

CORONAVIRUS INFORMATION & UPDATES

May 1, 2020

DOL Provides Sweeping Deadline Extensions and Other Relief for Employee Benefit Plans, Participants and Beneficiaries Due to the COVID-19 (Coronavirus) Outbreak

On April 28, 2020, the U.S. Department of Labor’s (DOL) Employee Benefits Security Administration (EBSA) issued guidance providing significant deadline extensions and other relief to assist employee benefit plans, plan participants and beneficiaries, employers and other plan sponsors, plan fiduciaries, and other service providers impacted by the COVID-19 outbreak. The guidance applies to health and welfare plans and retirement plans and follows President Trump’s March 13, 2020 declaration of a federal emergency resulting from the COVID-19 pandemic. The guidance consists of:

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1. a DOL notice (Joint Notice), jointly issued with the Department of the Treasury and Internal Revenue Service (IRS), promulgating final rules that take effect immediately upon publication in the Federal Register,
2. EBSA Disaster Relief Notice 2020-01 (EBSA Notice 2020-01), and
3. a set of Frequently Asked Questions (EBSA COVID-19 FAQs).

The relief is retroactive to March 1, 2020 and will apply until 60 days after the announced end of the national emergency or such other date announced by the DOL in a future notice (the end of the 60-day period being the Outbreak Period End Date). To the extent the emergency ends on different dates for different parts of the country, the DOL will issue additional guidance regarding the application of the relief to those areas. The guidance effectively tolls the deadlines for various actions until after the Outbreak Period End Date.

For group health plans subject to ERISA or the Code, the Joint Notice provides additional time for participants and beneficiaries to meet certain deadlines affecting COBRA continuation coverage, special enrollment, filing claims for benefits, appeals of denied claims, and external review of certain claims. For disability, retirement and other plans, the Joint Notice gives participants and beneficiaries extra time to make claims for benefits and appeal denied claims. The table below shows some specific actions covered by the Joint Notice.

| Action | Normal Deadline | Extension / Relief Provided |
|---|---|---|
| Requesting special enrollment in a spouse’s employer-sponsored group health plan upon loss of eligibility for the coverage the employee (and his or her dependents) previously had under another health plan, Medicaid or CHIP (Qualifying Event) | 30 days from the occurrence of the Qualifying Event (60 days in the case of CHIP) | 30 days following the Outbreak Period End Date* *The EBSA COVID-19 FAQs explain that applying for special enrollment in an individual health plan must still be completed within 60 days of losing |

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| Action | Normal Deadline | Extension / Relief Provided |
|---|---|---|
| | | employer-sponsored coverage (no extension will be provided). |
| Electing COBRA continuation coverage under a group health plan | 60 days following the date on which coverage terminates by reason of a Qualifying Event | 60 days following the Outbreak Period End Date |
| Commencing COBRA monthly premium payments | At least 45 days following the date of the initial COBRA election | 30 days following the Outbreak Period End Date |
| Filing a benefit claim under the plan's claims procedure pursuant to 29 CFR § 2560.503-1 | The deadline determined in accordance with the terms of the plan | The plan-designated deadline, but tolled until the Outbreak Period End Date |
| Respond to or appeal an adverse benefit determination under a group health plan or disability plan | At least 180 days following receipt of the adverse determination | At least 180 days following the Outbreak Period End Date |
| Requests for a federal external review of an adverse benefits determination for claims under non-grandfathered group health plans | At least 4 months following receipt of the adverse benefit determination | At least 4 months following the Outbreak Period End Date |
| Respond to or appeal an adverse benefit determination under a pension plan | At least 60 days following receipt of the adverse determination | At least 60 days following the Outbreak Period End Date |

The Joint Notice also explains that the period from March 1, 2020 until the Outbreak Period End Date is disregarded when a group health plan determines the date by which it (and its sponsor and administrator) must provide a COBRA election notice to a qualified beneficiary.

EBSA Notice 2020-01 extends the time for plan sponsors to furnish benefit statements, annual funding notices, and other notices and disclosures required by ERISA so long as they make a good faith effort to furnish the documents as soon as administratively practicable. It explains that good faith includes the 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. EBSA Notice 2020-01 also includes compliance assistance with other issues such as plan loans, participant contributions and loan payments, and blackout notices.

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With respect to loans and distributions, EBSA Notice 2020-01 says that if a pension plan fails to follow procedural requirements imposed by the terms of its plan, the DOL will not treat it as a failure if the reasons are it is solely attributable to the COVID-19 outbreak; the plan administrator makes a good-faith diligent effort under the circumstances to comply with those requirements; and the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.

EBSA Notice 2020-21 builds on earlier guidance the IRS issued in April (IRS Notice 2020-23), extending the deadline until July 15, 2020 for Form 5500 filings that would otherwise be due on or after April 1 and before July 15, 2020. This extension automatically applies to Form 5500 filings for plan years that ended in September, October, or November 2019. It also applies to Form 5500 deadlines that fall within the relief window due to a previously filed extension request on Form 5558. However, the due date for 2019 Form 5500 filings for calendar year plans remains July 31, 2020 since that is outside the relief window. EBSA Notice 2020-21 also says that Form M-1 filings required for multiple employer welfare arrangements and certain entities claiming exception are provided relief for the same period of time as the Form 5500 filings.

The EBSA COVID-19 FAQs address certain health benefit and retirement benefit issues to help participants and beneficiaries understand their rights and responsibilities under ERISA in light of the pandemic. Questions address a variety of concerns such as replacing one's health coverage in the event of loss of eligibility, paying insurance premiums if one's employer fails to do so, and taking pre-retirement distributions or loans, if necessary.

As noted in EBSA Notice 2020-01, the guiding principle for plan sponsors is to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic well-being. Moreover, plan fiduciaries are expected to make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.

The Joint Notice can be found at <https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/covid-19-final-rule.pdf>.

EBSA Notice 2020-01 can be found at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>.

The EBSA COVID-19 FAQs can be found at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>.

If you have any questions about this guidance, please reach out to a member of the Ropes & Gray [Employment, Executive Compensation and Benefits](#) group.