31, 2020"](#)). [EBSA Disaster Relief Notice 2020-01](#) (EBSA Notice) declares that the DOL is acting on its authority per Section 518 of ERISA to announce "an extension of deadlines for furnishing other required notices or disclosure to plan participants, beneficiaries, and other persons so that plan fiduciaries and plan sponsors have additional time to meet their obligations under Title I of ERISA during the COVID-19 outbreak." The EBSA Notice provides that as long as plans and the responsible fiduciaries "act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances," they

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will not be in violation of ERISA for failing to meet regular deadlines between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency. Plan sponsors are able to use alternative means of communication for such disclosures and notices including email, text messages and corporate intranets.

The EBSA Notice also announced other relief to ensure companies are able to meet the following benefit plan compliance requirements:

- **Plan Loans.** If a pension plan fails to follow procedural requirements for plan loans or distributions, where failure is attributed solely to COVID-19, then the DOL will not treat such failure as non-compliant if the plan administrator makes a good-faith diligent effort to comply and reasonably attempts to correct any procedural deficiencies as soon as administratively practicable.
- **Plan Amendments.** Plan amendments to a pension plan related to plan loans and distributions pursuant to the CARES Act will be deemed in compliance with the CARES Act if such amendment is adopted on or before the last day of the first plan year beginning on or after Jan. 1, 2022.
- **Participant Contributions and Loan Repayments.** In the event there is a delay in depositing certain funds for participant contributions and loan repayments due solely to COVID-19 between March 1, 2020, and 60 days following the announced end of the National Emergency, the DOL will not take enforcement action as long as companies act reasonably, prudently and in the interest of employees to comply.
- **Blackout Notices.** In the event that a plan administrator is unable to provide a blackout notice to participants in an individual account plan, such as a 401(k) plan, 30 days in advance due to COVID-19, the 30-day requirement is waived.
- **Form M-1 Filings.** Similar to the deadline extension for IRS form 5500 issued in IRS Notice 2020-23, the EBSA Notice extends the same deadlines for Form M-1 filings for multiple employer welfare arrangements.

The EBSA Notice's overarching guidance is for plans to act reasonably, prudently, and in the interest of participants and beneficiaries. The DOL acknowledges the unprecedented impact COVID-19 is exacting on employee benefit plans and has stated that enforcement efforts will focus on making accommodations to ensure compliance, including grace periods, and continue to issue relevant guidance in this evolving landscape.

## We Can Help

If you have any questions regarding your retirement plans and the potential impact of the new legislation on them, please contact the authors or another member of Holland & Knight's [Employee Benefits and Executive Compensation Group](#), including Partners [Ari Alvarez](#), [Kelly Bley](#), [Gregory Brown](#), [Kerry Halpern](#), [John Martini](#), [David Pardys](#), [Rachel Shim](#) and [Victoria Zerjav](#).

DISCLAIMER: Please note that the situation surrounding COVID-19 is evolving and that the subject matter discussed in these publications may change on a daily basis. Please contact your responsible Holland & Knight lawyer or the authors of this alert for timely advice.

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**Robert Friedman** practices in the area of ERISA, employee benefits and executive compensation. Since 1996, he has been the head of the firm's national Employee Benefits, Executive Compensation

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and ERISA Practice Group. Mr. Friedman is also co-chair of the ESOP (Employee Stock Ownership Plans) Practice Group. His clients include private, non-profit and governmental employers.

305.789.7791 | [robert.friedman@hklaw.com](mailto:robert.friedman@hklaw.com)



**Christopher K. Buch** is a Chicago business attorney who focuses on employee benefits and executive compensation matters. Mr. Buch represents Fortune 500 companies, publicly traded companies, private corporations and closely held entities on employee benefits matters including: qualified plans; employee stock ownership plans (ESOPs); non-qualified plans; health and welfare benefits; Affordable Care Act compliance; Health Insurance Portability and Accountability Act (HIPAA) compliance; Department of Labor (DOL) and Internal Revenue Service (IRS) audits and investigations; vendor contracting; fringe benefits; fiduciary investment advice; prohibited transactions; and corporate transactions.

312.715.5760 | [Christopher.Buch@hklaw.com](mailto:Christopher.Buch@hklaw.com)



**Betsy Luxenberg** is a business attorney in Holland & Knight's Tysons office who practices in the area of corporate services, with a particular emphasis on employee benefits and executive compensation. Ms. Luxenberg counsels employers and private and public tax-exempt entities on a variety of employee benefits issues, including qualified retirement plans and fringe benefits, as well as health and welfare plans arising under the Employee Retirement Income Security Act (ERISA), Internal Revenue Code (IRC) and the Affordable Care Act (ACA).

703.720.8017 | [Betsy.Luxenberg@hklaw.com](mailto:Betsy.Luxenberg@hklaw.com)