

# Agencies Extend Employee Benefit Plan Deadlines

Form 5500 filing due date postponed for certain non-calendar-year plans

By Stephen Miller, CEBS

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In response to the coronavirus pandemic, the IRS has postponed certain deadlines affecting employee benefit plans, including the deadline to file Form 5500 for plan years that ended from September through November 2019. The new deadline, announced in Notice 2020-23 (<https://www.irs.gov/pub/irs-drop/n-20-23.pdf>), is July 15, 2020.

The U.S. Department of Labor (DOL) issued its own deadline relief for benefit plans that comply with the Employee Retirement Income Security Act (ERISA).

## Form 5500 Relief

Form 5500 and related schedules and attachments are used to report the financial conditions, investments and operations of employee benefit plans ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/form-5500-reporting-in-2020.aspx](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/form-5500-reporting-in-2020.aspx)). Typically, the form is due on the last day of the seventh month (<https://www.irs.gov/Retirement-Plans/Form-5500-Corner>) after the plan year ends, with an optional two-and-a-half-month extension.

Under IRS Notice 2020-23, "Form 5500 filings for plan years that ended in September, October or November 2019, as well as Form 5500 deadlines falling between April 1 and July 15, 2020, as a result of a previously filed extension request are now due July 15, 2020 (<https://spotlightonbenefits.com/2020/irs-extends-filing-deadlines-for-employee-benefit-plans/>)," wrote Jason S. Luter, a partner in the Dallas office of law firm Faegre Drinker.

## SHRM RESOURCE SPOTLIGHT

Coronavirus and COVID-19 ([www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx](http://www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx))

## No Relief for Later Deadlines

The Form 5500 extension "will surely be welcome news for those June 30 plan year-ends that had filed for an extended deadline of April 15 (<https://www.asppa-net.org/news/browse-topics/irs-5500-extension-comes-short>) (the regular Jan. 31 deadline + 2.5 months)—and which will now have until July 15 to file," according to the American Society of Pension Professionals & Actuaries (ASPPA). However, the group added, "the news will be of little comfort to those plans with calendar year-ends—for which their July 31 deadline is fast approaching."

Brian Graff, CEO of the American Retirement Association, of which the ASPPA is an affiliate, told the ASPPA, "We certainly hope and expect that there will be further guidance automatically extending the Form 5500 deadline for calendar year plans from July 31 to October 15, particularly considering that the IRS Ogden Service Center has been shut down—and there is now no place to send the Form 5558 to ask

for an extension."

[*SHRM members-only HR Q&A: What is Form 5500, and where are instructions for completing it?* ([www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/whatisform5500andwhereareinstructionforcompletingit.aspx](http://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/whatisform5500andwhereareinstructionforcompletingit.aspx))]

#### 401(k) Deadline Relief

Notice 2020-23 also extends other benefit plan deadlines to July 15, 2020

(<https://www.ballardspahr.com/alertspublications/legalalerts/2020-04-15-federal-agencies-postpone-deadlines-for-employee-benefit-plan-matters>), as listed by law firm Ballard Spahr. The following are among the extended deadlines affecting 401(k) and other defined contribution retirement plans:

- **Plan loan repayments.** Participants who owe monthly plan loan repayments due from April 1 through July 14, 2020, now have until July 15, 2020, to make those repayments. However, plan sponsors are not required to implement the delay in loan repayments and may choose not to do so.
- **Refunding excess contributions.** For 401(k), 403(b) and governmental 457(b) retirement plans, employee contributions, made through elective payroll deferrals, are limited to an annual dollar amount. If employee elective deferrals exceeded 2019 contribution limits ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/2020-irs-401k-contribution-limits.aspx](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/2020-irs-401k-contribution-limits.aspx)), plans would be required to refund the excess and any related investment income to the participant by April 15, 2020. Under the IRS guidance, that deadline is extended to July 15, 2020. The extension also applies to correcting excess retirement plan contributions, which must be returned to highly compensated participants when a plan fails annual nondiscrimination testing, intended to ([www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/2019-irs-401k-contribution-limits.aspx#article-section-5](http://www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/2019-irs-401k-contribution-limits.aspx#article-section-5)) prevent plans from favoring high-earners or key employees.
- **60-day rollover period.** When a participant receives funds as an indirect rollover from a defined contribution retirement plan, that distribution may be rolled over tax-free to another eligible retirement plan, such as a new employer's 401(k) plan or an individual retirement account, no later than the 60th day after the day the participant received the distribution. If the end of the 60-day period falls from April 1 through July 14, 2020, the deadline is automatically extended to July 15, 2020.

Feedback

#### SHRM RESOURCE SPOTLIGHT

*Managing Communicable Diseases in the Workplace* ([www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx](http://www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx))

#### Defined Benefit Pensions

For defined benefit pension plans, the Pension Benefit Guaranty Corporation (PBGC) announced it will extend the deadline to July 15, 2020 (<https://www.pbgc.gov/news/press/releases/pr20-02>), for upcoming PBGC insurance premium payments and certain other required filings that would have been due from April 1 through July 14, 2020.

However, "notably absent [from IRS Notice 2020-23] was an extension for annual funding notices in defined benefit plans (<http://www.octoberthree.com/regulatory-update-april-2020/>)," which still needed to be distributed to participants and beneficiaries (or postmarked) by April 29, noted Mike Barry, a senior consultant with October Three, a retirement plan advisory firm.

Annual funding notices are required for all defined benefit plans and must be provided no later than 120 days after the end of each plan year—meaning that for pension plans using a calendar year, the 2020 deadline remains April 29 (due to the leap year).

### Health Savings Accounts

Under IRS Notice 2020-18 (<https://www.irs.gov/pub/irs-drop/n-20-18.pdf>), issued March 18, the grace period for health savings accounts (HSAs), during which employees can still contribute money to their HSA for tax year 2019, has been extended to July 15, 2020, from April 15, since the due date for filing federal income tax returns is now July 15 also. HSA holders can make 2019 contributions to their accounts up to last year's limits ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-2020-hsa-contribution-limits.aspx#article-section-2](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-2020-hsa-contribution-limits.aspx#article-section-2)) any time until the new deadline.

The relief also extends to July 15 (from May 31) the 60-day time frame for account holders to complete HSA indirect rollovers from one HSA to another. The deadline for plan administrators to report HSA contribution information for 2019 by filing Form 5498-SA with the IRS and providing the information to account holders has also been extended to July 15.

### **DOL Issues Additional Deadline Relief**

On April 29, the DOL eased ERISA-compliance deadlines to help employee benefit plan sponsors, participants and service providers affected by the coronavirus pandemic.

A new final rule, Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak (<https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/covid-19-final-rule.pdf>), issued by the DOL, the Treasury Department and the IRS, extends certain time frames affecting participants' rights to health care coverage, portability and continuation of group health plan coverage under COBRA, and it extends the time for plan participants to file benefit claims or appeal denied claims.

#### **Good-Faith Efforts**

Also on April 29, the DOL's Employee Benefits Security Administration (EBSA) issued EBSA Disaster Relief Notice 2020-01 (<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>), extending the deadline for providing benefit statements, annual funding notices, and other notices and disclosures required by ERISA to "as soon as administratively practicable" given the COVID-19 pandemic.

The notice states that an employee benefit plan will not violate ERISA for failing to distribute a required notice, disclosure or document due between March 1, 2020, and 60 days after the announced end of the COVID-19 national emergency, as long as the plan and responsible fiduciary act in good faith. Good-faith efforts include the use of e-mail, text messages and continuous-access websites to share information.

"Under the notice, companies can use electronic alternative means of communicating with plan participants and beneficiaries as long as the plan fiduciary reasonably believes that they have practical access to electronic communication," said Scott Hittner, partner and chief actuary at October Three.

Relief is also provided for plan loans, participant contributions, and loan payment deadlines, as long as employers and service providers act "reasonably, prudently and in the interest of employees to comply as soon as administratively practicable under the circumstances," the notice states.

#### **New FAQs**

The DOL also posted a new set of Frequently Asked Questions (<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>) to help employee benefit plan participants and beneficiaries, plan sponsors, and employers impacted by the coronavirus outbreak understand their rights and responsibilities under ERISA.

"EBSA will continue to safeguard the employee benefits of American workers while ensuring that employers and plans have the flexibility they need to continue delivering benefits during this challenging time," said Preston Rutledge, the assistant secretary of labor for EBSA.

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