

# COVID-19: DOL Issues Administrative Changes for Employee Benefit Plans

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In response to the COVID-19 outbreak, the Department of Labor (the “DOL”) recently issued guidance providing relief to employee benefit plan participants and administrators facing challenges in complying with various administrative requirements and deadlines. We have summarized below how this latest DOL guidance seeks to address those challenges.

First, in a notice jointly issued with the Internal Revenue Service (the “IRS”), the DOL extended the timeframes for participants to exercise certain rights, file claims and appeal denied claims. Second, in a separately issued notice, the DOL extended the time for administrators to furnish certain notices and disclosures, as well as relaxed the enforcement of other administrative requirements. Both notices apply with respect to a relief period starting March 1, 2020 and ending 60 days after the end of the federally declared national emergency for the COVID-19 outbreak, subject to a 1 year limit (the “Outbreak Period”).

## Mandatory Extension of Administrative Deadlines

For purposes of minimizing the risk of participants losing benefits, the DOL, in conjunction with the IRS, has ordered ERISA covered retirement, health and welfare plans to suspend the following administrative deadlines during the Outbreak Period:

### **HIPAA Special Enrollment Rights:**

- The 30-day (and in some cases, 60-day) period for employees and their dependents to enroll in group health plan coverage following a special enrollment qualifying event, such as the loss of other coverage.

### **COBRA Continuation Coverage Rights:**

- The 60-day period for a participant to elect COBRA continuation coverage following a COBRA qualifying event that would otherwise result in loss of coverage, such as a termination of employment.
- The 60-day period for a participant to notify a group health plan about the occurrence of certain COBRA qualifying events, such as a divorce or legal separation.
- The 14-day period for a group health plan to provide eligible participants with notice of their right to elect COBRA continuation coverage after receiving notice of a COBRA qualifying event.
- The 30-day (and in some cases, 45-day) period in which a participant who elects COBRA

continuation coverage must pay a COBRA premium; note, participants remain responsible for paying all accrued COBRA premiums.

#### **ERISA Internal Claim and Appeal Procedures:**

- The maximum period of time in which an initial claim for benefits may be filed by a participant under the terms of the plan.
- The 180-day period in which a group health plan or disability plan participant may appeal a denied claim.
- The 60-day period in which a retirement plan or welfare plan participant may appeal a denied claim.

#### **ERISA External Appeal Procedures:**

- The 4-month period in which a group health plan participant may request an external review by an independent reviewer of a denied claim or appeal.
- The 4-month (or in some cases, 48-hour) period in which a participant may correct an incomplete request for an external review by an independent reviewer of a denied claim or appeal.

We note that the mandatory deadline extension order by the DOL and IRS is limited in scope and does not cover certain time-sensitive COBRA and claim processing requirements. For example, the relief does not apply to the 30-day period in which employers must provide a group health plan notice of the occurrence of certain COBRA qualifying events, such as a termination of employment.

### **Permissible Good Faith Deadline Extension**

For purposes of providing plan administrators with additional time to comply with ERISA requirements, the DOL will not treat the failure to timely furnish certain notices, disclosures and other documents as a violation of ERISA, provided the following conditions are satisfied:

- the failure occurs during the Outbreak Period, and
- the plan and administrator act in good faith and furnish the notice, disclosure or document as soon as administratively practicable under the circumstances.

The DOL indicates that good faith acts include electronically communicating with participants and beneficiaries who the administrator reasonably believes have effective access to electronic means of communication, including email, text messages and continuous access websites.

This permissible good faith deadline extension covers several ERISA required notices, disclosures and other documents not otherwise addressed by the mandatory deadline extension described above, including summary plan descriptions, benefit statements, blackout notices and annual funding notices.

### **Other Good Faith Administrative Relief**

For purposes of providing plan administrators additional compliance assistance, the DOL will not treat the following as administrative failures, provided they occur solely due to the COVID-19 outbreak and the administrator satisfies conditions generally requiring a good faith effort to comply:

- **Plan Loans and Distributions.** Failure to follow a plan's ERISA procedural requirements with respect to plan loans and distributions.
- **Participant Contributions and Loan Repayments.** Failure to timely forward participant payments and withholdings to a retirement plan.

## CARES Act Plan Amendments

The DOL, with IRS concurrence, announced that if a retirement plan provides the plan loan and distribution relief granted under the CARES Act, the plan has until the last day of the first plan year beginning on or after January 1, 2022 to adopt the necessary plan amendments (i.e., December 31, 2022 for calendar year plans). The plan amendments must, however, meet the conditions required under the relevant provisions of the CARES Act.

If you have any questions about compliance requirements for employer sponsored retirement, health and welfare plans, including the application of COVID-19 relief, please contact a member of our [Employee Benefits Group](#).