[Billing Codes: 4510-29-P; 4830-01-P]

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2590

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

Notice on extension of certain time frames for employee benefit plans affected by Hurricane Katrina

AGENCIES: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice announces the extension of certain time frames under the Employee Retirement Income Security Act and Internal Revenue Code for group health plans, disability and other welfare plans, pension plans, participants and beneficiaries of these plans, and group health insurance issuers directly affected by Hurricane Katrina.

EFFECTIVE DATE: [insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Amy Turner, Employee Benefits Security Administration, Department of Labor, at 202-693-8335; or Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at 202-622-6080.

SUPPLEMENTAL INFORMATION:

I. Purpose

As a result of Hurricane Katrina, a number of participants and beneficiaries covered by group health plans, disability or other welfare plans, and pension plans may encounter problems in exercising their health coverage portability or continuation coverage rights, or in filing or perfecting their benefit claims. Recognizing the numerous challenges already facing affected participants and beneficiaries, it is important that plans and the Agencies take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established time frames. Similarly, the Agencies recognize that affected plans also may have difficulty in complying with certain notice obligations related to a participant's health coverage portability or continuation coverage rights.

Accordingly, under the authority of section 518 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1148, and section 7508A of the Internal Revenue Code of 1986 (Code), 26 U.S.C. 7508A, the Agencies are extending certain time frames otherwise applicable to group health plans, disability and other welfare plans, pension plans, their participants and beneficiaries, and group health insurance issuers, under ERISA and the Code.[1]

The Agencies believe that such relief is immediately needed to preserve and protect the benefits of participants and beneficiaries in affected plans. Accordingly, the Agencies have determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b) and (d), that there is good cause for making the relief provided by this notice effective immediately

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[1] ERISA section 518 and Code section 7508A generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan, affected by a Presidentially declared disaster, notwithstanding any other provision of law, the Secretaries of Labor and the Treasury may prescribe (by notice or otherwise) a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 of ERISA and section 7508A of the Code further provide that no plan shall be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline under those sections.

upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to public interest.

The relief provided by this Notice supplements other Hurricane Katrina disaster relief, which can be accessed on the Internet at www.dol.gov and www.irs.gov.

II. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides portability of group health coverage by, among other things, placing limitations on the ability of a group health plan or group health insurance issuer to impose a preexisting condition exclusion and by requiring special enrollment rights. ERISA section 701 and Code section 9801. Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage. ERISA section 601 and Code section 4980B. Section 503 of ERISA and the Department of Labor's claims procedure regulation at 29 CFR 2560.503-1 require employee benefit plans subject to Title I of ERISA to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. All of the foregoing provisions include timing requirements for certain acts in connection with employee benefit plans, some of which are being modified by this notice.

A. HIPAA time frames

The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage. ERISA section 701(c)(2)(A) and Code section 9801(c)(2)(A). Also, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting

condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption. ERISA section 701(d) and Code section 9801(d).

The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage or loss of employer contributions) to be eligible for special enrollment. ERISA section 701(f) and Code section 9801(f).

The HIPAA certification rules prescribe time periods for the provision of certificates of creditable coverage upon loss of coverage. Under the regulations, plans and issuers subject to the COBRA continuation coverage provisions are required to provide an automatic certificate no later than the time for providing a COBRA election notice. Plans and issuers not subject to COBRA are required to provide the automatic certificate within a reasonable time after coverage ceases. 29 CFR 2590.701-5(a)(2)(ii) and 26 CFR 54.9801-5(a)(2)(ii).

B. COBRA time frames

The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. ERISA section 605 and Code section 4980B(f)(5).

Plans are required to allow payers to pay premiums in monthly installments and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. ERISA section 602(3) and Code section 4980B(f)(2)(C). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day in the period for which payment is being made. ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii), 26 CFR 54.4980B-8 Q&A-5(a).

Notice provisions prescribe time periods for individuals to notify the plan of a qualifying event or determination of disability and for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage. ERISA section 606 and Code section 4980B(f)(6), 29 CFR 2590.606-3.

C. Claims procedure time frames

Section 503 of ERISA and the Department of Labor's claims procedure regulation at 29 CFR 2560.503-1 require employee benefit plans to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Under the regulation, plans cannot have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

III. Relief

A. Relief for affected plan participants, beneficiaries, qualified beneficiaries, and claimants. With respect to plan participants, beneficiaries, qualified beneficiaries, or claimants directly affected by Hurricane Katrina (as defined in paragraph III.C.(1)), group health plans, disability and other welfare plans, pension plans, and health insurance issuers subject to Part 7 of ERISA, must disregard the period from August 29, 2005 through January 3, 2006 when determining any of the following time periods and dates --

(1) The 63-day break in coverage period under ERISA section 701(c)(2)(A) and Code section 9801(c)(2)(A),

(2) The 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children under ERISA section 701(d) and Code section 9801(d),

(3) The 30-day period to request special enrollment under ERISA section 701(f) and Code section 9801(f),

(4) The 60-day period to elect COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),

(5) The date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C),

(6) The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6),

(7) The date within which individuals may file a benefit claim under the plan's claims procedure pursuant to 29 CFR 2560.503-1, and

(8) The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure pursuant to 29 CFR 2560.503-1(h).

B. Relief for group health plans. With respect to group health plans, their sponsors and administrators, and health insurance issuers subject to Part 7 of ERISA, that are directly affected by Hurricane Katrina (as defined in paragraph III.C.(3)), the period from August 29, 2005 through January 3, 2006 shall be disregarded when determining the following dates --

(1) The date for providing an automatic certificate of creditable coverage under 29 CFR 2590.701-5(a)(2)(ii) and 26 CFR 54.9801-5(a)(2)(ii), and

(2) The date for providing a COBRA election notice under ERISA section 606 and Code section Code section 4980B(f)(6).

C. Definitions. For purposes of this notice --

(1) A participant, beneficiary, qualified beneficiary, or claimant directly affected by Hurricane Katrina means an individual who resided, lived, or worked in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane; or if the employee benefit plan providing the individual's coverage was directly affected (as defined in paragraph III.C.(3)).

(2) The term disaster areas means the counties and parishes in Louisiana, Mississippi or Alabama that have been or are later designated as disaster areas eligible for Individual Assistance by the Federal Emergency Management Agency because of the devastation caused by Hurricane Katrina.

(3) An employee benefit plan is directly affected by Hurricane Katrina if the principal place of business of the employer that maintains the plan (in the case of a single-employer plan, determined disregarding the rules of section 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of section 414(b) and (c) of the Code); the office of the plan or the plan administrator; or the office of the primary recordkeeper serving the plan, was located in one of disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane.

D. Any later extension of the January 3, 2006 date by the Agencies will automatically apply for purposes of the deadlines addressed by this notice.

IV. Examples

The following examples illustrate the time frame for extensions required by this notice. In each example, assume that the individual described is directly affected by the hurricane.

Example 1. (i) Facts. Individual A works for Employer X and participates in X's group health plan. On August 29, 2005, the day of Hurricane Katrina, X's business is destroyed and the plan ceases to function. A has no other creditable coverage.

(ii) Conclusion. In this Example 1, when determining A's 63-day break in coverage period and special enrollment period, the period from August 29, 2005 through January 3, 2006 is disregarded. Accordingly, A would not incur a 63-day break in coverage until 63 days after January 3 (which is March 7, 2006) and the last day of any special enrollment period is 30 days after January 3 (which is February 2, 2006).

Example 2. (i) Facts. Same facts as Example 1 and another employer that is part of the same controlled group as X continues to operate and sponsor a group health plan. A is provided a COBRA election notice on October 2, 2005.

(ii) Conclusion. In this Example 2, the period from October 2, 2005 through January 3, 2006 is disregarded for purposes of determining A's COBRA election period. The last day of A's COBRA election period is 60 days after January 3, 2006 (which is March 4, 2006).

Example 3. (i) Facts. Individual B participated in a group health plan and lost eligibility for coverage on August 14, 2005.

(ii) Conclusion. In this Example 3, B had been without coverage for 14 days before the day of the hurricane. When determining B's 63-day break in coverage period and special enrollment period, the period from August 29, 2005 through January 3, 2006 is disregarded. The last day of B's 63-day break in coverage period is 49 days after January 3 (which is February 21, 2006) and the last day of any special enrollment period is 16 days after January 3, 2006 (which is January 19, 2006).

Example 4. (i) Facts. Before the hurricane, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since C had elected COBRA. Monthly premium payments were due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. C made a timely August payment, but not a September payment, before the hurricane.

(ii) Conclusion. In this Example 4, the period from August 29, 2005 through January 3, 2006 is disregarded for purposes of making monthly COBRA premium installment payments. Premium payments made by 30 days after January 3, 2006 (which is February 2, 2006) for September, October, November, December and January are timely.

Example 5. (i) Facts. Same facts as Example 4. By February 2, 2006, a payment equal to two months' premium has been made for C.

(ii) Conclusion. C is entitled to COBRA continuation coverage for September and October 2005.

Example 6. (i) Facts. Individual D is a participant in a group health plan. On October 1, 2004, D received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not yet submitted. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment.

(ii) Conclusion. For purposes of determining the 365-day period applicable to D's claim, the period from August 29, 2005 through January 3, 2006 is disregarded. Therefore, D's last day to submit a claim is 34 days after January 3, 2006, which is February 6, 2006.

Example 7. (i) Facts. Individual E received a notification of an adverse benefit determination from his disability plan on August 10, 2005. The notification advised E that there are 180 days within which to file an appeal.

(ii) Conclusion. When determining the 180-day period within which P's appeal must be filed, the period from August 29, 2005 through January 3, 2006 is disregarded. Therefore, E's last day to submit an appeal is 162 days after January 3, which is June 14, 2006.

Signed at Washington, DC, this 15th day of September, 2005.

Ann Combs
Assistant Secretary
Employee Benefits Security Administration
Department of Labor

Signed this 16th day of September, 2005.

Deputy Commissioner for Services and Enforcement
Internal Revenue Service
Department of the Treasury.