

IRS and PBGC Provide Pension and Other Relief in the Wake of COVID-19

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This week, the Internal Revenue Service (“IRS”) and Pension Benefit Guaranty Corporation (“PBGC”) both released helpful guidance intended to assist the individuals and organizations affected by the novel coronavirus (“COVID-19”). The guidance follows President Trump’s declaration of a federal emergency resulting from the COVID-19 pandemic under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Emergency Assistance Act”).

First, the IRS issued anticipated Notice 2020-23, postponing various tax and employee benefit related deadlines under the Code. Specifically, Notice 2020-23 automatically postpones the due date of many tax payments and filings, and extends many deadlines that would otherwise apply with regard to benefit plan administration under Code rules. Any such due date or deadline that would ordinarily fall on or after April 1, 2020 through July 14, 2020, is automatically extended to July 15, 2020. While this relief is welcome amidst the COVID-19 crisis, many Form 5500 filers are left without meaningful relief. For example, calendar year plans’ due date for the Form 5500 is July 30, 2020, outside the July 15th relief period. Without separate COVID-19 deadline extensions from Department of Labor (“DOL”) or PBGC, or an additional 90 day rolling extension from the IRS, the largest portion of employee benefit stakeholders are provided little meaningful relief during this disruptive national emergency.

Second, PBGC automatically extended due dates for required filings under Title IV of the Employee Retirement Income Security Act (“ERISA”). [1]

We summarize the new guidance below.

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IRS Disaster Relief

Unlike prior disaster relief, the Secretary of Treasury is providing nationwide relief for persons who have been adversely affected by COVID-19. An Affected Taxpayer is one who has a specified action, a Federal tax payment, Federal tax return or other filing obligation due on or after April 1, 2020, and before July 15, 2020. For example, filing Forms 990 that would have been due for calendar year filers on May 15, 2020 are now due July 15, 2020. Similarly, Form 990-T that would have been due for calendar year filers on April 15, 2020 are now due July 15, 2020.

Under Notice 2020-23, an Affected Taxpayer also includes any “person performing” (i.e., a plan that administers) one of 44-time sensitive actions related to employee benefits listed under Revenue Procedure 2018-58 that were otherwise due between April 1 and July 14, 2020, which are now due July 15, 2020. Among the timing rules that are affected are those relating to:

- filing Form 5500s;
- plan loan repayments;
- Code section 83(b) elections;
- certain Code section 72(t) relief (g., 10% early withdrawal tax);
- cafeteria plan rules under Code section 125;
- written requirement for establishing pre-established performance goals under Code section 162(m);
- timing of indirect rollovers;
- required minimum distributions under Code section 401(a)(9);
- distribution of excess deferrals, and corrective distributions for excess contributions/excess aggregate contributions;
- remedial amendment period;
- distribution of nondeductible contributions to avoid the 10 percent penalty under Code section 4972.

Indirect rollover relief is particularly significant, extending the 60 day rollover period to include previously distributed 2020 Minimum Required Distributions (“MRD”) made on or after February 1, 2020, to May 15, 2020. However, as of yet, the IRS has not provided relief for MRD payments made in January 2020 or after May 15, 2020.

Note that the deadlines extended are only those that fall within the April 1 to July 15 window. Therefore, they may have limited application for certain plans (for example, the extensions with regard to cafeteria plans are generally tied to rules relating to the beginning or end of the plan year, so they may not be relevant if the cafeteria plan year does not begin during the window).

Unfortunately, the IRS has not yet provided relief for calendar year employee benefit plans who file the Form 5500 Series, which without extension, remains due on July 31, 2020. Those with plan years ending September 30, October 31, or November 30 now have until July 15, 2020, to file their annual

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reports for the preceding plan year. Relief may also be available for non-calendar plans whose fiscal year ends as early as June 30 or July 30, provided they have filed for the automatic extension available under Form 5558. Remaining Form 5500 filers must file their annual reports or apply for extension without regard to the COVID-19 crisis.

PBGC Disaster Relief

Under ERISA section 4001(i), PBGC has the authority to extend due dates for required filings under Title IV of ERISA for those persons affected by a federal disaster declared by the President of the United States under the Emergency Assistance Act. In July 2018, PBGC published a notice providing for automatic PBGC disaster relief (1) when the IRS issues a news release announcing disaster relief for taxpayers, and (2) to the same extent as the relief granted to taxpayers by the IRS. [2] On April 10, 2020, PBGC issued an actual notice that confirmed they would be following IRS guidance.

Because PBGC automatically allows for the same disaster relief as the IRS, the deadlines for plan sponsors and administrators for certain PBGC filing and reporting requirements that fall between April 1, 2020, and July 15, 2020, are also extended to July 15, 2020 (or, if extended, the last day of the IRS relief period). As a result, plan sponsors and administrators will not, for the filings affected by the disaster relief, be subject to late filing penalties under ERISA sections 4071 or 4302, or late premium payment penalties under ERISA section 4007. Relevant deadlines extended by the IRS disaster relief period include:

- Comprehensive Premium Filings and payment of premiums (under the current relief, deadline extension is only for plans with a plan year ending in July or August)
- ERISA section 4010 filings for certain underfunded plans (e.g., for calendar year plans, the deadline to file information required under ERISA 4010 is usually April 14, but that deadline would be extended to July 15 under the current IRS disaster relief)
- Deadlines that are calculated based on the due date of another action that is subject to disaster relief (e.g., the deadline to file certain actuarial information under ERISA section 4010 by 15 days after the filing of a Form 5500), in which case the deadline is calculated based on the end of the IRS relief period
- Reportable event notices required under ERISA section 4043 (e.g., an active participant reduction or a controlled group breakup for which a post-event notice is due between April 1 and July 15) except the following:
 - Advance notices of reportable events (PBGC Form 10-Advance)
 - Post-event notices (PBGC Form 10) regarding—
 - Failure to make required contributions
 - Inability to pay benefits when due
 - Liquidation
 - Loan default
 - Insolvency or similar settlement

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- Notices of missed contributions over \$1 million (PBGC Form 200)
- Actions related to distress terminations for which PBGC has issued a distribution notice

To take advantage of this relief, the plan sponsor or administrator must notify PBGC of its eligibility for disaster relief on or before the last day of the IRS relief period. For most filings, unless PBGC provides specific instructions otherwise, the filer should, as soon as reasonably possible, but before the end of the relief period, send an email to PBGC notifying PBGC of the filer's eligibility for relief. The email should include (1) the number of the applicable IRS news release announcing the relief, (2) plan information (i.e., name and EIN/PN), and (3) the name and address of the person affected by the disaster (i.e., the sponsor, administrator, or service provider).

For premium filings, notice to PBGC must be done when submitting the Comprehensive Premium Filing prior to the end of the relief period; however, it is advisable to also send an email to PBGC in advance of the normal premium filing due date as notice to the PBGC that the filer is eligible for disaster relief. Additionally, if a premium filer does not anticipate it will be able to submit the Comprehensive Premium Filing by the extended due date, the filer must notify PBGC of the filer's eligibility for disaster relief prior to the new due date so that penalties and interest will be assessed from the end of the disaster relief period and not from the normal filing due date.

Note that even if disaster relief does not automatically extend a PBGC deadline (e.g., advance reportable event notices), filers may still request relief from PBGC on a case-by-case basis. Relief should be requested according to the process described in the instructions for a particular filing, or absent instructions, by contacting PBGC as soon as possible.

Conclusion

During the national COVID-19 crisis, any relief from the IRS and PBGC is welcome so that stakeholders can effectively and safely fulfil their obligations under the Code and ERISA. Stay tuned for continued updates on Federal tax payment and filing obligation relief as the COVID-19 pandemic continues to evolve.

[1] PBGC confirmed these deadline extensions in a press release issued on April 10, 2020. See <https://www.pbgc.gov/news/press/releases/pr20-02>

[2] See <https://www.pbgc.gov/prac/other-guidance/Disaster-Relief> for PBGC's general disaster relief announcement; 83 Fed. Reg. 30991.