

DOL Issues Additional Guidance Regarding the Duration of Previously Announced Deadline Extensions

On April 28, 2020, the Employee Benefits Security Administration, the Department of Labor (“DOL”), the Internal Revenue Service (“IRS”) and the Department of the Treasury (the “Agencies”) jointly issued guidance providing for an extension of deadlines with respect to certain medical plan enrollments, election periods under COBRA, COBRA premium payments, COBRA qualifying event notification periods, and certain plan claims, appeals and review periods. Our prior alert, found [here](#), describes the deadlines that were impacted and that prior guidance.

The prior guidance mandated the disregard of the period between March 1, 2020, until 60 days after the end of the COVID-19 National Emergency (declared on March 13, 2020 and through subsequent guidance), or such other date announced by the Agencies (referred to as the “Outbreak Period”) when determining certain deadlines or time limited periods for action. Accordingly, measuring periods related to those deadlines were to be “tolled” during the Outbreak Period – and contemplated time deadlines would commence to be calculated again only after the end of the Outbreak Period.

However, the DOL and IRS’s statutory authority to extend such deadlines only permitted deadline extensions for up to one year, and so the previously announced deadline extensions needed to be considered in light of that statutory limitation.

On February 26, 2021, the DOL issued guidance regarding the impact of that statutory limitation on the previously announced deadline extensions, in EBSA Disaster Relief Notice 2021-01, which can be found [here](#).

Disaster Relief Notice 2021-01, in essence, provides that the one-year statutory limitation on the Agencies’ ability to extend deadlines should be applied separately for each participant and each event triggering a deadline that is subject to extension under the April 28, 2020 guidance, rather than to all events taken together with a single end date for applicable deadline extensions.

Accordingly, for example, for an individual whose normal deadline to make a COBRA election would have been March 1, 2020 (the first date such individual would have been eligible for relief), after application of the relief, the new deadline for such action is March 1, 2021.

But for an individual for whom action would have otherwise, without regard to any tolling relief, had a deadline for applicable action **after** March 1, 2020, our understanding of the impact of the new guidance is that the tolling of the period during which the action must be taken now begins on the date such period started to run (or if the period started before March 1, 2020, then March 1, 2020 will be the date that is used) (the “Start Date”) and continues until the earlier of (1) one year from the Start Date, or (2) the end of the Outbreak Period (*i.e.*, 60 days after the end of the COVID-19 National Emergency). After the end of such tolling period, any remaining period of time to perform the action starts to be counted again. The maximum tolling period cannot exceed one year.

Thus, if an individual or a plan triggered a 30-day period to perform an action that began on February 1, 2021 and that period was eligible for the tolling relief, the relief would disregard (or toll) the period to perform the action for one year until January 31, 2022 (or until the end of the Outbreak Period, if earlier). After the tolling period ends,

the 30-day period to perform the action would resume. If the tolling period lasted one year (because the Outbreak Period had not yet ended), the 30-day period would start again on February 1, 2022 and the deadline would be March 2, 2022. If, instead, the Outbreak Period ended on November 30, 2021, the 30-day period would start again on December 1, 2021 and we understand that the deadline in this example should then be December 30, 2021.¹

The DOL in its Disaster Relief Notice suggests that plan participants should be informed of the deadlines that apply to them, in light of the prior guidance and the new Disaster Relief Notice, to help them avoid missing such deadlines and to prevent the loss or undue delay in the payment of benefits. If plan participants were previously informed of the deadline extension, it may be appropriate to send a supplemental communication (such as a supplemental Summary of Material Modifications) to them regarding the impact of the limits on the deadline extension announced in Disaster Relief Notice 2021-01 to the extent that prior communications either did not reference any limit on the deadline extensions, or interpreted the limits on deadline extensions differently than the interpretation found in Disaster Relief Notice 2021-01. The DOL also suggested that plans consider making participants losing group health plan coverage aware of other available coverages, including some extended enrollment periods made available for individual coverage under the Affordable Care Act.

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¹ We note that Disaster Relief Notice 2021-01 provides an example that appears to not follow the general 1-year tolling rule set forth above. That example involves a deadline to make a COBRA election that would have been on March 1, 2021 in the absence of any deadline extension, and states that the new deadline would be the earlier of one year from the normal March 1, 2021 deadline (which would be March 1, 2022), or the end of the Outbreak Period. We understand that this example may have been misstated and it was not intended to change the general 1-year rule on tolling relief stated above. This is because, in the DOL's example, the entire COBRA election period (which is a 60-day period that would have had to start on January 1, 2021) occurred during the tolling period, and the example suggests that the tolling period would end at the end of the Outbreak Period (even if the Outbreak Period ended prior to January 1, 2022). However, because the general rule on tolling relief is that the 60-day election period would start to be counted again after the tolling ends, the election deadline could be 60 days after the end of the Outbreak Period (rather than right at the end of the Outbreak Period). Accordingly, our understanding of the 1-year tolling rule under Disaster Relief Notice 2021-01 would be that under the DOL's example involving a COBRA election, where a COBRA election would have otherwise normally been due on March 1, 2021, in the absence of a deadline extension, the tolling of the individual's election time would result in a new deadline that is the earlier of (a) March 1, 2022 or (b) 60 days after the end of the Outbreak Period. We are hoping that the DOL will issue further guidance to clarify this point.