



# Washington Update



## **The Extension of Certain Timeframes for Employee Benefits Plans Continues**

On Friday, February 26, 2021, the DOL released [EBSA Disaster Relief Notice 2021-01](#) (the "clarifying notice"). The notice provides guidance on the duration of the COVID-19 relief that was originally provided in the Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants and Beneficiaries ("the notice of extension"). Specifically, the DOL clarified that the extension of timeframes will continue until the earlier of a) one year from the date an individual or plan is first eligible for relief or b) 60 days after the announced end of the national emergency (the end of the "outbreak period").

### *Background*

In May 2020, the DOL, Treasury and IRS provided relief requiring group health and welfare plans and employee pension plans to disregard the period from March 1, 2020, until 60 days after the end of the national emergency for certain deadlines. This created an "outbreak period" during which certain deadlines would be tolled for purposes of COBRA, HIPAA special enrollments, and claims filing, appeals and external review. Plan fiduciaries were also given additional time to furnish participant notices, as long as they were distributed as soon as administratively practicable under the circumstances.

Based on the statutory authority that the DOL and IRS relied upon to provide these extensions, many in the employee benefits industry concluded that the relief would only last until February 28, 2021 (which was one year from the March 1, 2020 effective date of the notice of extension). However, the DOL/IRS did not weigh in on this interpretation until now.

### *EBSA Disaster Relief Notice 2021-01*

The DOL's clarifying notice explains that the duration of the relief provided under the notice of extension is statutorily limited to a period of one year from the date the individual action would otherwise have been required or permitted. So instead of the one-year limit being assessed from the effective date of the notice of extension, it is actually assessed based on when an individual or plan first needed to utilize the relief. This means that until the end of the outbreak

period, the period that is disregarded will vary depending on when the triggering deadline occurs.

Here are a couple examples of the effect of this guidance:

- If a COBRA-qualified beneficiary would have been required to make a COBRA election by July 1, 2020, they would have until the earlier of June 30, 2021 or the end of the outbreak period to elect COBRA. However, a COBRA-qualified beneficiary who was required to make a COBRA election by March 1, 2020, would only have until February 28, 2021, to elect COBRA.
- An employee had a baby on August 20, 2020. The plan normally allows 30 days from the date of birth for the employee to request a HIPAA special enrollment. The disregarded period would last until the earlier of the end of the outbreak period or August 19, 2021, after which the employee would have 30 days to request the special enrollment.

### *Employer Action*

Many employers must continue to honor the extended timeframes for individuals who become eligible to make certain elections in 2020 or 2021. Only individuals who became eligible to make these elections at the very beginning of the COVID-19 pandemic will have exhausted their timeframes under this relief. So employers will need to work with their vendors and plan administrators to ensure that timelines are being administered in accordance with the new understanding of the DOL's guidance.

To avoid the possibility of individuals losing benefits, the DOL expects employers to notify plan participants or beneficiaries that their relief period has ended or will end. Additionally, employers should consider reissuing plan disclosures that were issued during the pandemic in order to provide accurate information regarding the deadline by which individuals will need to act. The DOL also encouraged employers to provide information about the opportunity to obtain coverage through the federal or state exchanges.

Since the pandemic continues to disrupt plans' operations, the DOL will provide enforcement relief for fiduciaries who act in good faith and with reasonable diligence under the circumstances.

The NFP Benefits Compliance team will continue to review the new guidance and provide clarifying materials where possible, including additional insight in our March 2, 2021, edition of *Compliance Corner*. For additional information see [EBSA Disaster Relief Notice 2021-01](#).

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