CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: DOL and Treasury Provide Relief from Certain ERISA Deadlines for Benefit Plans and Participants

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On April 29, 2020, the Department of Labor and the Department of the Treasury ("Treasury") issued guidance providing relief for employee benefit plans in the context of the COVID-19 pandemic. The guidance includes the Employee Benefits Security Administration ("EBSA") Disaster Relief Notice 2020-01 (the "EBSA Notice"), final regulations extending certain deadlines that apply to benefit plans and benefit plan participants (the "Final Regulations"), and a set of COVID-19 FAQs for Participants and Beneficiaries (the "FAQs"). The Final Regulations were published in the Federal Register on May 4, 2020.

The guidance is focused on providing relief by extending certain ERISA deadlines that would otherwise be required to be complied with during the "Outbreak Period." The "Outbreak Period" is defined as the period from March 1, 2020 through 60 days after the announced end of the National Emergency. The deadlines begin to run again as of the end of the Outbreak Period.

1. EBSA Notice

COBRA Provisions

The EBSA Notice provides that employee benefit plan sponsors are not required to provide COBRA election notices during the Outbreak Period to COBRA beneficiaries. Instead, the regular 14-day deadline for providing the election notice begins to run at the end of the Outbreak Period. Notification to a COBRA beneficiary is normally required within 14 days of the date on which the plan administrator is notified of the qualifying event. Although the notice requirement is suspended during the Outbreak Period, plan administrators should continue to provide COBRA election notices to the extent possible during the Outbreak Period.

ERISA Required Disclosures and Notices

The EBSA Notice provides relief during the Outbreak Period from the ERISA rules that require a plan sponsor to provide certain notices and disclosures to participants and beneficiaries. The relief from the deadlines for providing such notices and disclosures is available if the benefit plan and fiduciary responsible for providing the notice or disclosure acts "in good faith" to provide the notices and disclosures "as soon as administratively practicable" following the end of the Outbreak Period. The Notice also permits plan sponsors to distribute required notices and disclosures electronically to individuals the plan sponsor "reasonably believes" have effective access to email, text, or other forms of electronic communication.

Participant Loans

The EBSA Notice includes a number of provisions relating to participant loans under qualified retirement plans. These provisions include the relaxation of rules relating to loan verification during the Outbreak Period, relief from the imposition of a fiduciary breach by the DOL on a plan fiduciary who permits participant loans in accordance with the CARES Act, and relief from enforcement action by the DOL for plan fiduciaries who fail to remit participant contributions and loan repayments in a timely manner during the Outbreak Period. The relief provided generally requires the plan administrator to act prudently and in good faith and to comply as soon as administratively practicable in a given situation.

Fiduciary Requirements

The EBSA Notice addresses compliance with ERISA claims processing, during the Outbreak Period. During the Outbreak Period, the DOL will provide relief and assistance with compliance rather than focus on penalties for failure to comply, provided that plan fiduciaries act prudently and in the best interest of plan participants.

2. The Final Regulations

The DOL and Treasury issued Final Regulations which extend certain timeframes that would otherwise apply to participants in employer sponsored group health plans. The Final Regulations provide relief from satisfying the following deadlines during the Outbreak Period:

- The 30-day period (or 60-day period, if applicable) to request special enrollment;
- The 60-day election period for COBRA continuation coverage;
- The due date for making COBRA premium payments;
- The deadline for individuals to notify the plan of a qualifying event or determination of disability;
- The date by which individuals can file a benefit claim or appeal an adverse benefit determination under the plan's claims procedures;
- The date by which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The date by which a claimant may file information to perfect a request for external review upon a finding that the request was not complete.

The timeframes and deadlines for the actions and elections described above are extended until the end of the Outbreak Period.

Example of Extended COBRA Premium Payment Deadline. Premiums for COBRA coverage are normally required to be paid within 30 days of the due date. If the COBRA premium due date is March 1, 2020, the former employee has a 30-day grace period until March 31, 2020 to pay the premium. The COBRA beneficiary fails to pay the premium for March, as well as the remainder of the Outbreak Period. Assume the Outbreak Period ends on August 31, 2020. Premiums paid for March through

August that are paid by September 30, 2020 are considered to be paid timely and the Employee will be able to retain COBRA coverage for these months.

Example of Extended Deadline for 60-day COBRA Election Period. The COBRA rules generally require group health plans to permit qualified beneficiaries to elect continuation coverage within 60 days of the date health plan coverage terminates due to a qualifying event. Assume an employee's hours are reduced and as a result the employee becomes ineligible for health plan coverage on May 1, 2020 and the COBRA election notice is provided on May 1, 2020. Assume the Outbreak Period ends on August 31, 2020. Under the Final Regulations, the employee has until October 30, 2020 to elect COBRA. If the employee timely elects COBRA coverage, and pays the premium, the COBRA coverage will be retroactive to May 1, 2020.

3. The FAQs

The COVID-19 FAQs are intended for participants and provide illustrations of the rules and information included in the EBSA Notice and Final Regulations.

Conclusion

Although relief from the deadlines described above is available, employers should endeavor to provide the required notices on time whenever possible.

For more information on this subject, contact a member of Benesch's Executive Compensation & Benefits Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

