

Limited Extension of Participant Contributions and Loan Repayments Deadlines

By: Alex Mattingly on May 5, 2020 on graydon.law

As mentioned in our [prior blog post](#), the DOL and IRS have recently [issued coordinated guidance](#) that provides relief for benefit plans by extending certain deadlines. This post examines the limited relief granted to retirement plans by extending the amount of time a plan has to distribute participant contributions and loan repayments into participant accounts to still be considered timely.

Employers are responsible for the timely transmittal of deferrals and loan repayments to participant accounts. Under DOL regulations, employee deferrals and loan repayments become plan assets (and therefore must be deposited in the plan trust to avoid a prohibited transaction) on the earliest date that the employer can reasonably segregate employee contributions from general assets, but not later than the 15th day of the month following the month in which the deferral is withheld from the employee's wages. What the DOL considers "reasonable" can vary from employer to employer, based on a number of factors; but most employers are reasonably able to segregate employee contributions within a few days from payroll, and some employers are reasonably able to make these transmissions as early as the same day as payroll. Failure to timely deposit employee contributions may result in penalties from the DOL and IRS, and can even lead to plan disqualification.

The DOL understands that employers and service providers have experienced interruptions due to COVID-19, and what might have been deemed "reasonable" before the pandemic may not be feasible during the pandemic. The DOL will therefore not take enforcement action with respect to a temporary delay in transmitting such contributions, but only if the delay was "solely on the basis of a failure attributable to the COVID-19 outbreak," and only if the employer has acted "reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances." The relief applies to all interruptions that occur during the period beginning March 1, 2020, and ending on the 60th day following the announced end of the National Emergency.

It is critical to recognize that the joint relief is not applicable to all situations. The cause of the delay must be COVID-19 related. While there is no guidance that provides a laundry list

of causes that are “solely related to COVID-19,” it is clear that not all failures that occur during the prescribed timeframe will qualify for this relief (e.g., delay in transmission due to a switch in TPAs likely wouldn’t be COVID related). Further, the length of the extension in time provided by the relief is limited. Employers must act “reasonably, prudently, and in the interest of employees.” Therefore, the delay in transmission should be temporary and in proportion to the cause of the delay.

While limited in nature, this relief may be very helpful for employers that experience delays in contributing contributions during this period. Our recommendation to employers that rely on this relief is that they should be carefully documenting both the reason for and the response to any COVID-19 related delay. Late deferrals are often brought to light during a plan’s internal audit for Form 5500 filings, which won’t occur until sometime next year. An employer wanting to take advantage of this relief should take the time now to record why the delay was solely attributable to COVID-19, and what actions it took to act reasonably and prudently in the best interest of its employees.