

DOL Issues Guidance on Duration of “Outbreak Period” Rules

March 1, 2021

On February 26, 2021, the U.S. Department of Labor’s Employee Benefits Security Administration (DOL) issued guidance in [Disaster Relief Notice 2021-01](#) (the “Notice”) clarifying the duration of certain COVID-19 relief rules that had paused employee benefit plan deadlines during a period referred to in those rules as the “Outbreak Period.”

How Does the new DOL Guidance on the Outbreak Period Rules Change the Law?

The DOL’s Notice provides important and much-requested guidance on the duration of the COVID-19-related relief that had effectively paused certain employee benefit plan compliance deadlines during a period of time referred to as the “Outbreak Period” (these rules are commonly referred to as the “Outbreak Period Rules”).

The Outbreak Period Rules require employers to disregard the Outbreak Period when enforcing certain employee benefit plan compliance deadlines and give plan sponsors additional time to distribute plan notices and disclosures. In other words, under these Outbreak Period rules, certain benefit plan compliance deadlines are effectively paused for a period of time (the

“Pause Period”) that begins with the U.S. COVID-19 National Emergency¹ on March 1, 2020, and continues until 60 days after the announced end of the National Emergency (the end of the Outbreak Period). For additional background on these Outbreak Period rules, see our prior eAlerts [here](#) and [here](#).

As explained in our [prior eAlert](#), under the Outbreak Period Rules, the period of time when plan compliance deadlines are effectively disregarded or paused, the Pause Period, is subject to the statutory duration limits in ERISA and the Code, under which a set-aside or “disregarded” period of up to one year is permitted (under 29 U.S.C. § 1148; 26 U.S.C. § 7508A). Because the Outbreak Period began on March 1, 2020, the relief was expected to expire on Feb. 28, 2021. However, the guidance in the DOL’s new Notice allows the relief to extend beyond this date in some situations.

How Does the DOL Apply the One-year Limit in the Outbreak Period Rules?

The Notice interprets the one-year limit on the Pause Period relief to begin on the date the applicable plan-related action would otherwise have been required in a given

SYNOPSIS

- The U.S. DOL issued guidance clarifying the duration of certain COVID-19 relief rules that had paused employee benefit plan deadlines during the “Outbreak Period.”
- The Outbreak Period Rules require employers to disregard the Outbreak Period when enforcing certain employee benefit plan compliance deadlines and give plan sponsors additional time to distribute plan notices and disclosures.
- Employers and plan sponsors should, as soon as possible, begin discussing the new rules with their applicable COBRA administrators, TPAs, insurers and other plan vendors.
- Employers and plan sponsors should begin updating their plan notices and disclosures to account for these new rules.

¹ The president-declared COVID-19 “National Emergency” period should not be confused with the HHS-declared “public health emergency” period, which applies to certain group health plan rules under the CARES Act.

situation. In other words, the Notice applies the Pause Period on an individualized, participant-by-participant or plan-by-plan basis. Specifically, the Notice clarifies that individuals and plans will have the applicable plan deadline's time periods paused until the earlier of:

- One year from the date the deadline would have begun running for that individual; or
- 60 days from the end of the National Emergency (which is still ongoing).

On the applicable date when this Pause Period ends, the time frames for individuals and plans with periods that were previously disregarded (or paused) will resume. In no case will a Pause exceed one year of the Outbreak Period.

How Does this Individualized One-year Limit to the Pause Period Work?

Below are some examples of how the new Notice's individualized one-year limit on the Pause Period applies to COBRA qualified beneficiaries.

As background, for each of these examples, let's assume that we are considering the extension of a plan's COBRA deadlines. A COBRA qualified beneficiary (QB) has 60 days to elect COBRA, counted from the later of the date of their loss of coverage or the date their COBRA election notice is provided. As explained in the Outbreak Period Rules, a QB's 60-day deadline was paused as of March 1, 2020, until the end of the Outbreak Period. At the end of the Outbreak Period, the deadlines would start running again, and the QB would have their normal 60-day COBRA election period (or the remaining balance of their election period if it started before March 1, 2020).

However, now, under the new Notice's one-year expiration rules, the Notice provides that the one-year Pause Period does not end on February 28, 2021 for all individuals, but rather, each individual has his/her own one-year Pause Period.

- If QB Alex's COBRA election period started 2/1/20, her election deadline was paused as of 3/1/2020. Her one-year Pause Period would end 2/28/21, so her election period would start 3/1/21, and she would have the balance of her 60-day election period.
- If QB Betty's election period started 3/1/20, her election deadline was paused as of 3/1/20. Her one-year Pause Period would end 2/28/21, so her 60-day election period would start 3/1/21.
- If QB Chris' election period starts 4/1/21, her election deadline will be paused right away on 4/1/21 (as long as we are still in the National Emergency period on 4/1/21). Her one-year Pause Period would end 3/31/22, so her 60-day election period would start 4/1/22.
- For each of these examples, the Pause Period would end

earlier if the National Emergency period ends at an earlier date.

Does the Notice Require that Reasonable Accommodations be Offered?

Yes. The DOL recognizes that plan participants and beneficiaries may continue to encounter problems when the relief described above is no longer available, due to the one-year limit. Accordingly, the Notice provides that plan fiduciaries should make reasonable accommodations to prevent the loss of, or undue delay in, payment of benefits in these cases and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.

- The administrator or other fiduciary should consider affirmatively sending a notice regarding the end of the Pause Period when individuals are at risk of losing coverage.
- Plan disclosures issued prior to or during the pandemic may need to be reissued or amended if those disclosures failed to provide accurate information regarding the time in which participants and beneficiaries were required to take action (for example, COBRA election notices and claims procedure notices).
- In the case of ERISA group health plans, plans should consider ways to ensure that participants and beneficiaries who are losing coverage under their group health plans are made aware of other coverage options that may be available to them, including the opportunity to obtain coverage through the ACA Exchange in their state.

The DOL also acknowledges that full and timely compliance with ERISA's disclosure and claims processing requirements by plans and service providers may not always be possible. Specifically, the Notice provides that in the case of plan fiduciaries that have acted in good faith and with reasonable diligence under the circumstances, the DOL's approach to enforcement will be marked by an emphasis on compliance assistance, including allowance of grace periods and other relief.

What Should Employers and Plan Sponsors Do Next?

The timing of the new Notice was not ideal, as it was released on the Friday prior to March 1, 2021, giving plan sponsors only two days to adjust their plan's procedures for compliance deadline administration. It's also not clear how, on two days' notice, COBRA administrators, third-party administrators (TPAs) and insurers will be able to change (or build) their administrative systems to create customized COBRA, special enrollment and claims deadlines procedures in a way that accounts for the Notice's new "individualized" or "participant-by-participant" application of the Pause Period. Employers and plan sponsors may likely have to extend the deadlines for all

participants while they determine how to proceed. That being said, the DOL has indicated in their Notice that they will be accommodating when enforcing the new rules in the Notice, and so it is likely that the DOL will be understanding that plans that have been acting in good faith will need additional time to comply.

Employers and plan sponsors should, as soon as possible, begin the process of discussing the new rules in the Notice with their applicable COBRA administrators, TPAs, insurers and other plan vendors, and also, begin updating their plan notices and disclosures to account for these new rules.

**If you have any additional questions,
please call your Corporate Synergies
Account Manager or 866.CSG.1719.**