



## Extension of Certain Timeframes for Employee Benefit Plans, Participants and Beneficiaries

May 12, 2020

On May 4, 2020, the DOL and the Department of the Treasury (the Departments) issued guidance providing an extension of various compliance deadlines in its "Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak" final rule. Recognizing the potential difficulties for group health plans attempting to comply with certain notice obligations due to the COVID-19 public health crisis, and in effort to minimize the possibility of individuals losing benefits due to a failure to timely meet requirements, the Departments have extended certain timeframes for group health plans, disability and other welfare plans, and pension plans.

The relief provides that all group health plans, disability and other employee welfare benefit plans, and employee pension plans subject to ERISA or the Code must disregard the period from March 1, 2020, until 60 days after the end of the National Emergency (known as the "Outbreak Period") for certain deadlines, including:

- The 30-day (or 60-day, if applicable) deadline to request a special enrollment under HIPAA
- The 60-day COBRA election period
- The 30-day (or 60-day, if applicable) deadline to notify the plan of a COBRA qualifying event (and the 60-day deadline for individuals to notify the plan of a determination of a disability)
- The 14-day deadline for plan administrators to furnish COBRA election notices
- The 45-day deadline for participants to make a first COBRA premium payment and 30-day deadline for subsequent COBRA premium payments
- Deadlines for individuals to file claims for benefits, for initial disposition of claims, and for providing claimants a reasonable opportunity to appeal adverse benefit determinations under ERISA plans and non-grandfathered group health plans
- Deadlines for providing a state or federal external review process following exhaustion of the plan's internal appeals procedures for non-grandfathered group health plans

Notably, with this relief applying to deadlines for individuals to file claims for benefits, this may impact health FSA administration. For example: let's say that under H Company's health FSA, participants must submit claims incurred in the 2019 plan year by March 31, 2020 (also called the run-out period). Further, for purposes of this example, let's say that the national emergency is proclaimed to be over on May 31, 2020. The health FSA participants would have until October 28, 2020, to submit claims (90 days following the end of the outbreak period). Note that this relief does not extend a date in which a claim can be incurred for health FSAs. Rather, it extends the time in which a claim can be submitted for reimbursement. This relief will impact health FSAs or even HRAs with a run-out period ending during the outbreak period, as described in the example. Importantly, this extension does not apply to Dependent Care FSAs.

In addition, there is relief for group health plans in furnishing participant notices. More specifically, plans (and responsible plan fiduciaries) will not be treated as having violated ERISA if they act in good faith and furnish any notices, disclosures or documents that would otherwise have to be furnished during the outbreak period (including those requested in writing by a participant or beneficiary) "as soon as administratively practicable under the circumstances." Here, it's important to note that acting in good faith includes sending documents electronically as long as the employer believes employees have effective access to electronic means of communications.

Employers should be aware of these developments and confirm with any vendors and administrators, as applicable, that the specified timelines are being administered in accordance with the DOL's guidance. For more guidance on application, see the examples provided in the DOL's final rule.

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