LEGAL UPDATE

DOL Guidance on COVID-19 Relief for Employee Benefit Plans

On Feb. 26, 2021, the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) issued Disaster Relief Notice 2021-01 to provide guidance on the duration of the COVID-19-related relief regarding certain employee benefit plan deadlines during the Outbreak Period.

The relief requires employers to disregard the Outbreak Period when enforcing certain employee benefit plan deadlines and gives plan sponsors additional time to distribute plan notices and disclosures. Under federal law, this period cannot exceed one year. Because the Outbreak Period began on March 1, 2020, the relief was expected to expire on Feb. 28, 2021. However, this guidance allows the relief to extend beyond this date in some situations.

Outbreak Period Guidance

- Began on March 1, 2020.
- Continues until 60 days after the announced end of the COVID-19 National Emergency (or other date announced in a future notification).
- By law, cannot exceed one year.
- Separate from the public health emergency declared by the Department of Health and Human Services, which expires after 90 days unless an extension is issued. The most recent extension lasts through April 20, 2021.

Plan administrators should continue to make reasonable accommodations to prevent the loss of or delay in payment of benefits.

Application of the One-year Limit

The DOL Notice interprets the one-year limit on the relief related to the Outbreak Period to begin on the date the action would otherwise have been required in a given situation. Specifically, individuals and plans will have the applicable periods disregarded until the earlier of:

- One year from the date they were first eligible for relief; or
- 60 days after the announced end of the National Emergency (the end of the Outbreak Period).

On the applicable date, the time frames for individuals and plans with periods that were previously disregarded will resume. In no case will a disregarded period exceed one year.

Examples

The Notice provides the following examples to illustrate EBSA's guidance on the duration of the relief:

- If a qualified beneficiary would have been required to make a COBRA election by **March 1, 2020**, that requirement is delayed until **Feb. 28, 2021**. This date is the earlier of one year from March 1, 2020, or the end

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of the Outbreak Period (which remains ongoing).

- If a qualified beneficiary would have been required to make a COBRA election by **March 1, 2021**, that election requirement is delayed until the earlier of one year from that date (that is, **March 1, 2022**) or the end of the Outbreak Period.

- If a plan would have been required to furnish a notice or disclosure by **March 1, 2020**, the relief would end with respect to that notice or disclosure on **Feb. 28, 2021**. The responsible plan fiduciary would be required to ensure that the notice or disclosure was furnished on or before March 1, 2021.

In all of these examples, the delay for actions required or permitted that is provided by the Notices does not exceed one year.

Reasonable Accommodations

The DOL recognizes that plan participants and beneficiaries may continue to encounter problems when the relief described above is no longer available, due to the one-year limit. Accordingly, plan fiduciaries should make reasonable accommodations to prevent the loss of or undue delay in payment of benefits in these cases and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.

- The administrator or other fiduciary should consider affirmatively sending a notice regarding the end of the relief period when individuals are at risk of losing coverage.

- Plan disclosures issued prior to or during the pandemic may need to be reissued or amended if those disclosures failed to provide accurate information regarding the time in which participants and beneficiaries were required to take action (for example, COBRA election notices and claims procedure notices).

- In the case of ERISA group health plans, plans should consider ways to ensure that participants and beneficiaries who are losing coverage under their group health plans are made aware of other coverage options that

may be available to them, including the opportunity to obtain coverage through the Exchange in their state.

The DOL also acknowledges that full and timely compliance with ERISA's disclosure and claims processing requirements by plans and service providers may not always be possible. In the case of fiduciaries that have acted in good faith and with reasonable diligence under the circumstances, the DOL's approach to enforcement will be marked by an emphasis on compliance assistance, and includes grace periods and other relief.