



## **FAQs on Deadline Extensions for Participants and Health Plan Sponsors under the Joint IRS and DOL Regulations**

*May 12, 2020*

Recognizing the impact of the COVID-19 pandemic, the Department of Labor (DOL) and the Department of the Treasury have issued a joint regulation on April 28, 2020, which extends certain deadlines affecting a participant's right to elect continuation of group health coverage under COBRA, to pay premiums for COBRA continuation coverage, to submit claims for coverage, and to dispute denials of claims for benefits. The guidance also extends the period of time that a group health plan sponsor or administrator has to provide a COBRA Election Notice.

Normally regulated deadlines for these actions will now be disregarded retroactively to March 1, 2020, and until 60 days after the time the federal government declares that the COVID-19 national emergency (referred to as the "Outbreak Period") has ended.

The guidance states that the following actions that are required to be taken during the Outbreak Period are extended until after the Outbreak Period ends:

- Special health plan enrollment periods
- 60-day election period for COBRA continuation coverage
- Date for making COBRA continuation coverage premium payments
- Date for individuals to notify a health plan of a qualifying event or determination of disability
- Date that a group health plan sponsor or administrator must provide a COBRA Election Notice

### **Frequently Asked Questions**

**Q-1: How are deadlines to notify an employer of special enrollment in a group health plan extended?**

**A-1:** The joint notice provides relief to individuals wishing to enroll themselves or a dependent in the group health plan under a special enrollment. This includes

- an employee that loses eligibility for any group health plan or other health insurance coverage in which the employee was previously enrolled,
- an employee dependent that loses eligibility for any group health plan or other health insurance coverage in which they were previously enrolled,
- a newborn child of the employee,
- a child adopted or placed for adoption with the employee, or
- a spouse of the employee.

In all cases, the employee must request enrollment in the group health plan within 30 days of the event. The joint notice requires that the outbreak period be disregarded when computing the applicable deadline.

**Q-1: Example 1** – Employee C declined coverage under his employer’s group health plan because he enrolled in the group health plan sponsored by his spouse’s employer. On February 21, 2020 Employee C’s spouse resigns and loses coverage under the group health care plan sponsored by her employer. Under normal circumstances, Employee C has until March 22, 2020 to request special enrollment for him and his spouse in his employer’s group health plan. Since the deadline to request special enrollment falls in the outbreak period, however, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded. In this example, December 31, 2020 is the end of the national emergency, so the end of the outbreak period is March 1, 2021. Employee C exhausted 8 of his 30 days for special enrollment before the outbreak period; the remaining 22 days for special enrollment are exhausted after the outbreak period. Employee C would have until March 23, 2021 to request special enrollment into the group health plan sponsored by his employer.

**Q-2: Are the deadline extensions under the joint notice applicable to plan administrators?**

**A-2:** The joint notice extends relief to group health plans and their plan sponsors and administrators, providing that the outbreak period is disregarded when determining the date for providing a COBRA Election Notice.

**Q-2: Example 1** – Employer sponsors a group health plan and is subject to COBRA. Employee D, a plan participant, resigns on January 10, 2020 and loses coverage under the plan effective January 31, 2020. Under normal circumstances, Employer has 60 days counted from January 31, 2020 to provide the corresponding COBRA Election Notice (until March 31, 2020) to Employee D. But since the deadline to provide the COBRA Election Notice falls in the outbreak period, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded. In this example, December 31, 2020 is the end of the national emergency, so Employer would have until April 1, 2021 to provide the corresponding COBRA Election Notice.

**Note:** In addition to the relief provided under the joint notice, the DOL has provided additional relief in EBSA Disaster Relief Notice 2020-01. Under Notice 2020-01, deadlines to furnish notices, disclosures, and other documents required under the provisions of Title I of ERISA (over which the DOL has interpretive and regulatory authority) are extended. Employee benefit plans and plan fiduciaries will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the national emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances.

**Q-3: How are the deadlines applicable to qualified beneficiaries under COBRA extended?**

**A-3:** The joint notice extends the following deadlines.

- The time for a qualified beneficiary to elect COBRA continued coverage
- The time for a qualified beneficiary to make COBRA premium payments
- The time for an individual to notify the plan of a qualifying event or determination of disability

The joint notice provides that the Outbreak Period between March 1, 2020, and 60 days after the announced end of the national emergency is disregarded when computing these applicable deadlines.

**Q-3: Example 1 (COBRA Election Notice – Qualified Beneficiary)** – Employee E receives a COBRA Election Notice from his employer on February 10, 2020. Under normal circumstances, Employee E would have until April 10, 2020 to elect continued coverage under COBRA. Since the deadline to elect COBRA continued coverage falls in the outbreak period, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded in computing the due date to elect COBRA continued coverage. In this example, December 31, 2020 is the end of the national emergency, so Employee E would have until April 11, 2021 to elect continued coverage under COBRA.

**Q-3: Example 2 (First COBRA Premium Payment)** – Employee E timely elected COBRA continued coverage on February 19, 2020 for coverage effective February 1, 2020. Under normal circumstances, Employee E would have 45 days (until April 4, 2020) to make the first COBRA premium payment. But since the deadline to elect COBRA continued coverage falls in the outbreak period, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded in computing the due date to make the first payment. In this example, December 31, 2020 is the end of the national emergency, so Employee E would have until April 5, 2021 to make the first COBRA premium payment.

**Q-3: Example 3 (Recurring COBRA Premium Payment)** – Employee E timely elected COBRA continued coverage and has been covered under COBRA for three months. The February 2020 premium is due on February 1, 2020. Under normal circumstances, Employee E has until March 1, 2020 to pay the February 2020 COBRA premium. Since the grace period to make the February 2020 COBRA premium payment expires during the outbreak period, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded in computing the due date to make the first COBRA premium payment. In this example, December 31, 2020 is the end of the national emergency, so Employee E would have until March 2, 2021 to make the February 2020 COBRA premium payment.

**Note:** Premium payments for which the grace period expired before the Outbreak Period (before March 1, 2020) are not covered under the relief. Therefore, a plan administrator may rescind COBRA continued coverage during the outbreak period for a qualified beneficiary that did not make the payment within the pre-outbreak grace period.

**Q-3: Example 4 (Notifying Qualifying Event)** – Employee E is enrolled in family coverage in the group health plan sponsored by his employer. Employee E's spouse is a covered dependent in the plan. Employee E's and his spouse's divorce becomes effective on January 21, 2020. Employee E has 60 days from the divorce effective date (so until March 21, 2020) to notify the plan administrator of this qualifying event to allow the plan administrator to

notify the ex-spouse of her COBRA election rights. But since the deadline to notify of the qualifying event falls in the outbreak period, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded. In this example, December 31, 2020 is the end of the national emergency, so Employee E would have until March 22, 2021 to notify his employer of the qualifying event (divorce).

**Note:** The relief for notifying the plan administrator of qualifying event applies to the following events.

- Divorce under ERISA §603(3)
- Dependent child ceasing to be a dependent child under ERISA §603(5)
- Qualified beneficiary that became disabled during the first 60 days of COBRA coverage and is formally notified by the Social Security Administration under ERISA §606(a)(3)

**Q-4: How is the COBRA Election Notice deadline extended when applicable to plan administrators under COBRA?**

**A-4:** With respect to group health plans and their sponsors and administrators, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded when determining the date for providing a COBRA Election Notice under ERISA §606(c) and IRC §4980B(f)(6)(D).

**Q-4: Example 1 (COBRA Election Notice – Plan Administrator)** – Employee F resigns effective January 31, 2020. Under normal circumstances, his employer would have 44 days (until March 15, 2020) to provide a COBRA Election Notice to “any qualified beneficiary” with respect to the resignation. Since the deadline to provide the COBRA Election Notice falls in the outbreak period, the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) is disregarded. In this example, December 31, 2020 is the end of the national emergency, so the employer would have until March 16, 2021 to provide the corresponding COBRA Election Notice to Employee F.

**Q-5: Does the joint notice extending deadlines apply to self-funded plans that are not governed by ERISA?**

**A-5:** The joint notice applies to all group health plans, disability, and other employee welfare benefit plans, and to employee pension benefit plans subject to ERISA (private sector plans) or the Internal Revenue Code (IRC) (private sector and church plans). With respect to plans that are not subject to ERISA or the IRC, the joint notice indicates that the Department of Health and Human Services (HHS) will extend similar deadlines otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan under applicable provisions of the Public Health Service Act (PHS Act). The HHS encourages plan sponsors of non-Federal governmental group health plans to provide similar relief.

**Q-6: How will the joint notice affect employers that currently have a suspension policy? These companies suspend insurance if payment is not processed by the first of the month. They do not terminate coverage, but suspend coverage until payment is received.**

**A-6:** The joint notice provides that all group health plans, disability, and other employee welfare benefit plans, and employee pension benefit plans subject to ERISA or the IRC must disregard the outbreak period (March 1, 2020 to 60 days after the end of the national emergency) or such other date announced by the federal agencies in a future notice for all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located in determining the date for making COBRA premium payments pursuant to ERISA §602(2)(C) and (3) and IRC §4980B(f)(2)(B)(iii) and (C). Since the due date for paying the COBRA premium is delayed, the “suspension” should not be applied because there is no late payment.

**Q-7: Are plan amendments needed in order to accommodate deadline extensions under the joint notice?**

**A-7:** Plan sponsors should seek legal counsel to determine whether their plans must be amended. In general, if the plan document details the deadlines that apply to special enrollments under HIPAA, claims procedures, external review, or COBRA continued coverage, it is likely that the plan document will require an amendment to incorporate the extended deadlines.

#### **Additional FAQs**

The DOL has provided additional COVID-19 FAQs for Participants and Beneficiaries [linked here](#).