



# EBSA Disaster Relief Notice 2021- 01

## Guidance on Continuation of Relief for Employee Benefit Plans and Plan Participants and Beneficiaries Due to the COVID-19 (Novel Coronavirus) Outbreak

This notice provides 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”) provide relief for certain actions related to employee benefit plans required or permitted under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code (“Code”). The relief is focused on employee benefit plans, plan participants and beneficiaries, employers and other plan sponsors, plan fiduciaries, and other service providers impacted by the coronavirus outbreak.

ERISA section 518 (29 U.S.C. § 1148) and Code section 7508A(b) (26 U.S.C. § 7508A(b)) generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan affected by a Presidentially declared disaster, the Secretaries of Labor and the Treasury may prescribe a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 of ERISA further provides that the Secretary of Labor may provide for such extensions of timeframes in the case of a public health emergency declared by the Secretary of Health and Human Services (HHS) pursuant to 42 U.S.C. § 247d. The relief period under the Notices began on March 1, 2020.<sup>1</sup>

The relief provided pursuant to the Notices continues until sixty (60) days after the announced end of the COVID-19 National Emergency (as defined in the Joint Notice) or such other date announced by the relevant Agency or Agencies in a future notification (the “Outbreak Period”), but as noted above, under section 518 of ERISA and section 7508A(b) of the Code, the disregarded period for individual actions “required or permitted” is expressly limited by statute to a period of 1 year from the date the individual action would otherwise have been required or permitted. One year from March 1, 2020, is February 28, 2021, and stakeholders have inquired about the continuation of relief beyond that date.

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<sup>1</sup> On March 13, 2020, the President 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, 42 U.S.C. § 5121 *et seq.*, that a national emergency exists nationwide beginning March 1, 2020, as the result of the COVID–19 outbreak (the National Emergency). *See* 85 FR 26351, 52 (May 4, 2020).

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,<sup>2</sup> 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.<sup>3</sup> In all of these examples, the delay for actions required or permitted that is provided by the Notices does not exceed 1 year.

This guidance has been coordinated with and reviewed by the Department of the Treasury, IRS, and HHS. The Department of the Treasury, IRS, and HHS have advised the Department of Labor that they concur with the guidance provided above regarding the continuation of relief and the application of the laws under their jurisdiction.<sup>4</sup>

The Department of Labor recognizes that affected plan participants and beneficiaries may continue to encounter an array of problems due to the ongoing nature of the COVID-19 pandemic in circumstances under which relief under the Notices is no longer available due to the statutory one-year limit on the Agencies' authority to grant relief. 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

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<sup>2</sup> The first date upon which an individual or plan could be eligible for relief was March 1, 2020, the first day of the National Emergency. Therefore, the earliest date upon which a disregarded period can begin to run again is March 1, 2021, including for periods during which an action is required or permitted to be completed that began before March 1, 2020.

<sup>3</sup> The relief provided under Notice 2020-01 for plan distribution of notices and disclosures was subject to the condition that the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. The Notice provided that good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites. The Department of Labor understands that many plans may have already returned to normal compliance procedures for furnishing notices and disclosures. Notices and disclosures properly furnished without relying on the relief in Notice 2020-01 do not need to be re-furnished. Similarly, to the extent the plan can demonstrate that a notice or disclosure was actually received, it would not need to be re-furnished even if it was initially furnished in reliance on the relief in Notice 2020-01.

<sup>4</sup> See Centers for Medicare & Medicaid Services, Insurance Standards Bulletin Series -- INFORMATION, "Temporary Period of Relaxed Enforcement of Certain Timeframes Related to Group Market Requirements under the Public Health Service Act in Response to the COVID-19 Outbreak" (May 14, 2020), available at <https://www.cms.gov/files/document/Temporary-Relaxed-Enforcement-Of-Group-Market-Timeframes.pdf>.

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.

For example, 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. Moreover, 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. Further, 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.<sup>5</sup> For more information on the Health Insurance Marketplace special enrollment period, go to 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/>.

In addition, the Department of Labor 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, including 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. In 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.

The Agencies continue to monitor the effects of the COVID-19 outbreak as they relate to employee benefit plans and have been engaged with stakeholders regarding the continued need for relief. 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.

## **Contact Information**

For more information, visit the EBSA Disaster Relief pages for [Employers and Advisers](#) or [Workers and Families](#), or contact [EBSA](#) or 1-866-444-3272. Questions about IRS guidance should be directed to the [IRS](#) or 1-202-317-5500.

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<sup>5</sup> 86 FR 7793 (February 2, 2021).