

EB Flash: DOL Extends COVID-19 Disaster Relief

Employee Benefits Alert

02.26.2021

The Department of Labor (DOL) issued [Notice 2021-01](#) today, providing guidance on the duration of the COVID-19-related relief provided by Employee Benefits Security Administration (EBSA) [Disaster Relief Notice 2020-01](#) (Notice 2020-01) and the [Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak](#) (Joint Notice) issued by the Department of Labor, the Department of the Treasury, and the Internal Revenue Service (IRS) (collectively Agencies).

The Joint Notice and Notice 2020-01 (collectively Notices) extend various COBRA, special enrollment, and claims procedures deadlines by suspending the applicable deadline until 60 days after the end of the COVID-19 National Emergency, subject to a one-year limit imposed by the authorizing statutory provisions. The relief became effective March 1, 2020, and with no end in sight to the COVID-19 National Emergency, there has been some question about whether the Agencies would extend the relief beyond the one-year period ending February 28, 2021.

In today's Notice, DOL has, in fact, extended the relief, by taking the position that the one-year extension applies on an individual-by-individual basis, with the earliest extension beginning March 1, 2020 and the latest beginning 60 days after the end of the COVID-19 National Emergency (which is not known). This position – announced on a Friday and just two days before the extension was otherwise thought to end – will undoubtedly create substantial administrative complexity for plan sponsors and fiduciaries, and require coordination with vendors and a review of communications/disclosures.

One-Year Extension Applies on Individual-by-Individual Basis

Notice 2021-01 explains the extension as follows:



Individuals and plans with timeframes that are subject to the relief under the Notices will have the applicable periods under the Notices disregarded until the earlier of (a) 1 year from the date they were first eligible for relief, or (b) 60 days after the announced end of the National Emergency (the end of the Outbreak Period). On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.

The following examples are intended to illustrate the duration of the relief under the Notices. If a qualified beneficiary, for example, would have been required to make a COBRA election by March 1, 2020, the Joint Notice delays that requirement until February 28, 2021, which is the earlier of 1 year from March 1, 2020 or the end of the Outbreak Period (which remains ongoing). Similarly, if a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, the Joint Notice delays that election requirement until the earlier of 1 year from that date (i.e., March 1, 2022) or the end of the Outbreak Period. Likewise, if a plan would have been required to furnish a notice or disclosure by March 1, 2020, the relief under the Notices would end with respect to that notice or disclosure on February 28, 2021. The responsible plan fiduciary would be required to ensure that the

notice or disclosure was furnished on or before March 1, 2021. In all of these examples, the delay for actions required or permitted that is provided by the Notices does not exceed 1 year.

Guiding Principle for Plan Fiduciaries To Make Reasonable Accommodations

Notice 2021-01 further recognizes that affected plan participants and beneficiaries may continue to encounter problems due to the ongoing nature of COVID-19 beyond the date relief is available. To that end, DOL provides the following "guiding principle":



The guiding principle for administering employee benefit plans is to act reasonably, prudently, and in the interest of the workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic well-being. This means that plan fiduciaries should make reasonable accommodations 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 time frames.

Notice 2021-01 provides the following examples of this guiding principle:

- Where the plan administrator or other responsible plan fiduciary knows, or should reasonably know, that the end of the relief period for an individual action is exposing 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.
- 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 Health Insurance Marketplace in their state. In this regard, in accordance with the President's Executive Order 14009, a special enrollment period is available to the consumers in the 36 states that use the HealthCare.gov platform starting on February 15 and continuing through May 15. At least 13 states plus the District of Columbia, which operate their own Marketplace platforms, are offering a similar opportunity. For more information on the Health Insurance Marketplace special enrollment period, go to [HealthCare.gov](https://www.healthcare.gov). For a list of states that do not use HealthCare.gov and links to their Marketplaces, go to: <https://www.healthcare.gov/marketplace-in-your-state/>.

Emphasis on Good-Faith Compliance

DOL continues to emphasize that "[i]n the case of fiduciaries that have acted in good faith and with reasonable diligence under the circumstances, the Department of Labor's approach to enforcement will be marked by an emphasis on compliance assistance and includes grace periods and other relief."

Further Relief on the Horizon?

Last but not least, Notice 2021-01 indicates further "relief" may be forthcoming: "The Agencies are of the view that continued relief may be needed to preserve and protect private-sector employee benefit plans. The Agencies intend to continue to engage with affected stakeholders on whether, and if so, how to better tailor relief, consistent with their respective jurisdictions, to focus on

areas in which participants and beneficiaries continue to need relief and as plans continue to move toward a normal compliance status."

The full text of Notice 2021-01 is [posted here](#).

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