Impact of COVID-19 on COBRA Litigation and Best Practices

*Alexandra Lugo, Esq.**

Recent class action lawsuits brought pursuant to the COBRA underscore the need for strict compliance when administering employer-sponsored group health plans. In most cases, the lawsuits allege failures which involve nuanced—and often novel—interpretations of what is required under COBRA. The COVID-19 pandemic adds a layer of complexity to COBRA administration at a time when employers and COBRA administrators are already facing increased scrutiny. This article highlights two class action lawsuits filed against Amazon and Nestlé Waters North America since the start of the COVID-19 national emergency, and discusses COBRA litigation trends that may emerge as the COVID-19 pandemic continues. Federal guidance extending certain COBRA deadlines during the COVID-19 outbreak period is explained, and best practices for COBRA administration are considered.

INTRODUCTION

On March 13, 2020, President Trump declared a national emergency in response to the novel coronavirus (COVID-19) pandemic. In the weeks that followed, many employers were forced to temporarily halt physical business operations due to state and local government shelter-in-place and non-essential business closing orders. As a result, many organizations were left with the difficult decision to furlough or lay off employees who could not work remotely. The decision to furlough or lay off employees during a pandemic creates unique Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) administration and compliance issues for employers who sponsor group health plans.

COBRA: AN OVERVIEW

Under COBRA, employers with 20 or more employees must offer continuation coverage to qualified beneficiaries who lose active coverage under a group health plan.[1] The types of group health plans subject to COBRA include employer-sponsored medical, dental, and vision plans, as well as health flexible spending accounts (health FSAs) and health reimbursement accounts (HRAs). Depending how the programs are structured, some employee assistance programs (EAPs), wellness programs, and on-site medical clinics may also con-

**ALEXANDRA LUGO* is an associate with Barclay Damon LLP in Buffalo, NY. She advises for-profit and not-for-profit entities on employee benefit plan compliance and administration. She has advised companies at all stages of development—from small businesses to Fortune 500 companies—on local, state, and federal laws governing employee benefit plans. Ms. Lugo also analyzes employee benefit plan compliance and transition planning issues in connection with mergers and acquisitions. Ms. Lugo drafts employee benefit plan documents and employee communications, and advises individuals involved in plan design and administration in understanding their fiduciary responsibilities. She also regularly negotiates contracts on behalf of clients, including administrative-service agreements and business-associate agreements. She advises clients on all aspects of health, fringe benefit, and retirement plan compliance and administration, including ERISA, the Internal Revenue Code, COBRA, the Affordable Care Act (ACA), HIPAA, and state privacy and insurance laws. She counsels clients on how to minimize liability under these laws while providing the greatest benefits to plan participants and beneficiaries.

stitute a group health plan subject to COBRA.

A qualified beneficiary, which includes an employee, the employee's spouse, and dependent children enrolled in active group health plan coverage, each have an independent right to elect COBRA continuation coverage when active coverage is lost due to a COBRA qualifying event. The most common COBRA qualifying events include the termination of employment (other than for gross misconduct), a reduction in hours, divorce or legal separation, death of the employee, and loss of dependent status.[2] When active group health plan coverage is lost due to a reduction in hours or termination of employment, such as in the case of a furlough or layoff, qualified beneficiaries must be offered 18 months of continuation coverage under COBRA.

The continuation coverage offered must be the same coverage that a qualified beneficiary was enrolled in prior to the qualifying event. COBRA beneficiaries may be charged the full premium amount (plus a 2% administrative fee). In certain cases, coverage may extend beyond 18 months following a termination of employment or reduction in hours when a second qualifying event occurs or a qualified beneficiary becomes disabled during the initial COBRA coverage period. Lastly, COBRA imposes strict notice requirements. Employees must be notified of their COBRA election rights in specific detail within certain timeframes; these notice requirements are the focus of most COBRA litigation, as discussed below.

COBRA Administration During COVID-19

The COVID-19 pandemic and associated cessation of business operations triggered a landslide of furloughs and layoffs for employers who were not financially able to continue paying employees during periods when no work was being performed. Although there is no uniform definition of "furlough" under federal or state law, a furlough is generally treated as an unpaid leave of absence. Some employers elect to implement "partial furloughs," where an employee works a reduced schedule (for example, a full-time employee transitions to part-time hours, on a temporary basis). Alternatively, some employers choose to implement "rotating furloughs," where employees alternate moving in and out of furlough periods in order to distribute paid employment and unpaid leave more equitably among employees.

Generally, a furlough can constitute a COBRA qualifying event on the basis of a "reduction in hours." Similarly, a layoff generally constitutes a COBRA qualifying event on the basis of a "termination of employment." However, COBRA only requires that continuation coverage be offered when active coverage is lost due to a qualifying event. If a termination of employment or reduction in hours does not result in a loss of active coverage, then the employee did not experience a COBRA qualifying event and the employer is not required to offer COBRA continuation coverage.[3]

In the early days and weeks of the COVID-19 national emergency period, this created a conundrum for employers subject to COBRA. Employers implementing COVID-related furloughs and layoffs intended for these employment changes to be temporary and only last as long as businesses were required to remain closed. Protecting employees' active, employer-subsidized medical coverage during a pandemic was a priority; however most employee benefit plan documents and insurance carrier policies require employees to be actively at work in order to be eligible to receive benefits. Although employers are required to keep employees enrolled in active group health plan coverage during certain categories of protected leave

where no work is being performed (such as FMLA leave under the federal Family and Medical Leave Act of 1993, paid state disability and family leave, and military leave under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA)), unpaid leaves of absence such as a furlough generally trigger a loss of plan eligibility under the terms of the plan.

Initially, it appeared COVID-related furloughs and layoffs would trigger a requirement to offer COBRA continuation coverage, despite employers' intentions that such furloughs and layoffs would be temporary. Leaving an employee enrolled in active coverage following a termination of employment or reduction in hours would be viewed as fraud by an insurance carrier when the plan documents and insurance policies require active employment under a fully insured plan. In addition, employers that self-insure group health plan benefits run the risk that the plan stop-loss carrier would take the position that furloughed or terminated employees are not covered by the stop-loss policy, leaving the employer financially responsible for high-cost claims.

Fortunately, most insurance carriers ultimately agreed to permit furloughed employees to remain enrolled in active coverage so long as the applicable premium was paid during the COVID-19 outbreak period (subject to change and continued carrier approval). In some cases, carriers also permitted laid off employees to remain on active coverage for a finite period of time (such as 90 days). This removed the immediate concern of whether a furlough or layoff should result in an offer of COBRA coverage, but other compliance questions linger.

For example, as the COVID-19 outbreak period continues, many employers have considered cash-saving measures such as eliminating the employer contribution toward group health plan coverage for furloughed employees who were permitted to remain enrolled in active coverage. Such measures can create compliance risks beyond COBRA, such as triggering affordability penalties under the Patient Protection and Affordable Care Act (PPACA).[4] Although COBRA generally counts as an offer of coverage under the PPACA employer shared responsibility rules, COBRA will likely be unaffordable unless the employer heavily subsidizes the COBRA premium.

In addition, deciding to treat an extended furlough as a COBRA qualifying event when the employer and insurance carrier previously waived actively work requirements for furloughed employees should be carefully considered. An aggrieved employee could claim there was a de facto or operational plan amendment eliminating the "actively at work" requirement. Employers will face heightened risk of such claims where employees who have been furloughed and voluntarily provided with continued active coverage are subsequently told they are losing their employer-subsidized health insurance in the midst of a pandemic. An employer in this situation would be better served, from a COBRA perspective, by transitioning the extended furlough into a permanent layoff and offering COBRA coverage based on a termination of the employment relationship.

COBRA Litigation: An Overview

Under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), a participant or beneficiary can sue "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." In addition, ERISA § 502(a)(3) permits a participant or beneficiary to

sue "to obtain other appropriate equitable relief." These provisions provide a mechanism for plan participants and beneficiaries to bring COBRA lawsuits against employers.

A court can award COBRA plaintiffs damages for amounts the plaintiffs paid for medical bills, attorney's fees, and provide "other relief," none of which are likely to be covered or subject to indemnification under an employer's contract with an insurance carrier or third-party COBRA administrator. ERISA also authorizes courts to impose a $110 per day statutory penalty for each COBRA notice failure, which has been interpreted to mean separate $110 per day penalties can be assessed for each COBRA qualified beneficiary in a family unit.[5] In addition, an employer may be subject to Internal Revenue Service (IRS) excise taxes of up to $200 per day per family unit for failure to comply with COBRA.[6] Thus, it is no surprise that six- and seven-figure class action COBRA settlements have become common, as a class size can easily reach hundreds or thousands of individuals when the alleged COBRA failures span a number of years.[7]

The majority of the COBRA class action lawsuits filed in recent years targeted alleged violations in the COBRA election notice. Aside from obvious failures, such as providing COBRA election notices to participants and beneficiaries beyond the maximum period required under COBRA,[8] the lawsuits pose novel interpretations of the required election notice contents. On the one hand, the COBRA election content requirements are fairly straightforward. The election notice must notify a COBRA qualified beneficiary of such beneficiary's rights under COBRA.[9] The election notice must be "written in a manner calculated to be understood by the average plan participant."[10] The Department of Labor (DOL) has even articulated 14 specific pieces of information[11] that must be included in the election notice, such as the name of the plan, the name, address, and telephone number of the party responsible for administering COBRA, identification of the qualifying event, identification of each qualified beneficiary entitled to COBRA coverage, the date COBRA coverage will end, an explanation of how to elect COBRA coverage, the premium amount, and premium payment procedures.

On the other hand several of the election notice content requirements that seem straightforward at first glance have been challenged in court, with mixed success. For example, the requirement that the election notice be "written in a manner calculated to be understood by the average plan participant" became the center of two lawsuits challenging the failure to provide Spanish-speaking employees with an election notice written in Spanish. Although COBRA does not require the election notice to be translated for non-English speaking employees, the DOL provides a Spanish version of the model notice on its website.[12] In *Vazquez v. Marriott International*,[13] a Spanish-speaking employee failed to elect COBRA after being provided an English-only COBRA election notice. The lawsuit against Marriott ultimately settled for $250,000.[14] In *Valdivieso v. Cushman & Wakefield, Inc.*,[15] a Spanish-speaking employee brought similar language-based claims on the basis that English was his second language and he could not "read English very well." The court granted the employer's motion to dismiss the employee's language-based claim because the employee failed to demonstrate that the average plan participant could not understand the notice.

Class actions have also raised a novel interpretation of the COBRA election notice requirements by challenging

the failure to use the DOL model COBRA election notice. The DOL maintains the model COBRA notice, which is updated periodically, to assist employers in meeting their notice obligations.[16] Notably, use of the model notice is not mandatory.[17] Nonetheless, employers that use a custom notice in lieu of the DOL model notice have become easy targets for COBRA class action lawsuits. The model notice contains specific text and formatting that is easily distinguishable from a customized notice to the trained eye. If an attorney is able to identify even technical deficiencies in an employer's COBRA election notice which is not based on the DOL model notice, a COBRA lawsuit can be an easy path toward a large settlement.

COBRA Litigation During COVID-19

The recent wave of class action COBRA lawsuits and high-dollar settlements is likely to continue in spite of the ongoing COVID-19 pandemic. Three major household names have been hit with class action COBRA lawsuits since the start of the COVID-19 national emergency for alleged COBRA election notice failures—Amazon Corporate, LLC, Nestlé Waters North America, Inc., and Starbucks—indicating that the surge of COBRA litigation is showing no signs of slowing. Two class action COBRA lawsuits that reached settlements in the $1,000,000+ range following the Great Recession provide a roadmap for what may lie ahead.

The complaint in *Ousley v. Amazon*, which was filed on March 25, 2020, challenged Amazon's failure to use the DOL model election notice, and set forth several novel arguments in claiming Amazon's customized COBRA election notice was inadequate. The complaint alleges the election notice was 19 pages long, and was deliberately drafted to "bury" important election information halfway through the document. In addition, the complaint alleges that Amazon included information warning against knowingly providing the plan with false information in order to "chill" the election of COBRA and save the plan money. Upon review, it can certainly be argued that the "chilling" language included in Amazon's notice was a standard plan anti-fraud provision.[18] Notably, even the DOL model election notice states that "[COBRA] may end before the date noted above in certain circumstances, like . . . fraud."[19] The complaint further alleged the plaintiff could not determine the deadline to elect COBRA because the election notice both referenced a specific deadline date, and also stated that "If you do not complete the enrollment process within 60 days, you will lose your right to elect COBRA coverage." Interestingly, the complaint alleged the Amazon election notice requested a federal tax identification number (such as a Social Security number) for each COBRA qualified beneficiary, and threatened IRS penalties if the identification number was not provided. COBRA does not require that a federal tax identification number be provided to an employer or COBRA administrator in order for a qualified beneficiary to elect COBRA coverage.

The underlying facts that lead to the Amazon lawsuit are worth considering as a cautionary tale. The complaint alleges the plaintiff was terminated after failing to report to work when Amazon declined his request to use vacation time in order to care for his two-year-old son during the Christmas season, when no other childcare was available. Employers should be mindful that employees who are furloughed or terminated during COVID-19 may look for opportunities to pursue litigation against their former employer when they feel they have been wrongfully dismissed.

The complaint in *York v. Nestlé Waters North America*,

which was filed on April 28, 2020, by the same law firms representing the lead plaintiff in the Amazon case, raises the same challenges alleged in the *Amazon* complaint: the Nestlé election notice was too long, failed to clearly explain the COBRA election deadline by both referencing a specific date and a 60-day period to elect COBRA coverage, and included "chilling" language regarding fraudulent conduct and potential IRS penalties. The law firms representing the plaintiffs in *Amazon* and *Nestlé* filed a class action COBRA lawsuit against Starbucks on June 8, 2020, and have also represented COBRA plaintiffs suing Best Buy, Wal-Mart, Lowe's, Lockheed Martin, and Marriott in the case discussed below, among a dozen others in recent years. The "rinse and repeat" COBRA class action lawsuits filed by these firms is reminiscent of the recent wave of Section 403(b) class action litigation, where a single firm filed nearly identical complaints against almost two dozen university retirement plans.

If history is any indicator of future COBRA litigation, two class action COBRA lawsuits filed in the wake of the 2007–2009 Great Recession may provide a crystal ball. In 2009, the federal government provided a COBRA premium subsidy under the American Recovery and Reinvestment Act (ARRA) for certain employees who lost group health plan coverage due to an involuntary termination of employment. In *Hornsby v. Macon County Greyhound Park, Inc.*[20] and *Slipchenko v. Brunel Energy, Inc.*,[21] the employers' failure to amend the COBRA election notice to describe the ARRA premium subsidy for COBRA resulted in a $1,300,000 class action settlement against Macon County Greyhound Park and a nearly $1,000,000 class action settlement against Brunel Energy. Although the federal government has not yet provided COBRA subsidies for individuals impacted by COVID-19, it is clear that there will be an influx of COBRA beneficiaries due to furloughs and layoffs and, as a result, a larger pool of potential COBRA litigants.

COBRA DEADLINES EXTENDED DURING COVID-19 OUTBREAK PERIOD

On April 28, 2020, the IRS, Department of Treasury, and DOL issued guidance extending certain plan timeframes, including COBRA deadlines, due to the ongoing COVID-19 pandemic.[22] Employers that sponsor group health plans subject to COBRA must carefully consider the impact of the extensions on the COBRA administration and notice requirements. Recognizing that COVID-19 may make it more difficult for individuals to timely elect COBRA, pay premiums, and provide required notifications to plans, the agencies extended certain deadlines from March 1, 2020, through 60 days after the announced end of the COVID-19 national emergency (referred to as the "Outbreak Period"). For example, if the end of the COVID-19 national emergency is announced on July 31, 2020, the deadline extension relief would apply through September 29, 2020. In this example, the Outbreak Period would run from March 1, 2020, through September 29, 2020, and the entire period between March 1, 2020, and September 29, 2020, is disregarded when determining whether a participant has complied with certain COBRA deadlines.

During the Outbreak Period, plans are required to extend the following COBRA deadlines for plan participants:

- The period to elect COBRA coverage.
- The deadline to make COBRA premium payments.
- The date by which an individual must notify the plan of a COBRA-

qualifying event or disability determination.

COBRA qualified beneficiaries must be provided a period of at least 60 days to elect COBRA coverage after the election period begins. The election period generally begins on the date the COBRA election notice is received or, if later, the date coverage is lost. Employees who lose their employer-sponsored group health plan coverage due to a COBRA-qualifying event, including a reduction in hours or termination of employment (such as a furlough or layoff), will now have until the date that is 60 days after the end of the Outbreak Period to elect COBRA coverage. If elected, COBRA coverage would apply retroactive to the date active coverage was lost due to the COBRA qualifying event.

If COBRA is elected, a qualified beneficiary generally has 45 days to pay the initial COBRA premium. Future premiums are typically due in monthly installments (often as of the first day of the month), subject to the 30-day grace period required under COBRA. Plans and insurers cannot deny coverage due to nonpayment of COBRA premiums during the Outbreak Period. For qualified beneficiaries whose initial COBRA premium payment becomes due during the Outbreak Period, the deadline to make the initial COBRA premium payment is extended until 45 days after the end of the Outbreak Period. For qualified beneficiaries already enrolled in COBRA coverage, the deadlines to make ongoing monthly premium payments are extended until 30 days after the end of the Outbreak Period. If a participant does not pay COBRA premiums due within the applicable 45- or 30-day deadline following the end of the Outbreak Period, the plan is not required to cover benefits and services incurred during the months COBRA was not paid for.

The 60-day deadline by which qualified beneficiaries must notify the plan of certain qualifying events (for example, divorce or legal separation, a dependent child ceasing to be a dependent under the terms of the plan) or disability determination is also extended to the date that is 60 days following the end of the Outbreak Period.

The extended notice deadlines described above apply as follows:

- If the applicable COBRA deadline expired prior to March 1, 2020, no deadline extension is available.
- If the COBRA deadline period began on or after March 1, 2020, but before the end of the Outbreak Period, the deadline is extended to the applicable number of days following the end of the Outbreak Period, as described above.
- If the COBRA deadline period began prior to March 1, 2020, the deadline is extended beyond the end of the Outbreak Period by 60 days less the number of days that elapsed between the start of the deadline period and March 1, 2020.

Although the DOL updated its model notice on May 1, 2020, to further describe the interaction between Medicare and COBRA, it failed to include a description of these temporary deadline extensions due to COVID-19. An open question remains as to whether employers should amend their election notice to describe the deadline extensions, which are available on a temporary basis.

COBRA BEST PRACTICES: COVID-19 AND BEYOND

There are a number of best practices that employers and COBRA administrators should consider when navigating the often murky waters of COBRA administration during the remainder of the COVID-19 Out-

break Period. The following list is not exhaustive, but highlights several action items for readers to consider:

- In light of recent litigation challenging the failure to use the DOL model election notice, employers and COBRA administrators should adopt the model notice (supplemented with the employer's plan-specific information) if they have not done so already.
- If an employer has outsourced COBRA administration to a third party and the third party will not allow the employer to control the contents of the COBRA election notice, then the underlying administration agreement should require the COBRA administrator to indemnify the employer for damages resulting from claims based on the contents of the election notice.
- When adoption of the DOL model election notice is not feasible, employers should strive to conform their election notice to the model notice's form and contents as closely as possible. However, employers and COBRA administrators should be aware that the COBRA class action complaint filed against Starbucks on June 8, 2020, alleged that Starbucks' election notice was inadequate by only partially adhering to the model notice "to the extent that served [Starbucks'] best interests," while omitting or altering other critical parts of the model notice.
- The COVID-related COBRA deadline extensions described above, which apply during the COVID-19 Outbreak Period, should be communicated to plan participants. Although there is no affirmative requirement to communicate these extensions, a description of the deadline extensions should be provided with the COBRA election notice so that COBRA beneficiaries understand they have additional time to elect COBRA and pay for coverage. Otherwise, a claimant might allege their COBRA rights were not properly explained, as required by ERISA § 606(a)(4).
- An open question, which remains unresolved, is whether an employer has an affirmative requirement to provide non-English COBRA notices if the "average plan participant" does not speak English as a primary language. Employers should periodically review their employee demographics to determine whether a significant number of employees do not speak English or speak English as a second language. If so, a non-English election notice may need to be prepared and provided as needed. At minimum, employers and COBRA administrators should consider including a provision in their COBRA election notice which states that individuals may receive a copy of the Spanish version of the DOL model notice free of charge upon request.
- Many employers would like to use electronic disclosure, such as email, to provide COBRA election notices. Other employers use certified mail to send hard copy election notices. The COBRA election notice should be mailed by first-class mail as a best practice. First-class mail is typically less costly and a post office certificate of mailing is provided that can serve as proof of mailing, if

needed during litigation. By contrast, certified mail that it not signed for by the recipient is typically returned to the sender, creating questions as to what the employer or COBRA administrator should have done to satisfy the election notice requirement (in addition to serving as evidence that the election notice was never received). Electronic disclosure of COBRA election notices is generally inadvisable. COBRA election notices must also be sent to spouses and dependents who are COBRA qualified beneficiaries, and it is difficult to satisfy the DOL electronic disclosure safe harbor rules for spouses and dependents who do not have an employer-provided email or do not otherwise consent to electronic disclosure.

- When plan administrators are making "close calls" with respect to enforcing COBRA election and premium payment deadlines during the COVID-19 Outbreak Period, a decision that terminates an individual's COBRA coverage rights should be carefully considered. EBSA Disaster Relief Notice 2020-01 clarifies that the DOL will emphasize "compliance assistance" rather than "enforcement," while directing plan fiduciaries to "make reasonable accommodations to prevent the loss of benefits" and "minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes." For example, an employer should consider extending a COBRA deadline to the next business day if the deadline falls on a weekend or holiday.

NOTES:

[1]ERISA § 601. Some states, such as New York, also require group health plan continuation coverage for small employers with less than 20 employees under state "mini-COBRA" laws.

[2]See ERISA § 603. A covered employee becoming entitled to Medicare can also trigger COBRA, although Medicare entitlement rarely causes a loss of active coverage due to the Medicare Secondary Payer rules. In addition, employer bankruptcy can trigger COBRA under retiree plans.

[3]Treas. Reg. § 54.4980B-4, Q/A-1(c).

[4]I.R.C. § 4980H(b).

[5]See, generally, Torres-Negron v. Ramallo Bros. Printing, Inc., 203 F. Supp. 2d 120, 27 Employee Benefits Cas. (BNA) 2889 (D.P.R. 2002), where the court noted that an employer could be penalized up to $220 per day ($110 per COBRA beneficiary) where an employer failed to provide a COBRA election notice to an employee and her dependent child.

[6]IRC § 4980B.

[7]In Vazquez v. Marriott International, Inc., Case No.: 8:17-cv-116 (M.D. Fla. 2017), the class size included over 15,000 individuals.

[8]Generally, the COBRA administrator must provide participants and beneficiaries a COBRA election notice within 14 days after being notified by the employer or participant/beneficiary of a qualifying event (44 days for employers that administer COBRA internally). See ERISA § 606(c) and DOL Reg. § 2590.606-4(b)(2).

[9]ERISA § 606(a)(4).

[10]DOL Reg. § 2590.606-4(b)(4).

[11]DOL Reg. § 2590.606-4(b)(4)(i)–(xiv).

[12] https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[13]Vazquez v. Marriott International, Inc..

[14] https://www.marriottcobraclassaction.com/.

[15]Valdivieso v. Cushman & Wakefield, Inc., 2017 WL 2191053 (M.D. Fla. 2017).

[16] https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[17]DOL Reg. § 2590.606-4(g).

[18]The complaint alleges the notice stated: "any person who knowingly provides materially false, incomplete, or misleading information is considered to have committed an act to defraud or deceive the Plan Sponsors. The filing of any application for insurance or other claim for benefits based on false, misleading, or incomplete information is a fraudulent act and may result in criminal or civil penalties."

[19] https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[20]Hornsby v. Macon County Greyhound Park, Inc., 2013 WL 1747539 (M.D. Ala. 2013).

[21]Slipchenko v. Brunel Energy, Inc., 2015 WL 338358 (S.D. Tex. 2015).

[22]The guidance consists of a joint final rule issued by the U.S. Departments of Labor and Treasury, EBSA Notice 2020-01, and COVID-19 FAQs for Participants and Beneficiaries.