DOL Clarifies Form 5500 COVID-19 Relief Provided for Late Contributions and Loan Repayments

AICPA EBPAQC Member

Per the AICPA AICPA Employee Benefit Plans Audit Quality Center,

the DOL staff has stated that in accordance with relief provided in [EBSA Disaster Relief Notice 2020-01; Guidance and Relief for Employee Benefit Plans Due to the COVID-19 (Novel Coronavirus) Outbreak,] the Department will not take enforcement action for participant payments and withholdings not made within prescribed timeframes, if the plan administrator determines the delay was caused *solely on the basis of a failure attributable to the COVID-19 outbreak*. In these circumstances, the amounts do not need to be reported on Form 5500, Schedule H, line 4a, or on the *Supplemental Schedule of Delinquent Participant Contributions*. Employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

The Covid-19 relief applies to the period beginning on March 1, 2020 and ending on the 60th day following the announced end of the National Emergency (see EBSA Disaster Relief Notice 2021-01). During this time, the Department will not take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan that are solely attributable to the COVID-19 outbreak.

However, the regulations within 29 CFR § 2510.3-102 have not changed. Any instances where amounts are not forwarded to the plan on the earliest date on which such amounts can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer are still considered prohibited transactions. Those late remittances must be reported on Form 5500, Schedule H, line 4a, and included on the *Supplemental Schedule of Delinquent Participant Contributions* and reported on the Form 5500 each subsequent year until the year after the violation has been fully corrected. In accordance with paragraph .22 of AU-C section 703, the auditor should evaluate whether

prohibited transactions identified by management or as part of the audit have been appropriately reported in the applicable ERISA-required supplemental schedules.

Click here for EBSA Disaster Relief Notice 2020-01.

See the EBPAQC Primer on *Timely remittance of employee contributions in defined contribution retirement plans*.

For additional questions, contact the DOL's EBSA Office of Chief Accountant at (202) 693-8360 (voice mail is being regularly monitored).

Form 5330 Filing Relief

IRS Notice 2020-35, *Additional Administrative Relief with Respect to Deadlines Applicable to Employment Taxes, Employee Benefits, and Exempt Organizations Affected by the Ongoing Coronavirus Disease 2019 Pandemic*, includes relief on the filing of Form 5330 and payment of the associated excise taxes.

The IRS Notice states, "*the period beginning on March 30, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest or penalty for failure to file the Form 5330 or to pay the excise tax postponed by this notice. Interest and penalties with respect to such postponed filing and payment obligations will begin to accrue on July 16, 2020*." Click here for IRS Notice 2020-35.

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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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