DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2590

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

Extension of Certain Time Frames for Employee Benefit Plans, Participants, and Beneficiaries Affected by Hurricane Maria

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

ACTION: Extension of time frames.

SUMMARY: This document announces the extension of certain time frames under the Employee Retirement Income Security Act and the 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 Maria.

DATES: November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth Schumacher or Suzanne Adelman, Employee Benefits Security Administration, Department of Labor, at 202–693–8335; or Karen Levin, Internal Revenue Service, Department of the Treasury, at 202–317–5500.

SUPPLEMENTARY INFORMATION:

I. Purpose

As a result of Hurricane Maria, 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 and 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 Employee Benefits Security Administration, Department of Labor and Internal Revenue Service, Department of the Treasury (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 group health plans may have difficulty in complying with certain notice obligations.

Accordingly, under the authority of section 518 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 7508A of the Internal Revenue Code of 1986 (the Code), the Agencies are extending certain time frames otherwise applicable to group health plans, disability and other welfare plans, pension plans, and their participants and beneficiaries 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 granting the relief provided by this notice effective immediately upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to the public interest.

This document has been reviewed by the Department of Health and Human Services (HHS), which concurs with the relief. HHS encourages plan sponsors of nonfederal governmental group health plans to provide the relief specified in this guidance. HHS also encourages States, and health insurance issuers, to enforce and operate, respectively, in a manner consistent with the relief provided in this guidance.[2]

The relief provided by this Notice supplements other disaster relief guidance, which can be accessed on the Internet at: *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief* and *https://www.irs.gov/newsroom/tax-relief-in-disaster-situations.*

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, requiring special enrollment rights. ERISA section 701, Code section 9801, 29 CFR 2590.701–6, 26 CFR 54.9801–6. 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, Code section 4980B, 26 CFR 54.4980B–1. Section 503 of ERISA and 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. Section 2719 of the Public Health Service Act (PHS Act), incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, imposes additional rights and obligations with respect to claims, appeals, and external review for nongrandfathered group health plans and health insurance issuers offering nongrandfathered coverage. See also 29 CFR 2590.715–2719 and 26 CFR 54.9815–2719. 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. Special Enrollment Time Frames

In general, the HIPAA special enrollment provisions require that a special enrollment period must be provided in certain circumstance including circumstances in which an employee or dependent loses eligibility for any group health plan or other health insurance coverage in which the employee or the employee's dependents were previously enrolled (including coverage under Medicaid and the Children's Health Insurance Program), and upon certain life events such as when a person becomes a dependent of an eligible employee by birth, marriage, or adoption. ERISA section 701(f), Code section 9801(f), 29 CFR 2590.701–6, and 26 CFR 54.9801–6. Generally, group health plans must allow such individuals to enroll in the group health plan if they are otherwise eligible and if enrollment is requested within 30 days of the occurrence of the event (or

[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.

[2] Section 104 of Title I of Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that the Secretaries of Labor, the Treasury, and Health and Human Services (the Departments) ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code, published at 64 FR 70164, December 15, 1999.

within 60 days, in the case of the special enrollment rights added by the Children's Health Insurance Program Reauthorization Act of 2009). ERISA section 701(f), Code section 9801(f), 29 CFR 2590.701–6, and 26 CFR 54.9801–6.

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 payment of 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). COBRA continuation coverage may be terminated for failure to pay premiums timely. ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day of the period for which payment is being made. ERISA section 602(2)(C), Code section 4980B(f)(2)(B)(iii), and 26 CFR 54.4980B–8 Q&A–5(a). Notice requirements prescribe time periods for employers to notify the plan of certain qualifying events and for individuals to notify the plan of certain qualifying events or a determination of disability; notice requirements also prescribe a time period for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage. ERISA section 606, Code section 4980B(f)(6), and 29 CFR 2590.606–3.

C. Claims Procedure Time Frames

Section 503 of ERISA and 29 CFR 2560.503–1, as well as section 2719 of the PHS Act, incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, 29 CFR 2590.715–2719, and 26 CFR 54.9815–2719, require ERISA-covered employee benefit plans and nongrandfathered group health plans and health insurance issuers to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and to provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Plans may not 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). 29 CFR 2560.503–1(h)(2)(i), 29 CFR 2560.503–1(h)(3)(i), 29 CFR 2590.715–2719(b)(2)(ii)(C), and 26 CFR 54.9815–2719(b)(2)(ii)(C).

D. External Review Process Time Frames

PHS Act section 2719, incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, sets out standards for external review that apply to nongrandfathered group health plans and health coverage and provides for either a State external review process or a Federal external review process. Standards for external review processes and timeframes for submitting claims to the independent reviewer for group health plans or health insurance issuers may vary depending on whether a plan uses a State external review process or a Federal external review process. For plans or issuers that use the Federal external review process, the process must allow at least four months after the receipt of a notice of an adverse benefit determination or final internal adverse benefit determination for a request for an external review to be filed. 29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i). The Federal external review process also provides for a preliminary review of a request for external review. The regulation provides that if such request is not complete, the Federal process must provide for a notification that describes the information or materials needed to make the request complete, and the plan or issuer must allow a claimant to perfect the request for external review within the four-month filing period or within the 48 hour period following the receipt of the notification, whichever is later. 29 CFR 2590.715–2719(d)(2)(ii)(B) and 26 CFR 54.9815–2719(d)(2)(ii)(B).

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 Maria (as defined in paragraph III.C.(1)), group health plans, disability and other welfare plans, pension plans, and health insurance issuers offering coverage in connection with a group health plan must disregard the period from September 17, 2017 through March 16, 2018 for such plan participants, beneficiaries, qualified beneficiaries, or claimants located in Puerto Rico, and must disregard the period from September 16, 2017 through March 15, 2018 for such plan participants, beneficiaries, qualified beneficiaries, or claimants located in the United States Virgin Islands, when determining any of the following time periods and dates—

(1) The 30-day period (or 60-day period, if applicable) to request special enrollment under ERISA section 701(f) and Code section 9801(f),

(2) The 60-day election period for COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),[3]

(3) 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),

(4) 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)(C),

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

(6) 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),

(7) The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination pursuant to 29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i), and

(8) The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete pursuant to 29 CFR 2590.715–2719(d)(2)(ii) and 26 CFR 54.9815–2719(d)(2)(ii).

B. Relief for Group Health Plans

With respect to group health plans, and their sponsors and administrators, that are directly affected by Hurricane Maria (as defined in paragraph III.C.(3)), the period from September 17, 2017 through March 16, 2018 for those located in Puerto Rico, and the period from September 16, 2017 through March 15, 2018 for those located in the United States Virgin Islands, shall be disregarded when determining the date for providing a COBRA election notice under ERISA section 606(c) and Code section 4980B(f)(6)(D).

[3] The term ''election period'' is defined as ''the period which—(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event, (B) is of at least 60 days' duration, and (C) ends not earlier than 60 days after the later of—(i) the date described in subparagraph (A), or (ii) in the case of any qualified beneficiary who receives notice under section 1166(4) of this title, the date of such notice.'' *See* ERISA section 605(a)(1). See also Code section 4980B(f)(5).

C. Definitions

For purposes of this notice—

(1) A participant, beneficiary, qualified beneficiary, or claimant directly affected by Hurricane Maria 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 whose employee benefit plan was directly affected (as defined in paragraph III.C.(3)), but solely with respect to that employee benefit plan.

(2) The term ''disaster areas'' means the counties in Puerto Rico and the counties and county equivalents in the United States Virgin Islands 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 Maria.

(3) An employee benefit plan is directly affected by Hurricane Maria 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 relevant office of the primary recordkeeper serving the plan was located in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane.

D. Later Extensions

The Agencies will continue to monitor the effects of Hurricane Maria and may provide additional relief as warranted.

IV. Examples

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

Example 1 (Electing COBRA). (i) *Facts.* Individual *A* works for Employer *X* in Puerto Rico and participates in *X*'s group health plan. On September 20, 2017, the day Hurricane Maria made landfall, *X*'s business is destroyed, and the plan ceases to function. *A* has no other coverage. Employer *Y* is part of the same controlled group as *X* and continues to operate and sponsor a group health plan. *A* is provided a COBRA election notice on December 1, 2017. What is the deadline for *A* to elect COBRA?

(ii) *Conclusion.* In this *Example 1, A* is eligible to elect COBRA coverage under Employer *Y*'s plan because Employer *Y* is in the same controlled group as Employer *X*.[4] The period from September 17, 2017 through March 16, 2018 is disregarded for purposes of determining *A*'s COBRA election period. The last day of *A*'s COBRA election period is 60 days after March 16, 2018, which is May 15, 2018.

Example 2 (Special enrollment period). (i) *Facts.* Individual *B* resides in the United States Virgin Islands. *B* is eligible for, but previously declined participation in, her employer-sponsored group health plan. On October 31, 2017, *B* gives birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15.

(ii) *Conclusion.* In this *Example 2,* the period from September 16, 2017 through March 15, 2018 is disregarded for purposes of determining *B*'s special enrollment period. *B* may special enroll herself and her child into her employer's plan as early as the date of the child's birth, and the last day *B* may special enroll herself and her child into her employer's plan is 30 days after March 15, 2018, which is April 14, 2018.

Example 3 (COBRA premium payments). (i) *Facts.* Individual *C* resides in Puerto Rico. Before the hurricane, *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 are 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 September payment, but did not make an October payment before the hurricane.

(ii) *Conclusion.* In this *Example 3,* the period from September 17, 2017 through March 16, 2018 is disregarded for purposes of making monthly COBRA premium installment payments. Premium payments made by 30 days after March 16, 2018, which would be April 15, 2018 for October, November, and December of 2017, and January, February, and March of 2018, are timely, and *C* is entitled to COBRA continuation coverage for these months.

Example 4 (COBRA premium payments). (i) *Facts.* Same facts as *Example 3.* By April 15, 2018, a payment equal to two months' premium has been made for *C.*

(ii) *Conclusion. C* is entitled to COBRA continuation coverage for October and November 2017, the two months for which timely premium payments were made, and *C* is not entitled to COBRA continuation coverage for any month after November 2017.

Example 5 (Claims for medical treatment under a group health plan). (i) *Facts.* Individual *D* resides in the United States Virgin Islands and is a participant in a group health plan. On October 1, 2017, *D* received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not submitted until later. 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 October 1, 2017 through March 15, 2018 is disregarded. Therefore, *D*'s last day to submit a claim is 365 days after March 15, 2018, which is March 15, 2019.

Example 6 (Internal appeal). (i) *Facts.* Individual *E* resides in Puerto Rico. *E* received a notification of an adverse benefit determination from *E*'s disability plan on August 15, 2017. 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 *E*'s appeal must be filed, the period from September 17, 2017 through March 16, 2018 is disregarded. Therefore, *E*'s last day to submit an appeal is 148 days after March 16, 2018, which is August 11, 2018.

Signed at Washington, DC, this 17th day of November, 2017.

Jeanne Klinefelter Wilson,

Deputy Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Signed this 16th day of November, 2017.

Kirsten Wielobob,

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

[FR Doc. 2017–25332 Filed 11–21–17; 8:45 am]

BILLING CODE 4510–29–P

[4] Under the COBRA rules, the COBRA period continues even after the end of the plan, if the employer continues to provide any group health plan to any employee. Code section 4980B(f)(2)(B)(ii) and ERISA 602(2)(B) . For purposes of COBRA, ''employer'' includes the person for whom services are performed and any other person that is a member of a group described in Code section 414(b), (c), (m), or (o). 26 CFR 54.4980B–2, Q&A 2.