

# DOL Issues Guidance on COVID-19 Deadline Extensions for Benefit Plan Participants and Plan Sponsors

Article By:

Timothy P. Brechtel

Ricardo X. Carlo

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In accordance with emergency powers granted in the wake of the COVID-19 pandemic, the IRS and DOL extended a number of benefit plan–related deadlines and provided other relief for participants and plan sponsors. The Jones Walker [May 22, 2020, Employee Benefits Client Alert](#) provided a summary of the guidance.

On Friday, February 26, 2021, the DOL issued additional [guidance](#) on certain benefit plan–related deadlines, just before the expiration of certain relief the following Monday. Deadline extensions may continue past February 28, 2021, provided the deadline at issue has not already been extended by one year as of such date, and extensions must be measured on a person-by-person basis.

## DOL and IRS Final Rule

The May 4, 2020, Final Rule generally suspended certain benefit plan deadlines for the duration of the “Outbreak Period,” which is an open-ended period beginning March 1, 2020, and ending 60 days after the end of the COVID-19 national emergency. However, the authority granted to the DOL and the IRS under ERISA Section 518 and Internal Revenue Code Section 7508A only allows relief for any given circumstance to extend for a one-year period (the Tolling Period).

Under the Final Rule, the Outbreak Period is disregarded for purposes of the following deadlines:

- The deadline for plan sponsors to issue COBRA qualifying-event election notices (normally 44 days for employers that serve as both the plan sponsor and plan administrator), although employers are still expected to issue notices as soon as administratively practicable
- The deadline for participants to elect COBRA coverage (normally 60 days after the employer issues a COBRA qualifying-event notice)
- The deadline for COBRA participants to pay COBRA premiums (normally within 45 days of first electing COBRA coverage and within 30 days of each monthly due date thereafter)

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- The deadline for an employee to notify a plan of a COBRA qualifying event, such as a divorce (normally 30 days)
  - The deadline for requesting special enrollment under the HIPAA portability rules, such as marriage or birth of a child (normally 30 days, but 60 days in the case of the loss of Medicaid or CHIP coverage)
  - The deadline for a participant to file a claim for benefits or to appeal a benefit denial by an ERISA plan
  - The deadline for requesting (and perfecting) external review of a denied health plan appeal (normally within 120 days after notification of determination on appeal)

## **Employee Benefits Security Administration (EBSA) Disaster Relief Notice 2020-01**

EBSA Notice 2020-01 (the 2020 EBSA Notice) provided further relief primarily aimed at plans and plan sponsors. This includes:

- Extension of deadlines for providing all notices or disclosures (except those described under the Final Rule above) to plan participants, beneficiaries, and other persons under Title I of ERISA during the Outbreak Period, provided the employer acts in good faith and provides the notice or disclosure as soon as administratively practicable. The 2020 EBSA Notice indicates that “good faith” includes providing the notices electronically, which is expanded to include text messages and continuous-access websites.
- Extension of deadline for forwarding participant contributions and loan repayments to retirement plans, provided the failure is solely attributable to the COVID-19 pandemic.
- Non-enforcement of failures to follow plan loan and distribution verification procedures during the Outbreak Period (other than those statutory requirements under the jurisdiction of the IRS such as obtaining spousal consent), provided that:
  - The failure was due to the COVID-19 pandemic.
  - Good-faith diligent efforts are made to comply with the requirements.
  - The procedural deficiencies are corrected as soon as administratively practicable.

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

EBSA Disaster Relief Notice 2021-01 (the 2021 EBSA Notice) provides that the Tolling Period ends the **earlier** of (1) one year from the date the deadline would have begun running for the individual in question, or (2) the end of the Outbreak Period. Plan administrators must measure Tolling Periods on a person-by-person basis.

For example, if an employee had a COBRA qualifying event on February 15, 2020, that employee’s

time to elect COBRA coverage paused at the start of the Outbreak Period on March 1, 2020, at which point 15 days had passed. On February 28, 2021, that employee's one-year Tolling Period ended. The employee has 45 days remaining (i.e. until April 14, 2021) to elect COBRA coverage.

Alternatively, if an employee had a COBRA qualifying event on June 15, 2020, that employee's election deadline was already tolled as of such date. That employee's Tolling Period would end one year later, on June 14, 2021 (assuming the Outbreak Period does not end sooner than such date). Because no part of the election period had elapsed prior to March 1, 2020, that employee's 60-day election period begins on June 15, 2021, and the employee will have until August 14, 2021, to elect COBRA.

## Next Steps

The 2021 EBSA Notice reminds employers to act reasonably, prudently, and in the interest of employees and their families. Plan fiduciaries should make reasonable accommodations to prevent the loss of or undue delay in payment of benefits and take steps to help prevent the loss of benefits because of a failure to comply with deadlines.

The 2021 EBSA Notice states that plan fiduciaries should consider notifying employees of the end of the relief period. Plan fiduciaries should ideally tailor such notices to each person's Tolling Period, some of which ended soon after the EBSA issued its latest guidance, and may need to reissue or amend earlier disclosures. Finally, plan fiduciaries should consider communicating to employees other coverage options, like coverage options via [healthcare.gov](https://healthcare.gov).

Where plan fiduciaries have acted in good faith and with reasonable diligence under the circumstances, the DOL's enforcement approach "will be marked by an emphasis on compliance assistance" and "grace periods and other relief." Thus, any employers that could not comply with any required action, notice, or disclosure due to the pandemic should comply as soon as practicable and document their good faith efforts to comply.

Employers should coordinate with their insurers, reinsurance providers, third-party administrators, health FSA administrators, COBRA administrators, retirement plan recordkeepers, and other service providers to determine how they will administer rolling deadline extensions on a person-by-person basis. Employers should make every effort consistent with the guidance above to notify participants and beneficiaries regarding any significant changes in plan benefits or procedures, perhaps with assistance from service providers where possible.

Remember that legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual plan. The same notice may vary depending on the terms of your plan and specific factual circumstances.

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