

May 7, 2020

Deadline Extensions and Other Relief for Employers, Plans, Participants, and Beneficiaries

Recognizing that the COVID-19 pandemic would make it difficult for employers, benefit plans, and others to comply with certain statutory requirements and deadlines, the Employee Benefits Security Administration (“EBSA”), the Department of Labor (“DOL”), and the Internal Revenue Service (“IRS”), Department of the Treasury (the “Agencies”) released a [final rule](#) (“Final Rule”) last week, formally extending certain deadlines and timeframes applicable to group health plans, welfare benefit plans, pension plans and their plan sponsors, participants and beneficiaries. The EBSA also subsequently issued [Disaster Relief Notice 2020-01](#) (“Notice”) and a set of [Frequently Asked Questions](#) (“FAQs”) to explain the changes and extensions.

Specifically, the Final Rule provides extensions for claims filing deadlines and other timeframes set forth in the Employee Retirement Income Security Act (“ERISA”), Internal Revenue Code (the “Code”), Health Insurance Portability and Accountability Act (“HIPAA”), and Consolidated Omnibus Budget Reconciliation Act (“COBRA”). This relief contained in the Final Rule and guidance comes as welcome news to many employers and participants who may have been struggling to figure out how they would meet certain upcoming requirements.

Extended Deadlines

Below is a non-exhaustive list of the deadlines that were extended and relief that was provided by the Final Rule. In determining the new deadlines, plans and plan sponsors must disregard the period beginning March 1, 2020 until 60 days after of the COVID-19 National Emergency is declared over (the “Outbreak Period”).

COBRA Deadline Extensions

- Qualifying Event Notice Deadline (the 30- or 60-day period to notify the plan of a qualifying event);
- Disability Determination Deadline (the 60-day period to notify the plan of a determination of disability);
- COBRA Election Notice Deadline (the 14-day period for plan administrators to provide COBRA election notices);
- COBRA Election Period (the 60-day period for individuals to elect COBRA);
- Premium Payment Deadlines (the initial 45-day and regular 30-day deadlines to make COBRA premium payments). (Note - this will affect the timing of a plan to terminate coverage of a

COBRA participant based on the failure to pay his/her COBRA premium. A participant now has until 45 or 30 days, respectively, after the end of the Outbreak Period to make the payment(s).

HIPAA Deadline Extensions

- Special Enrollment Period (the 30-day period for participants to change coverage due to loss of other coverage, marriage, birth, adoption, placement for adoption);
- Special Enrollment – Children’s Health Insurance Program (“CHIP”) (the 60-day period to due to change in coverage under CHIP).

Claims Filing and Procedures Deadline Extensions

- Claims for Benefits (the plan’s deadline for participants to file a claim for benefits);
- Appealing Adverse Benefit Determination (“ABD”) (the minimum 180-day period for an individual to appeal an ABD of a group health plan);
- Request for External Review (the deadline for claimants to file a request for an external review after receipt of an ABD or final internal ABD);
- Filing Information Related to External Review (the deadline for claimants to file information to perfect a request for external review upon a finding that the request was not complete).

Deadlines to Furnish ERISA Notices Extension and Other Relief

- The deadline to provide participants with any required notice under ERISA (e.g., Summary Plan Descriptions, Summary of Material Modifications) during the Outbreak Period is extended. The plan fiduciary must act in good faith and provide the notice as soon as “administratively feasible under the circumstances.”
- Using electronic means to alternatively communicate with plan participants and beneficiaries (if the plan fiduciary reasonably believes employees have effective access to electronic means of communication, including email, text messages, and continuous access websites) is expressly allowed.

Form 5500 and M-1

- Form 5500 Deadline (Form 5500 filings regularly due on or after April 1 and before July 15, 2020, are now due July 15, 2020. This extension is automatic.)
- Form M-1 Deadline (Form M-1 filings regularly due on or after April 1 and before July 15, 2020, are now due July 15, 2020. This extension is automatic.)

Relief for Pension Plans

The Final Rule and the Notice also provides certain relief for pension plans including the following:

- Loans and Distributions - Relief may be provided to a pension plan that fails to follow procedural requirements for plan loans or distributions provided in the plan's provisions, but only if certain requirements are met.
- Loan Repayments and Contributions - Relief will be provided to plans that have a temporary delay in forwarding contributions and loan repayments to the plan if the delay is related to the pandemic.
- Blackout Notices – Relief will be provided if there is a delay in providing blackout notices to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by a blackout period.

Our team will keep you apprised as the Agencies release additional guidance regarding the items and issues contained in the Final Rule or if the Agencies provided any additional relief that relates to plans, employers/plan sponsors or administrators and participants/beneficiaries.

Helpful Links:

- **EBSA and IRS Final Rule** - <https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected>
- **EBSA Disaster Relief Notice 2020-01** - <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>
- **EBSA FAQs** - <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>
- **EBSA Disaster Relief Information:** <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief>
- **IRS Coronavirus Tax-Related Information:** <https://www.irs.gov/coronavirus>

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