

COVID-19 Alert

MANDATORY EXTENSIONS OF CERTAIN TIMEFRAMES FOR EMPLOYEE BENEFIT PLANS, PARTICIPANTS, & BENEFICIARIES AFFECTED BY COVID-19

MAY 2020

On April 28, 2020, the Employee Benefits Security Administration, U.S. Department of Labor, Internal Revenue Service, and Treasury Department issued a Joint Notice under the authority of ERISA §518 which extends certain timeframes under employee benefit plans due to the COVID-19 pandemic. The extension of the eight timeframes that provide relief to participants and the one time frame that provides relief to group health plans are listed below. These extensions apply beginning on March 1, 2020, and end 60 days after the announced end of the National Emergency period (with such period known as the "Outbreak Period"). Specifically, the following employee benefit plan compliance timeframes are affected by this final rule¹:

- Special Enrollment Timeframes (Health Fund only):** Under HIPAA individuals normally have a 30-day "special enrollment period" when a qualifying event occurs to request coverage under a group health plan that they are otherwise eligible for. Qualifying events that allow for this special enrollment period include, but are not limited to, birth of a child, adoption of a child, and marriage.
 - Example under the Joint Notice** → Individual is eligible for, but previously declined participation in, her employer sponsored group health plan. On March 31, 2020, she has a baby and now would like to enroll herself and the baby in the group health plan. So now the time frame for the individual to provide a request for coverage under this special enrollment period is determined by disregarding the Outbreak Period. If we use the assumption in the footnote, the individual will have 30 days from July 30, 2020, to exercise her special enrollment right (i.e., until August 29, 2020).
- COBRA Election Timeframes – Participant Relief (Health Fund only):** Under the COBRA continuation coverage provisions generally, an individual has at least 60 days after loss of health coverage to elect COBRA continuation coverage under a group health plan.
 - Example under the Joint Notice** → Individual loses coverage under the group health plan due to lack of hours → and receives the COBRA election notice on April 1, 2020. So now the standard 60 day COBRA election period is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the individual will have 60 days from July 30, 2020, to elect COBRA (i.e., until September 28, 2020).

¹ Be aware that we have **assumed** that the National Emergency due to the COVID-19 pandemic, which began on March 1, 2020, will end on May 31, 2020. Thus, in each example, the "Outbreak Period" runs from March 1, 2020 through July 30, 2020 (as July 30, 2020 is the date that is sixty (60) days following the end of the National Emergency). We have used the May 31, 2020, ending date solely to show how the extensions under the Joint Notice operate, and as a result the applicable deadlines noted in these examples will very likely change.

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3. COBRA Election Timeframe – Group Health Plan Relief (Health Fund only): Under the COBRA continuation coverage provisions generally a group health plan must provide a COBRA election notice to individuals who experience a qualifying event within 44 days from the loss of coverage.
 - Example under the Joint Notice → Individual loses coverage on April 1, 2020. So now the standard 44 days the group health plan has to provide this individual with the COBRA election notice is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the group health plan will have 44 days from July 30, 2020, to provide the individual with the COBRA election notice (i.e., until September 12, 2020).
4. COBRA Premium Payment Period Timeframes (Health Fund only): Under the COBRA continuation coverage provisions generally an individual has: (1) 45 days from his or her COBRA election to make the first premium payment, and (2) a 30 day grace period starting at the beginning of each coverage month to make subsequent monthly payments.
 - Example under the Joint Notice → Individual was receiving COBRA continuation coverage on March 1, 2020, and more than 45 days had passed since that individual had elected COBRA. The individual made a timely February 2020 payment, but did not make the March 2020 payment or any subsequent payments during the Outbreak Period. So now the standard 30-day grace period to make the monthly COBRA payment is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the individual will have 30 days from July 30, 2020, to pay the COBRA premiums due and owing for the months of March, April, May, June, and July 2020 (i.e., until August 29, 2020).
5. COBRA Notification Period Timeframes (Health Fund only): Under the COBRA continuation coverage provisions an individual has 60 days to notify the group health plan of a qualifying event, such as a divorce or legal separation, that causes the spouse to lose eligibility.
 - Example under the Joint Notice → Individual and spouse are both covered under the group health plan and finalize their divorce on April 1, 2020. So now the standard 60 day requirement to notify the group health plan of this qualifying event is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the group health plan would need to be properly notified of the divorce (which is a qualifying event) within 60 days from July 30, 2020 (i.e., on or prior to September 28, 2020).
6. Claims Procedure Timeframes – Filing Claim (Health Fund only): Generally group health plans have claims procedures that provide a deadline that an individual must meet to file a benefit claim.
 - Example under the Joint Notice → A group health plan requires that a benefit claim must be submitted within 12 months of the date of covered service in order to be considered for payment. So now if a covered individual received medical treatment on March 1, 2020, the 12 months to submit that benefit claim to the group health plan is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the individual will have 12 months from July 30, 2020, to submit the benefit claim (i.e., until July 30, 2021).

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7. Claims Procedures Timeframes – Filing an Appeal (Health, Pension and Annuity Funds): Under ERISA, group health plans must provide a claimant at least 180 days following receipt of an adverse benefit determination to appeal. Under ERISA, pension and annuity plans must provide a claimant at least 60 days following receipt of an adverse benefit determination to appeal (except in the case of applications for disability pensions).
 - Example under the Joint Notice → Individual received a notification of an adverse benefit determination from a group health plan on April 1, 2020. So now the standard 180 days for the individual to appeal that decision is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the individual will have 180 days from July 30, 2020, to appeal the adverse benefit determination (i.e., until January 26, 2021).
8. External Review Process Timeframes – Request for External Review (Health Fund only): Under ERISA appeals procedures for non-grandfathered group health plans, an individual has four months after the date of receipt of an adverse benefit determination to request an external review.
 - Example under the Joint Notice → Individual receives a final adverse benefit determination from a non-grandfathered group health plan on April 1, 2020, and an external review is available. So now the standard four month period to request an external review is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the individual will have four months from July 30, 2020, to request an external review (i.e., until November 30, 2020).
9. External Review Process Timeframes – Filing Information to Perfect a Request (Health Fund only): Under ERISA appeals procedures for non-grandfathered group health plans, an individual has until the end of the four-month filing period (or, if later, 48 hours following receipt of notification of an incomplete request) to perfect the request for external review by submitting additional information.
 - Example under the Joint Notice → Individual receives a final adverse benefit determination from group health plan on April 1, 2020, and submits a request for external review on April 15, 2020. On April 20, 2020, the group health plan notifies the individual that the request is not complete. So now the standard four month period (or, if later, 48-hour period) to perfect an external review by submitting additional information is extended by disregarding the Outbreak Period. Using the assumption in the footnote, the individual will have until four months from July 30, 2020, to request an external review (i.e., until November 30, 2020).

The applicable weblink where these extensions are discussed in the Federal Register can be [found here](#).

Please contact the Reid and Riege attorney with whom you regularly work, or a member of our Multiemployer Benefit Plans practice listed to the right, for more up to date information, or questions about your unique circumstances.

For information and regulatory guidance on coronavirus / COVID-19 issues, please visit our website [here](#).

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