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Client Alert: Extension of Employee Benefit Plan Deadlines: More Time for Plans and Plan Participants

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The U.S. Department of Labor (DOL), Internal Revenue Service (IRS), and Department of Health and Human Services have issued a final rule extending a variety of deadlines that apply to group health plans and retirement plans during the COVID-19 emergency. These extensions provide relief to employee benefit plans and their participants.

The Relief creates the concept of the **Outbreak Period***. Under this relief, deadlines that would otherwise fall within the Outbreak Period are not violated if the required actions are taken by the end of the Outbreak Period. For example, if the end of the National Emergency is announced as June 15, 2020, any actions required to be taken within 60 days after the end of the Outbreak Period could be taken any time between now and August 14, 2020.

*OUTBREAK PERIOD: Beginning March 1, 2020 and ending 60 days after the end of the National Emergency.

It's important to note that plans **are required to provide these extended deadlines to participants**, so they are not at the plan's or the sponsor's election.

Here is a quick overview of the additional time participants and plans will be provided for meeting established group health plan deadlines. More comprehensive information about group health and retirement plan changes is provided in the sections titled "Detailed Group Health Plan Changes" and "Detailed Retirement Plan Changes" immediately following this overview.

Relief for Participants:

Additional 60 days (after end of Outbreak Period):

- For participants to elect COBRA coverage who lose group health plan coverage after termination or a reduction in hours

Additional 30 days (after end of Outbreak Period):

- For participants to request a special enrollment in a group health plan
- For participants to pay their COBRA premium

Days in Outbreak Period not counted:

- For participants who file a claim for benefits in a group health plan
- For participants who appeal a group health claim determination
- For participants who are required to notify the plan of a disability or other qualifying event (i.e., divorce, legal separation, child attaining age 26)

Relief for Plans:

Days in Outbreak Period are not counted:

- For plans to provide a COBRA election notice to a qualified beneficiary

Good-faith effort to furnish documentation, process claims:

- For plans to furnish benefit statements, annual funding notices, and other ERISA disclosures
- For plans to process claims and appeals due to a COVID-19 disruption to their place of business

Good-faith effort to comply with retirement plan procedural requirements:

- For plans to follow verification requirements for distributions (limited to verification requirements required under Title I of ERISA, does **not** include spousal consent or other statutory or regulatory requirements)
- For plans to furnish a Qualified Individual a loan under the CARES Act
- For plans being unable to forward participant payroll deductions within prescribed timeframes
- For plans being unable to provide participants with a 30-day advance notice of a blackout period

Detailed Group Health Plan Changes

Special Enrollment Periods. Under HIPAA special enrollment period rules, if an employee or his/her dependent is otherwise eligible and an event causes the employee or a dependent to lose eligibility for any other group health plan or health coverage in which the employee or dependents were previously enrolled, or when a person becomes the eligible employee's dependent by birth, marriage, adoption, or placement for adoption, a group health plan must generally offer the individual an opportunity to enroll outside of the normal open annual enrollment period. Normally, this special enrollment must be requested within 30 days of the occurrence of the event.

- Under this relief, the request may be made as late as 30 days after the end of the Outbreak Period.

COBRA Elections. Employees who would otherwise lose their group health plan coverage because of termination of employment or a reduction in hours normally have a period of at least 60 days to elect to enroll in COBRA continuation coverage from that group health plan.

- Under this relief, an employee losing coverage during the Outbreak Period can elect COBRA coverage at any time during the Outbreak Period or during the 60 days following the end of the

Outbreak Period.

COBRA premiums still have to be paid retroactive to the date that COBRA coverage began.

Payment of COBRA Premiums. Group health plans cannot require payment of premiums during the first 45 days after the initial COBRA election is made, must generally allow premiums to be paid in monthly installments, and must provide a 30-day grace period after the first day of the month for which a premium payment is being made.

- Under this relief, the grace period for COBRA premiums will not expire until 30 days after the end of the Outbreak period.

Notifying Plans of Disabilities and other Qualifying Events. A group health plan participant normally must notify the group health plan within 60 days of a determination of disability. There is a similar deadline for notifying the plan of other qualifying events (such as a divorce that causes the employee's spouse to lose eligibility for coverage).

- Under the relief, when determining a participant's deadline to notify the plan of a disability or other qualifying event, the Outbreak Period must be ignored, and only days after the end of the Outbreak Period can be counted.

Deadlines to File Claims. Group health plans may set a deadline for participants (including dependents) to file a claim for benefits under the group health plan.

- Under the relief, days during the Outbreak Period are disregarded in order to give the participant more time to file a claim.

Deadlines for Appeals. When a group health plan denies a claim for benefits, it must provide the claimant with at least 180 days to appeal the adverse benefit determination. Further, federal law requires group health plans to allow a participant to request an external review of certain denied claims.

- Under the relief, when determining the deadline to file these appeals, the Outbreak Period must be ignored, and only days after the end of the Outbreak Period can be counted.

The new rule does **not** provide similar relief for a group health plan's deadline to respond to an appeal filed during the Outbreak Period.

Claims Processing. While the DOL did not provide plans with relief from the ERISA requirements for processing claims and appeals, the DOL recognized that there may be circumstances in the Outbreak Period where plans and service providers may be unable to comply with the normal requirements. Therefore, the DOL's approach to enforcement will emphasize compliance assistance and include grace periods and other relief where appropriate, including situations where disruption to a plan or provider's principal place of business makes compliance with the pre-established timeframes impossible.

Form 5500 and M-1 Filings. The DOL will allow multiple employer welfare arrangements (MEWAs) to file their Form M-1 filings on the same extended deadline previously provided for Form 5500 filings.

Detailed Retirement Plan Changes

Verification Procedures for Loans and Distributions. If a retirement plan fails to follow procedural requirements for plan loans or distributions imposed by the plan terms (such a participant loan policy), the

DOL will **not** treat this as a failure if:

- The failure is solely attributable to the COVID-19 outbreak;
- The plan administrator makes a good-faith, diligent effort to comply with the requirements; and
- The plan administrator makes a reasonable attempt to correct any procedural deficiencies as soon as administratively possible.

This relief does not include any spousal consent or similar statutory requirements.

Participant Loans under the CARES Act. The DOL will not treat any plan as violating the ERISA Title I requirements for participant loans (including adequate security for the loan) solely because (a) the plan made a participant loan to a “Qualified Individual” in compliance with the CARES Act or (b) a Qualified Individual delayed making loan payments in the manner permitted by the CARES Act and related IRS notices or guidance.

Deposit or Participant Contributions and Loan Payments. If an employer or service provider is not able to forward participant payroll deductions for participant contributions or loan payments to the plan trustee within the prescribed timeframes during the Outbreak Period, the DOL will not take enforcement action with respect to a temporary delay in completing the deposits solely on the basis of a failure attributable to the COVID-19 outbreak.

Blackout Notices. Where a plan administrator is unable to provide participants with at least 30-days advance notice before their rights under an individual account plan are temporarily suspended or limited by a blackout period because of the COVID-19 pandemic, the DOL will recognize that as beyond the plan administrator’s control and grant relief.

Separate DOL Notice for ERISA Disclosure Notices

The DOL issued a separate notice providing an extension of deadlines for furnishing notices or disclosures required by Title I of ERISA. Under this notice, an employee benefit plan and its fiduciaries will not be considered in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must otherwise be furnished during the Outbreak Period if the plan and its fiduciaries act in good-faith and furnish the notice, disclosure, or document, as soon as administratively practicable under the circumstances. For this purpose, good-faith acts include use of email, continuous access websites, or other electronic means of communicating with plan participants who the plan fiduciary reasonably believes have effective access to these electronic means of communications.