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## DOL and IRS Clarify Duration of Tolloed EB Deadlines

March 2, 2021

In May 2020 the Departments of Labor and the Treasury provided regulatory relief for certain actions related to employee benefits that are required under Title I of ERISA (the “Notice”). The Notice generally provided that the period between March 1, 2020 to 60 days after the announced end of the COVID-19 National Emergency would be considered the “Outbreak Period.” During the Outbreak Period, various deadlines were tolled so employees would have more time to take certain actions, such as electing COBRA or appealing denied claims. Our May 2020 [Client Alert](#) provides more details.

The Notice created confusion regarding when its relief was supposed to end, as federal law only authorized the Notice’s relief for a one-year period (i.e. March 1, 2020 until February 28, 2021). On February 26, 2021 the Departments of Labor and the Treasury released additional guidance (the “Guidance”) clarifying that individuals and plans with timeframes that are subject to the Notice will have the applicable periods under the Notice disregarded until the earlier of (a) one year from the date they were first eligible for relief on an individual or plan basis for their respective timelines, or (b) 60 days after the announced end of the Outbreak Period. Once the tolled deadline provided by the Notice expires, the original deadline will resume. For instance:

- If a COBRA qualified beneficiary would have been required to make a COBRA election by March 1, 2020, that requirement is delayed until February 28, 2021 (one year from March 1, 2020).
- If a COBRA qualified beneficiary would have been required to make a COBRA election by March 1, 2021, that election requirement is delayed until the earlier of (a) March 1, 2022 or (b) 60 days after the announced end of the COVID-19 national emergency.
- If a COBRA qualified beneficiary would have been required to make a COBRA election on July 1, 2020, but the COVID-19 national emergency ends on August 1, 2021, that election requirement is delayed until June 30, 2021 (one year from July 1, 2020).

The Guidance also notes that plan participants and beneficiaries may continue to experience an array of problems because of the ongoing COVID-19 pandemic. Practical examples range from difficulties enrolling a newborn child onto a plan or making initial health insurance elections as a newly eligible employee, to complications in filing a reimbursement claim under a health flexible spending arrangement (“FSA”), or appealing a denial of benefits. These problems may occur during time periods for which relief under the Notices and other Department of Labor guidance is no longer available. The Guidance states that plan fiduciaries should make “reasonable accommodations” in these circumstances to prevent the loss of or undue delay in payment of benefits in such cases and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.

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For example:

- If a plan administrator (or other fiduciary) knows or should reasonably know that the end of the relief period for an individual action exposes a participant or beneficiary to a risk of losing protections, benefits, or rights under the plan, the administrator or other fiduciary should consider affirmatively sending a notice regarding the end of the relief period.
- Plan disclosures issued prior to or during the pandemic may need to be reissued or amended if such disclosures 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.
- Group health plans should consider ways to ensure that participants and beneficiaries who are losing coverage under the plan are made aware of other coverage options that may be available to them, including the opportunity to obtain coverage through the Health Insurance Marketplace in their state.

Finally, the Guidance acknowledges that COVID-19 may have caused and may further cause disruption to a plan or service provider's ability to fully and timely comply with ERISA's disclosure and claims process requirements. In such cases, the DOL's approach to enforcement will be focused on compliance assistance including grace periods and other relief for those fiduciaries who have acted in good faith and with reasonable diligence under the circumstances.

### Action Items

- Plan sponsors must consider how the tolling of deadlines applies to each individual and ensure that service providers are tracking those deadlines.
- Plan sponsors should communicate with their service providers and be diligent with appropriate notices before denying an individual a benefit based on that individual's failure to take action within the applicable timeframe.
- Plan sponsors should work with their service providers to determine whether previous notices (i.e. COBRA election notices or general informational notices) need to be reissued if they failed to provide accurate information regarding the participant's deadline to take action.

If you have any questions or need assistance, please contact a member of the Kutak Rock [Employee Benefits Practice Group](#).

