
# Final Rule on the Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Due to COVID-19

**8-Minute Read**

3/2/2021 Update: The DOL issued EBSA Disaster Relief Notice 2021-01 providing that the outbreak period relief noted below ends on the earlier of one year from the date an individual or plan was first eligible for relief (extension period) or the original outbreak period of 60 days after the announced end of the COVID-19 National Emergency. As of the date of this writing, the COVID-19 National Emergency has not ended. If a deadline noted below fell on March 1, 2020, it would be extended until February 28, 2021 (one year from March 1, 2020). However, if a deadline fell after March 1, 2020, the deadline would be extended to a date after February 28, 2021 because the extension is up to one year following the deadline or 60 days after the announced end of the COVID-19 National Emergency, if earlier.

On March 13, 2020, former President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak and by separate letter made a determination, under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a national emergency exists nationwide beginning March 1, 2020, as the result of the COVID-19 outbreak.

The Department of Labor (DOL) and the Department of the Treasury (Treasury) issued a final rule that extends certain timeframes under the Employee Retirement Income Security Act (ERISA) and Internal Revenue Code (IRC) for group health plans, disability, and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 national emergency. The timing extensions are issued to help alleviate problems faced by health plans to comply with strict ERISA and IRC timeframes and problems faced by participants and beneficiaries in exercising their rights under health plans during the COVID-19 national emergency. The final rule provides the timeframe extensions based on the end date of the "national emergency" (as of the date of this publication, the national emergency end date has not

been announced) and the end date of the "outbreak period" which is the 60th day after the end of the national emergency. Under EBSA Disaster Relief Notice 2021-01, the end of the outbreak period relief is the earlier of one year from the date they were first eligible for relief (extension period), or the original outbreak period of 60 days after the announced end of the national emergency. Under the final rule the outbreak period will be disregarded, meaning the timeframes for the group health plan requirements noted below will be paused until after the outbreak period has ended.

**HIPAA Special Enrollment Periods**

Under HIPAA, group health plans must provide special enrollment periods in certain circumstances, including when an employee or dependent loses eligibility for any group health plan or other health insurance coverage in which the employee or the employee's dependents were previously enrolled (including coverage under Medicaid and the Children's Health Insurance Program), and when a person becomes a dependent of an eligible employee by birth, marriage, adoption, or placement for adoption. Generally, group health plans must allow such individuals to enroll in the group health plan if they are otherwise eligible and if enrollment is requested within 30 days of the occurrence of the event (or within 60 days, in the case of loss of Medicaid or state Children's Health Insurance Program (CHIP) coverage or eligibility for state premium assistance subsidy from Medicaid or CHIP).

Under the final rule and EBSA Disaster Relief Notice 2021-01, the one-year extension period or original outbreak period, if earlier, must be disregarded when determining if a participant timely requested HIPAA special enrollment (i.e., the 30-day or 60-day period will begin to run the day after the outbreak period). See the Appendix for examples.

**COBRA**

The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. Plans are required to allow payment of premiums in monthly installments, and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. COBRA continuation coverage may be terminated for failure to pay premiums on time. Under the COBRA rules, a premium is considered paid on time if it is made no later than 30 days after the first day of the period for which payment is being made. Notice requirements prescribe time periods for employers to notify the plan of certain qualifying events and for individuals to notify the plan of certain qualifying events or a determination of disability. Notice requirements also prescribe a time period for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage.

Under the final rule and EBSA Disaster Relief Notice 2021-01, the one-year extension period or original outbreak period, if earlier, must be disregarded when determining the 60-day COBRA election period, the date for making COBRA premium payments, and the date for qualified beneficiaries to notify the plan of a qualifying event or determination of disability. The outbreak

period must also be disregarded when determining the date by which a COBRA election notice must be provided to a qualified beneficiary. See the Appendix for examples.

**Claims Procedure**

ERISA-covered employee benefit plans and non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage are required to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and to provide participants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Plans may not have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide participants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

Under the final rule and EBSA Disaster Relief Notice 2021-01, the one-year extension period or original outbreak period, if earlier, must be disregarded when determining the date for participants to file a benefit claim under the plan's claims procedures and the date by which a participant may file an appeal of an adverse benefit determination under the plan's claims procedure. See the Appendix for examples.

**External Review Process**

ERISA sets forth standards for external review that apply to non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage and provides for either a state external review process or a federal external review process. Standards for external review processes and timeframes for submitting claims to the independent reviewer for group health plans or health insurance issuers may vary depending on whether a plan uses a state or federal external review process. For plans or issuers that use the federal external review process, the process must allow at least four months after the receipt of a notice of an adverse benefit determination or final internal adverse benefit determination for a request for an external review to be filed. The federal external review process also provides for a preliminary review of a request for external review. The regulation provides that if such request is not complete, the federal external review process must provide for a notification that describes the information or materials needed to make the request complete, and the plan or issuer must allow a claimant to perfect the request for external review within the four-month filing period or within the 48-hour period following the receipt of the notification, whichever is later.

Under the final rule and EBSA Disaster Relief Notice 2021-01, the one-year extension period or original outbreak period, if earlier, must be disregarded when determining the date by which a participant may file a request for an external review after receiving an adverse benefit determination or final internal adverse benefit determination and the date by which a participant must file a corrected request for external review upon a finding that the request was not complete. See the Appendix for examples.

**Plan Administrator/Fiduciary Obligations Regarding the End of the Outbreak Period**

The DOL instructs that if the plan administrator or other responsible plan fiduciary knows, or should reasonably know, that the end of the outbreak 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 sending a notice regarding the end of the outbreak period. The DOL also notes that 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). The DOL provides that group health plans should consider ways to ensure that participants and beneficiaries who are losing coverage 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.

The DOL acknowledges that there may be instances when full and timely compliance with ERISA's disclosure and claims processing requirements by plans and service providers may not be possible, such as when pandemic or natural disaster-related disruption to a plan or service provider's principal place of business makes compliance with pre-established time frames for certain claims' decisions or disclosures impossible. The DOL will take into account fiduciaries that have acted in good faith and with reasonable diligence under the circumstances when enforcing ERISA requirements.

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# Appendix

The following examples were provided by the DOL and the Treasury to help illustrate the timeframe extensions required by the final rule. The DOL used a hypothetical end date for the COVID-19 National Emergency of April 30, 2020, and the outbreak period ending on June 29, 2020 (the 60th day after the hypothetical end of the national emergency). However due to the release of EBSA Disaster Relief Notice 2021-01, the examples are not as helpful. UBA has revised and updated the examples using the one-year extension from the date that an individual or plan was first eligible for relief. Note, if the original outbreak period of 60 days after the announced end of the COVID-19 National Emergency occurs earlier than the one-year date used in the examples, the 60th day after the announced end of the COVID-19 National Emergency must be used.

The following examples are based on examples provided by the DOL and the Treasury to help illustrate the timeframe extensions required by the final rule. The DOL used a hypothetical end date for the COVID-19 National Emergency of April 30, 2020, and the outbreak period ending on June 29, 2020 (the 60th day after the hypothetical end of the national emergency). UBA has revised and updated the examples based on our understanding of the one-year extension from the date that an individual or plan was first eligible for relief under EBSA Disaster Relief Notice 2021-01. Note, if the original outbreak period of 60 days after the announced end of the COVID-19 National Emergency occurs earlier than the one year date used in the examples, the 60th day after the announced end of the COVID-19 National Emergency must be used.

These revised examples have not been provided by the DOL or Treasury and they **do not constitute legal advice**. An employer should consult with its own attorney before taking any action.

**Example 1 – Electing COBRA**

*Facts.* Individual A works for Employer X and participates in X's group health plan. Due to the National Emergency, Individual A experiences a qualifying event for COBRA purposes as a result of a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements and has no other coverage. Individual A is provided a COBRA election notice on April 1, 2020. What is the deadline for A to elect COBRA?

*Conclusion.* Individual A is eligible to elect COBRA coverage under Employer X's plan. Individual A is entitled to outbreak period relief for purposes of determining Individual A's COBRA election period. Presuming the last day of Individual A's COBRA election period would be May 31, 2020 (60 days after April 1, 2020), the deadline to elect COBRA is extended to May 31, 2021.

**Example 2 – Special enrollment period**

*Facts.* Individual B is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Individual B gave birth and would like to

enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15. When may Individual B exercise her special enrollment rights?

*Conclusion.* In this example, the outbreak period relief applies to Individual B's special enrollment period. Individual B's deadline to special enroll herself and her child is extended to 30 days after March 31, 2021.

**Example 3 – COBRA premium payments**

*Facts.* On March 1, 2020, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since Individual C had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries more time than the statutory 30-day grace period for making premium payments. Individual C made a timely February payment, but did not make the March or April payment. As of May 1, Individual C has made no premium payments for March or April.

*Conclusion.* The conservative approach would appear to be to apply the one-year extension to each deadline because the notice applies the outbreak period relief based on individual actions. Therefore, the March 1, 2020 premium would be due 30 days after March 1, 2021 and the April 1, 2020 premium would be due 30 days after April 1, 2021. Individual C is eligible to receive coverage under the terms of the plan for March and April even though the premium payments may not be received until over a year after they were due. Since the due dates for Individual C's premiums would be postponed and Individual C's payment for premiums would be retroactive during the initial COBRA election period, Individual C's insurer or plan may not deny coverage, and may make retroactive payments for benefits and services received by the participant during this time.

**Example 4 – COBRA premium payments**

*Facts.* Same facts as Example 3. Individual C only pays the premium for March 2020 coverage. For how long does Individual C have COBRA continuation coverage?

*Conclusion.* Individual C is entitled to COBRA continuation coverage for March 2020 but not April 2020 if the April premium payment is not received by the 30th day following April 1, 2021. The plan would not be obligated to cover benefits or services that occurred after March 2020.

**Example 5 – Claims for medical treatment under a group health plan**

*Facts.* Individual D is a participant in a group health plan. On March 1, 2020, Individual D received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not submitted until April 1, 2021. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. Was Individual D's claim timely?

*Conclusion.* Yes. For purposes of determining the 365-day period applicable to Individual D's claim, a one-year extension would apply. Therefore, Individual D's last day to submit a claim is 365 days after March 1, 2021, which is March 1, 2022, so Individual D's claim was timely.

**Example 6 – Internal appeal, disability plan**

*Facts.* Individual E received a notification of an adverse benefit determination from Individual E's disability plan on January 28, 2020. The notification advised Individual E that there are 180 days within which to file an appeal. What is Individual E's appeal deadline?

*Conclusion.* When determining the 180-day period within which Individual E's appeal must be filed, a one-year extension would apply. Therefore, Individual E's last day to submit an appeal is 148 days (180 – 32 days following January 28 to March 1) after January 28, 2021, which is June 25, 2021.

**Example 7 – Internal appeal, employee pension benefit plan**

*Facts.* Individual F received a notice of adverse benefit determination from Individual F's 401(k) plan on April 15, 2020. The notification advised Individual F that there are 60 days within which to file an appeal. What is Individual F's appeal deadline?

*Conclusion.* When determining the 60-day period within which Individual F's appeal must be filed, a one-year extension would apply. Therefore, Individual F's last day to submit an appeal is 60 days after April 15, 2021, which is June 14, 2021.