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EBSA Disaster Relief Notice Highlights Pandemic's Lasting Impact

This latest regulatory development is just another piece of evidence underscoring how extraordinary the last 12 months have been.

Reported by [JOHN MANGANARO](#)

A new commentary shared with PLANSPONSOR by a team of attorneys at the Wagner Law Group provides helpful interpretive information about the recently published Employee Benefits Security Administration (EBSA) [Disaster Relief Notice 2021-01](#).

The Wagner attorneys note that this disaster relief is related to actions taken early on in the coronavirus pandemic by the Trump administration. As they recall, on March 13, 2020, then-President Donald Trump issued a formal proclamation declaring a national emergency concerning the novel coronavirus disease outbreak. The proclamation was accompanied by a separate letter which determined that a national emergency existed nationwide, beginning March 1, 2020, as a result of the COVID-19 outbreak.

In response, and acting pursuant to Employee Retirement Income Security Act (ERISA) Section 518, the Department of Labor (DOL) and the Internal Revenue Service (IRS) issued guidance of their own, titled "EBSA Disaster Relief Notice 2020-01." In a related move, the Department of Treasury joined the IRS and DOL in jointly issuing a document referred to as the "Notice of Extension of Certain Time Frames for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak"

Similar to what had been allowed regionally in earlier cases of natural disaster, these joint 2020 notices provided relief for certain time-sensitive and mandatory reporting and compliance actions related to employee benefit plans governed by ERISA. As the Wagner attorneys explain, the relief provided under the 2020 notices continues until 60 days after the announced end of the emergency, but the one-year reprieve period created under ERISA Section 518 technically ended on February 28, 2021.

"This had created a compliance conundrum, which the DOL has now addressed by issuing additional guidance," the Wagner attorneys note.

As the attorneys explain, this latest development is just another piece of evidence underscoring how extraordinary the last 12 months have been.

"Even with widespread bipartisan support, it can be difficult to draft legislation to address all possible contingencies," the attorneys observe. "In the wake of the events of September 11, 2001, Congress enacted ERISA Section 518 and Internal Revenue Code [IRC] Section 7508A, which generally allow the secretaries of labor and the Treasury to disregard a period of time of less than one year in determining employee benefit deadlines when a plan, sponsor, administrator, participant, beneficiary or other person is affected by a presidentially declared disaster."

The Wagner attorneys explain that ERISA Section 518 was later amended to permit the secretary of labor to allow extensions of these deadlines in the case of a public health emergency declared by the secretary of health and human services.

"The premise with respect to these provisions, whether a terrorist attack or public health emergency, was that a one-year period would be enough to address any extraordinary circumstances," the attorneys note. "Unfortunately, the COVID-19 pandemic has exceeded the limits of the one-year period of extension, thereby creating a significant administrative problem for employee benefit plans."

The Wagner attorneys say the DOL is aware of both the complexity of this approach and the ongoing nature of the pandemic. They say the DOL has committed to acting "reasonably, prudently and in the interest of workers and their families" during this challenging time. For their part, the attorneys say, plan fiduciaries should make reasonable accommodations to prevent the loss or undue delay of benefits and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.

"Since the time frames for certain participants to act could have ended today or could have ended earlier this week, action for most health and welfare plan sponsors should be a priority item," the Wagner attorneys suggest. "Plan sponsors will need to understand the new interpretation of the extension as applied to its participants."

The Wagner commentary makes clear that these developments probably will have a greater direct impact on health and welfare type plans relative to retirement plans, but the lessons are still important for all ERISA fiduciaries.

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