Morgan Lewis

MEMORANDUM

TO: Board of Trustees of Bakers Union/FELRA Health and Welfare Fund

FROM: Jim Kimble
Merle DeLancey

DATE: March 10, 2021

SUBJECT: COVID-19 Deadline Extensions

In March 2020, DOL's Employee Benefit Security Administration and the Department of Health and Human Services (the "Agencies") suspended certain deadlines related to COBRA, Claims and Appeals, and HIPAA open enrollment. Specifically, effective March 1, 2020, these deadlines were suspended until 60 days after the announced end of the National Emergency due to COVID-19 or such other date announced by the Agencies in a future notification (i.e., the "Outbreak Period"). The statutory provisions under which the deadlines were extended, however, did not appear to permit an extension of these timeframes beyond one year. In EBSA Disaster Relief Notice 2021-01 ("Notice"), the Agencies confirmed that the statutory one-year period could not be extended and provided guidance on how to deal with the deadline extensions.

The Notice provides that the suspended deadlines will be disregarded (or tolled) **until the earlier of (a) one year from the date the plan or individual was first eligible for relief, or (b) the end of the Outbreak Period.** There's an additional clarification (or caveat) that the maximum tolling period will not exceed one year. This interpretation means that each participant or beneficiary has his/her own personal rolling deadline from the date of his/her own event. In other words, the time period each participant or beneficiary has to report an event falling within the Guidance is suspended until the earlier of one year from the date of that event or until the end of the Outbreak Period.

For example:

A COBRA qualified beneficiary, whose election period began on June 1, 2020, will now have until 60 days (the COBRA election period) after May 31, 2021, to make his/her election.

The timeframes described in the COBRA, HIPAA Special Enrollment, and Claims/Appeals regulations are all minimums and plans have always been free to establish timeframes that are longer than required. Therefore, the Board should consider the following options, which are described in further detail below:

1. Enforce the termination of deadline extensions consistent with Notice 2021-01 (subject to appropriate notice to participants); or

2. Continue deadline extensions until 60 days after the end of the National Emergency. While this is the most expansive option with the most potential for adverse selection, it may be administratively easier for Associated Administrators to use one date for the termination of all deadline extensions.

The deadlines that are suspended are:

- HIPAA Special Enrollment Dates
- Date to Elect COBRA Continuation Coverage
- Date to Pay COBRA Premiums
- Date to Notify the Plan of a Qualifying Event that Would Trigger a Beneficiary's Loss of Coverage
- Date to File a Benefit Claim
- Date to File an Appeal of a Claim Denial
- Date to Request External Review of a Claim Denial
- Date to File Additional Information to Perfect External Review Request