

Blog Post

New Guidance from DOL Regarding the Suspension of Certain Employee Benefit Plan Deadlines Due to COVID-19

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Last minute guidance affects employers sponsoring group health plans, and answers a much-discussed question as we approach the one-year anniversary of past COVID guidance. Today the Department of Labor [issued long-awaited guidance](#) concerning whether certain employee benefit plan deadlines will continue to be suspended or whether the clock begins ticking again as of March 1, 2021. As we explain, the answer is, well, kind of both.

Past Guidance

Last year, due to the COVID-19 pandemic, the Department of Labor, in conjunction with the Department of Treasury, issued [guidance and a rule](#) that extended certain timeframes otherwise applicable under ERISA and the Internal Revenue Code (Code). The goal was to provide enhanced flexibility in an era of unknowns. Specifically, the Departments ordered all group health plans, disability and other employee welfare benefit plans, and employee pension benefit plans subject to ERISA or the Code to “disregard” the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency due to COVID-19 or such other date announced by the Departments in a future notification (the “Outbreak Period”) for certain specified actions.

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This action was taken by the Departments pursuant to their statutory authority under ERISA section 518 and Code section 7508A, which permits them to prescribe a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed by an employee benefit plan, plan sponsor, plan administrator, participant or beneficiary.

Anniversary Approaches on Monday – New Guidance Issued Just Beforehand

Of course, it is now the end of February 2021 and the National Emergency due to COVID-19 remains ongoing. However, the Departments’ statutory authority to suspend deadlines is limited to a period of up to one year. Before today’s guidance, it had been unclear how a plan should handle the suspension of deadlines on or after March 1, 2021, which would have marked the one-year anniversary of the original suspension of deadlines.

EBSA Disaster Relief Notice 2021-01 answers this question.

Specifically, individuals and plans with deadlines that are suspended pursuant to the previously-issued rule will have the applicable periods under the Notices disregarded until the earlier of: (1) one year from the date they were “first eligible for relief” (a concept further discussed at the end of this post); or (2) 60 days after the announced end of the National Emergency (that is, the end of the Outbreak Period).

Notice 2021-01 provides the following illustrative example: If a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, that election requirement is delayed until the earlier of one year from that date (i.e., March 1, 2022) or the end of the Outbreak Period.

By way of further example (ours, not the Departments’): If a plan participant would otherwise

have been required to file an appeal of an adverse benefit determination by September 1, 2020, that deadline is delayed until the earlier of one year from that date (i.e., September 1, 2021) or the end of the Outbreak Period.

Actions Plan Sponsors Should Take Now

1. Review all participant and beneficiary notices or other communications regarding these deadlines and make sure they accurately reflect this new guidance. To the extent that any previous communications listed a hard-and-fast end to the flexibility as February 28, 2021, updates will be needed.
2. Identify any participants and beneficiaries who were facing normal plan-related deadlines in March or April 2020. Notify these individuals as soon as possible that their deadlines now expire in March or April 2021 (one year from the date of the original deadline).
3. Consider whether to send a more general communication to all plan participants (and any beneficiaries who are required to receive plan notices) concerning the clarification that applicable deadlines are now suspended until the earlier of: (1) one year from the date of the original deadline; or (2) the end of the Outbreak Period.
4. Review any changes that may have been made to plan documents, summary plan descriptions (SPDs), or benefits booklets and make sure they are consistent with the new guidance.

Types of Deadlines Extended

For plan sponsors needing details on the type of deadlines affected by the original guidance and today's Notice, keep reading. The date that participants and beneficiaries are considered to be "first eligible for relief" is the date by which they were otherwise required to take some action. Specifically, for participants and beneficiaries, the following deadlines are subject to today's relief:

1. The 30-day period (or 60-day period, if applicable) to *request special enrollment* under ERISA section 701(f) and Code section 9801(f);
2. The 60-day *election period for COBRA continuation coverage* under ERISA section 605 and Code section 4980B(f)(5);
3. The date for *making COBRA premium payments* pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C);
4. The date for individuals to notify the plan of a qualifying event or *determination of disability* under ERISA section 606(a)(3) and Code section 4980B(f)(6)(C);
5. The date within which individuals may *file a benefit claim* under the plan's claims procedure pursuant to 29 C.F.R. 2560.503-1;
6. The date within which claimants may *file an appeal* of an adverse benefit determination under the plan's claims procedure pursuant to 29 C.F.R. 2560.503-1(h);
7. The date within which claimants may *file a request for an external review* after receipt of an adverse benefit determination or final internal adverse benefit determination pursuant to 29 C.F.R. 2590.715-2719(d)(2)(i) and 26 C.F.R. 54.9815-2719(d)(2)(i); and
8. The date within which a claimant may *file information to perfect a request for external review* upon a finding that the request was not complete pursuant to 29 C.F.R. 2590.715-2719(d)(2)(ii) and 26 C.F.R. 54.9815-2719(d)(2)(ii).

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