

Employee Benefit Plans Alert

Form 5500 and Other Time-Sensitive Actions Involving Employee Benefit Plans

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In IRS Notice 2020-23 issued earlier this month, the Internal Revenue Service announced that the federal income tax filing and payment due date is automatically postponed to July 15, 2020 if it was due on or after April 1, 2020, and before July 15, 2020. This relief includes the Form 5500, *Annual Return/Report of Employee Benefit Plan*. The Pension Benefit Guaranty Corporation (PBGC) subsequently provided information from that agency to indicate the extended filing deadline is applicable to Form 5500 as well as any payments and filings due to that agency.

However, there are particular filings on an Exceptions List maintained by the PBGC to which extended due dates do not apply. This occurs in situations that may indicate a high risk of harm to pension plan participants or the insurance program, but such filers may request individual extensions. The PBGC website can be accessed [here](#).

Clarification in Notice 2020-23

The guidance issued by the IRS in Notice 2020-23 amplified previously issued Notices 2020-18 and 2020-20 as to the term “Affected Taxpayers.” There is a technical definition of this term in the Internal Revenue Code which [in part] is any person with a federal tax payment, federal tax return, or other specified form filing obligation which is due on or after April 1, 2020 and before July 15, 2020. Additionally, this term applies to any person who performs a time-sensitive action listed in either the Treasury Regulations or delineated in Rev. Proc. 2018-58.

Rev. Proc. 2018-58 §8, Employee Benefit Issues

Any of the “Specified Time-Sensitive Actions” listed in §8 of Rev. Proc. 2018-58 due on or after April 1, 2020, and before July 15, 2020, will be subject to the deadline extension provided in Notice 2020-23. Employee benefit issues include:

- Form 5500 series filings. The Form 5500 is due the last day of the seventh month after the end of the plan year. For example, a plan year-end of June 30, 2019, which requested an automatic extension of 2-1/2 months to file the Form 5500, had a due date of April 15, 2020. The filing deadline has been postponed to July 15, 2020. **This deadline extension will not apply to calendar-year plans, which have a Form 5500 deadline of July 31, 2020.**
- Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*, from a plan that has a similar filing regime as provided above for the Form 5500.
- Qualified plan loan repayments. The CARES Act contains a different extension of plan loan repayments for individuals affected by COVID-19. The extension in Notice 2020-23 applies to all qualified retirement plan loan repayments during the specified timeframe.
- Distributing excess deferrals under Code §402(g) by April 15, 2020.
- Receiving required minimum distributions (RMDs). The CARES Act contains a different RMD waiver for defined contribution plans for the 2020 calendar year.

- The 60-day deadline for completing rollovers to an eligible retirement plan or IRA.
- Self-correcting certain insignificant failures under the Employee Plans Compliance Resolution System (EPCRS).
- Distributing excess contributions under Code §401(k)(8) by highly compensated employees.
- Distributing excess aggregate contributions (plus income) under Code §401(m)(6).
- Contributions to:
 - Qualified retirement plans
 - Simplified employee pensions
 - Individual Retirement Account (IRA)
 - SIMPLE IRA plans
 - Health savings account (HSA)
 - Archer medical savings account (Archer MSA)
 - Coverdell education savings account (Coverdell ESA)
- Making substantially equal periodic payments to obtain the exception to the 10% early distribution penalty under Code §72(t)(2)(A)(iv).

The above is not an exhaustive list of the postponement of the time to perform specified acts for taxpayers affected by the federally declared disaster caused by the COVID-19 virus.

403(b) Plan Restatements Extended to June 30

The time to adopt an amended or restated 403(b) plan was separately extended. A restated 403(b) plan document is required to be adopted by **June 30, 2020**. This plan document is typically provided from a plan’s record keeper, third party administrator, a law firm or other provider.

Further information regarding this IRS requirement can be found in a prior [Employee Benefit Services Group \(EBSG\) Alert](#).

Our EBSG has assisted many plan sponsors with the creation of an IRS approved 403(b) restated plan document, or reviewed a plan document that has been provided to them to ensure the many “form” requirements of the plan document are satisfied.

Contact Us and Resources

The [IRS website](#) provides a significant amount of information for taxpayers, tax-exempt organizations, and health plans affected by coronavirus (COVID-19), including the extension guidance issued by the IRS in various notices.

Visit the [PKF O’Connor Davies COVID-19 website](#) which contains financial, tax and business insights on issues related to the coronavirus, including [Treasury Announces Filing Extensions for Exempt Organizations](#).

The Employee Benefit Services Group at PKF O’Connor Davies is available to assist employers with the various compliance reporting and other compliance requirements imposed by federal agencies. We also provide a full spectrum of compliance services for qualified retirement plans, non-qualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or either of the following:

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