

Publications

Extension of Extended Employee Benefit Deadlines

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The IRS and DOL (the Agencies) published new guidance on the extension of certain employee benefit deadlines.

Under the original extension, the Outbreak Period was defined as the period starting on March 1, 2020 and ending 60 days after the end of the National Emergency, *subject to a one-year limit*. The Agencies told us that the Outbreak Period could not be counted as part of the following periods for purposes of determining the deadline for an individual's actions:

1. 60-day period for a COBRA qualified beneficiary to give notice of a divorce, legal separation or a finding of Social Security disability.
2. 60-day period for a COBRA qualified beneficiary to elect COBRA continuation coverage.
3. 45-day period for a COBRA qualified beneficiary to pay the first COBRA premium.
4. 30-day period for a COBRA qualified beneficiary to pay each subsequent COBRA premium.
5. A medical plan's enrollment window (typically 30, 31 or 60 days) for an employee to enroll in coverage after a marriage, birth, adoption, placement for adoption or a loss of other medical coverage.
6. Deadlines for a plan participant to file a benefit claim, appeal and (for a medical plan) a request for external review.

The Outbreak Period has not ended because the National Emergency has not ended. What's new is that the Agencies have now told us how to apply the one-year limit to the Outbreak Period extension. Under EBSA Disaster Relief Notice [2021-01](#) (February 26, 2021), the one-year limit runs from the first day of each individual's period to take action. Therefore, in setting a deadline for an individual to take action, a plan cannot take into account the period ending on the earlier of:

- the end of the Outbreak Period (i.e., the 60th day after the end of the National Emergency); or

- the one year anniversary of the first day of the notice, election, payment, enrollment or filing period.

For example, let's say that a group health plan sent a COBRA election notice to a COBRA qualified beneficiary on June 30, 2020. Sending the COBRA election notice starts the COBRA qualified beneficiary's COBRA election period.

Without the extension, the COBRA qualified beneficiary's deadline to elect COBRA coverage would have been August 30, 2020 (the 60th day after the day that the COBRA election notice was sent).

With the extension, the COBRA qualified beneficiary's deadline to elect COBRA coverage is the earlier of (a) the 60th day after the end of the Outbreak Period (i.e., the 120th day after the end of the National Emergency); or (b) August 30, 2021 (i.e., the 60th day after the one year anniversary of the day that the COBRA election notice was sent). Note that the plan does not need to continue to pay the COBRA qualified beneficiary's claims during the extension. Unless and until the COBRA qualified beneficiary actually elects COBRA coverage and pays COBRA premiums, the payment of claims may be suspended.

Bottom line: While the National Emergency is ongoing (and in the absence of additional guidance), plans will need to add one year to each of the six periods listed above.

Plan sponsors will want to update their Outbreak Period extension notices and evaluate the need for additional participant communications. (EBSA Notice 2021-01 states that additional participant communications may be needed if earlier communications "failed to provide accurate information regarding the time in which participants and beneficiaries were required to take action, e.g., COBRA election notices and claims procedure notices.") Plan sponsors will also want to confirm that their COBRA and claims administrators are implementing compliant processes.