

DOL Issues New Guidance on the Duration of its COVID-19 Outbreak Period Relief

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As described in our client advisories of [May 6, 2020](#) and [February 11, 2021](#), the Department of Labor (the “DOL”) temporarily suspended the deadlines for employee benefit plan participants to exercise HIPAA special enrollment rights, elect and pay premiums for COBRA continuation coverage, file claims for benefits and appeal benefit claim denials (each, a “Qualifying Event”).

Under this relief, plan administrators were directed to disregard the period from March 1, 2020 until 60 days after the end of the federally declared national emergency for COVID-19 (the “Outbreak Period”) in determining such deadlines. Because the statutes authorizing this relief impose a one-year limit on the period that may be disregarded in determining these deadlines, as described in our client advisory of [February 11, 2021](#), the Outbreak Period was generally expected to end on February 28, 2021, absent further action from the DOL.

In a last-minute change of course, the DOL is now requiring the relief period instead to be the one-year period beginning on the normally applicable deadline, or 60 days after the end of the federally declared national emergency for COVID-19, if sooner. As of this writing, the federally declared national emergency is still in place and the government has given no sign of when that declaration might end. In other words, the relief period is to be measured on an event-by-event basis with respect to each participant and beneficiary instead of an overall deadline that applies to the plan as a whole.

This means that a participant who became eligible for COBRA on January 30, 2021, and who normally would have had until March 31, 2021 to elect COBRA, will have until March 31, 2022 to do so (assuming the national emergency does not end before January 30, 2022). More significantly, a participant who experiences a Qualifying Event on or after March 1, 2021 (i.e., more than a year after the start of the Outbreak Period) will also be eligible for the relief.

In apparent recognition of its strained interpretation of its own original guidance regarding extension of certain plan deadlines, the DOL observed that plan disclosures issued during the pandemic may need to be reissued or amended if such disclosures did not accurately inform participants and beneficiaries of when actions are required.

Finally, the DOL observed that plan fiduciaries should make reasonable accommodations to prevent the loss or undue delay in payment of benefits and minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames. Specific examples of accommodations in the DOL guidance include affirmatively sending the affected participant or beneficiary a notice regarding the end of the relief period and, in the case of a group health plan, informing the affected participant or beneficiary of other coverage options, including through the

Health Insurance Marketplace in the participant's state. It is unclear from this guidance whether the DOL expects plan fiduciaries to make other types of accommodations, such as extending deadlines beyond the statutory limits as facts and circumstances may warrant.

Based on the DOL's latest guidance, plan administrators should be prepared to continue contending with the uncertainty and administrative difficulties created by the Outbreak Period relief until the President declares an end to the national emergency for COVID-19.

If you have any questions about the DOL's latest interpretation of the Outbreak Period relief, or if you would like assistance in reviewing, preparing or revising communications to plan participants about the relief, please contact a member of our Employee Benefits Group.