

Insights

DOL and IRS Pandemic Relief for Group Health Plans and Retirement Plans

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Overview

On April 29, 2020, the U.S. DOL, Treasury Department and the IRS issued deadline relief and other guidance to aid employee benefit plans and plan participants impacted by the COVID-19 pandemic. The guidance extends certain timeframes affecting participants' rights to healthcare coverage, portability and continuation of group health plan coverage under COBRA, and extends the time for filing claims and appeals (the "Final Rule"). In coordination with the Final Rule, the DOL issued (1) EBSA Disaster Relief Notice 2020-01, (2) COVID-19 FAQs for Participants and Beneficiaries, and (3) a news release. These changes are particularly impactful on the administration of group health plans and should be diligently reviewed.

Final Rule Extending Certain Deadlines

All group health plans, disability and other welfare benefit plans, and pension benefit plans subject to ERISA or the Internal Revenue Code must now disregard the "Outbreak Period" when applying certain prescribed deadlines and or timeframes described below. The Outbreak Period began on March 1, 2020 and runs until 60 days after the announced end of the COVID-19 pandemic.

- **COBRA Continuation Coverage Timeframes**
 - 30- or 60-day deadline for individuals (or employers) to notify the plan of a qualifying event
 - 60-day deadline for individuals to notify the plan of a disability determination
 - 60-day period for an individual to make a COBRA continuation coverage election
 - 45-day deadline for COBRA participants to make the first premium payment and the 30-day deadline for the participant to make subsequent premium payments
 - 14-day deadline for a plan administrator to provide COBRA qualified beneficiaries an election notice.
- **HIPAA Special Enrollment Periods**
 - 30-day special enrollment period applicable when an employee or dependent loses eligibility for other group health plan coverage or other health insurance coverage in which the employee or the employee's

dependents were previously enrolled; or triggered when an employee obtains a new dependent by birth, marriage, adoption, or placement for adoption.

- 60-days in the case of special enrollment rights added by the Children's Health Insurance Program Reauthorization Act of 2009.
- DOL Claims Procedures Deadlines
 - For ERISA plans and non-grandfathered group health plans and health insurance issuers offering such plans, the Final Rule extends the deadline for filing a benefit claim, for the initial disposition of benefit claims, and for providing claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary has all be extended.

The Final Rule provides good examples of how the various administrative timeframes will be affected by disregarding the Outbreak Period.

EBSA Disaster Relief Notice 2020-01 - Guidance and Relief for Employee Benefit Plans

- Retirement Plan Loans and Distributions
 - *Verification Procedures* – A failure to follow the plan's procedures providing for plan loans and/or distributions will not be treated as such, if (i) that failure is solely attributable to the COVID-19 outbreak; (ii) the plan administrator makes a good-faith diligent effort under the circumstances to comply with procedural requirements; and (iii) the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.
- Participant Contributions and Loan Repayments
 - The DOL will not take enforcement action against plan sponsors or service providers who, due to the COVID-19 outbreak, cannot timely forward participant payments and contributions to the retirement plan, so long as they act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.
- Blackout Notices
 - Administrators of individual accounts will not be required to furnish the 30 days' advance notice to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by a blackout period.
 - The DOL will not require a plan fiduciary to make a written determination that the administrator's inability to furnish the advance notice is due to events beyond its reasonable control.
- Extension of other Notices
 - The DOL also announced a deadline extension for furnishing other required notices or disclosures to plan participants and beneficiaries so that plan fiduciaries and plan sponsors have additional time to meet their ERISA obligations during the Outbreak Period. To benefit from this relief, the plan sponsor and/or

responsible fiduciary must act in good faith and furnish the notice, disclosure or document *as soon as administratively practicable under the circumstances*. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

Conclusion

The COVID-19 relief provided by the DOL in coordination with other agencies leaves a lot of administrative questions unanswered, particularly how to communicate these changes to plan participants and beneficiaries. As these regulations are based on an open-ended period, it could prove difficult for employers and plan administrators to track, particularly with respect to COBRA elections and payments. Nevertheless, these changes should provide flexibility to plan participants and beneficiaries who are struggling to make difficult decisions regarding maintenance of health and welfare coverage amidst economic uncertainty. One thing seems clear, as the coronavirus pandemic continues to unfold throughout the Summer and Fall of 2020, we can expect an abundance of further guidance and administrative rules.