

U.S. Government Extends Certain Deadlines For Employee Benefit Plans Due To COVID-19 National Emergency

April 30, 2020

Recognizing the challenges facing employee benefit plan sponsors, administrators, and participants, on April 28, 2020, the Departments of Treasury (“DOT”), Labor (“DOL”) and Health and Human Services (“HHS”) extended certain deadlines related to employee benefit plans in conjunction with the U.S. declared national emergency beginning March 1, 2020, as a result of the COVID-19 outbreak (the “National Emergency”). The extensions are provided through two sets of guidance: a final rule issued jointly by the DOL and the DOT (the “Final Rule”); and the Employee Benefits Security Administration Disaster Relief Notice 2020-01 (the “Disaster Notice”). While HHS did not issue the guidance, both of them state that HHS concurs with the relief specified and will exercise enforcement discretion to adopt a temporary policy to extend relief to non-federal governmental group health plans and health insurance issuers pursuant to the Public Health Service Act in a manner similar to that provided in the issued guidance.

The Final Rule

The Final Rule extends certain deadlines under the Internal Revenue Code (“Code”) and the Employee Retirement Income Security Act (“ERISA”) for group health plans, disability and other welfare plans, and pension plans (the “Applicable Plans”), and participants and beneficiaries of the Applicable Plans. More specifically, the Final Rule provides certain extensions by requiring certain of the Applicable Plans to disregard the period of time beginning on March 1, 2020, and ending 60 days after the announced end of the National Emergency (or other date announced by the government in a further notice) (the “Outbreak Period”) when determining the last day to comply with certain deadlines, including but not limited to:

- Deadlines related to special enrollment periods;
- Deadlines related to COBRA notifications, elections, and payments;
- Deadlines related to plan claims and appeals; and
- Deadlines related to external reviews of plan adverse benefit determinations.

For example, if the National Emergency was declared to end on April 30, 2020, then the Outbreak Period would be defined as March 1, 2020, to June 29, 2020 (sixty days after April 30, 2020). If a participant experiences a COBRA qualifying event due to a reduction of hours and receives his or her COBRA election notice on April 1, 2020, the deadline for the participant to elect COBRA (which generally would be 60 days after receipt of the COBRA election notice) would be August 28, 2020 (60 days after the end of the Outbreak Period).

Importantly, the government acknowledges that the end date for the National Emergency might vary for different geographical regions.

The Disaster Notice

The Disaster Notice further relaxes certain ERISA deadlines occurring during the Outbreak Period for employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants, beneficiaries and service providers subject to ERISA. While the Disaster Notice uses the same time period as the Outbreak Period, the extension

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does not provide that plans must disregard the Outbreak Period. Instead, plans should comply with the deadlines during the Outbreak Period as soon as administratively practicable under the circumstances.

The Disaster Notice both delays deadlines and relaxes requirements for:

- Furnishing notices, disclosures, and other documents required by Title 1 of ERISA over which the DOL has authority (except those discussed in the Final Rule);
- Procedures for plan loans and distributions;
- Forwarding participant payments and withholdings to employee pension benefit plans;
- Issuing advance notice of blackout periods; and,
- Filing Form 5500 and Form M-1 Filing.

Additionally, the Disaster Notice states that the DOL acknowledges that plans and service providers may not be able to achieve full and timely compliance with claims and other ERISA requirements, and that the DOL will approach enforcement with a compliance assistance mindset, which may include grace periods and other relief where appropriate.

The government's guidance provides many nuances related to the extended timeframes and relaxed requirements for employee benefit plans. Please contact the authors or your Miller Canfield attorney for more information.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.