

Outbreak Period: Guidance on Extended Timeframes for COBRA Elections & Payments

November 1, 2021

Quick Facts

- After a National Emergency was declared, the regulatory agencies jointly issued a final rule extending several deadlines applicable under the Health Insurance Portability and Accountability Act (HIPAA), Consolidated Omnibus Budget Reconciliation Act (COBRA) and Employee Retirement Income Security Act (ERISA).
- For the period beginning March 1, 2020, until 60 days after the end of the National Emergency, all group health plans, disability plans, other employee welfare benefit plans and employee pension plans must disregard the time period known as the “Outbreak Period” when administering plans with respect to the deadlines covered by the rule.
- IRS guidance in Notice 2021-58 clarifies that the COBRA election and payment deadlines, although extended, may run concurrently.
- The extensions described above do not apply to the periods for providing the required notice of the American Rescue Plan Act (ARPA) extended election period or for electing COBRA continuation coverage with COBRA premium assistance.

Overview

On October 6, 2021, the Internal Revenue Service (IRS) released [Notice 2021-58](#), which further clarifies how to apply the extended deadlines for COBRA elections and COBRA premium payments during the Outbreak Period (i.e., the National Emergency + 60 days) that is still in effect.

Background

After a National Emergency was declared by President Trump as of March 1, 2020, the regulatory agencies jointly issued a final rule extending several deadlines applicable under HIPAA, COBRA and ERISA. The rule effectively extended the time participants were given for things like HIPAA special enrollment requests, ERISA claims and COBRA notifications, elections and payments. The rules apply broadly to all employer-sponsored benefits subject to ERISA and COBRA. The Department of Health and Human Services (HHS) indicated that similar relief was available to non-federal governmental plans as well.

For the period beginning March 1, 2020, until 60 days after the end of the National Emergency, all group health plans, disability plans, other employee welfare benefit plans, and employee pension plans must disregard the time period known as the “Outbreak Period” when administering plans with respect to the deadlines covered by the rule. Subsequent Department of Labor (DOL) guidance in [Disaster Relief Notice 2021-1](#), clarified that the 12-month limit on the agencies’ ability to disregard a statutory requirement applies on a participant by participant, or event by event, basis. This interpretation means that a participant’s deadline for something like a COBRA election or payment is unique to that participant and is based on the original deadline that would have applied absent the National Emergency. In no case will a deadline be delayed for any individual by more than one year.

For COBRA specifically, the following deadlines are extended for up to one year or until the end of the Outbreak Period, whichever occurs first:

- 60-day election period;
- COBRA premium payments (including the initial 45-day payment and subsequent 30-day grace periods);
- Notification of qualifying events or disability determinations; and
- Providing COBRA election notices.

Clarification for COBRA Election and Payment Deadlines

IRS guidance in Notice 2021-58 clarifies that the COBRA election and payment deadlines, although extended, may run concurrently. A plan does not have to permit a year to elect COBRA, plus a year to make the initial payment once COBRA is elected, plus a year for each subsequent premium payment; instead, all the extended time frames may run from the date the COBRA election notice is provided.

The notice also includes the following rules for applying the extended deadlines, including several examples:

COBRA Elections

Individuals must make the initial COBRA election by the earlier of one year + 60 days from receipt of the COBRA election notice, or the end of the Outbreak Period.

- **Example:** An individual has a qualifying event and is provided a COBRA election notice on August 1, 2020. The individual has until September 30, 2021 (one year + 60 days) to elect COBRA.

COBRA Initial Premium Payment, COBRA Elected *Within* Normal 60-Day Window

If an individual elects COBRA within the initial 60-day election timeframe, the individual has one year + 45 days after electing COBRA to make the initial COBRA premium payment.

- **Example:** An individual has a qualifying event and receives a COBRA election notice on October 1, 2020, and the individual elects COBRA on October 15, 2020. The individual has until November 29, 2021, to make the initial premium payment for October 2020 (one year + 45 days after electing COBRA). The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year + 30 days).

COBRA Initial Premium Payment, COBRA Elected *After* Normal 60-Day Window

If an individual elects COBRA after the initial 60-day election timeframe, the individual has one year + 105 days (60-day election period + 45-day initial payment deadline) from receipt of the COBRA election notice to make the initial COBRA premium payment.

- **Example:** An individual has a qualifying event and is provided a COBRA election notice on August 1, 2020, and the individual elects COBRA on February 1, 2021. The individual has until November 14, 2021, to make the initial premium payment for August – October 2020 (one year + 105 days after receipt of the election notice). The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year + 30 days).

Transition Relief

In no event will an initial COBRA premium payment be due before November 1, 2021, if the individual makes the initial COBRA premium payment within one year + 45 days after the election date.

- **Example:** An individual has a qualifying event and is provided a COBRA election notice on April 1, 2020, and the individual elects COBRA on October 1, 2020. Under the rule set forth above, the individual has until July 15, 2021, to make the initial COBRA premium payment for April – June 2020 (one year + 105 days after receipt of the election notice); however, because of the transition relief, the individual has until November 1, 2021, to make the initial COBRA premium payment for April – October 2020 (November 1, 2021, is less than one year + 45 days after October 1, 2020).
- If the individual elected COBRA on May 1, 2020, instead of October 1, 2020, requiring the initial premium payment by June 15, 2021 (one year + 45 days after electing COBRA), the transition relief would not be available because the deadline cannot be extended beyond one year + 45 days.

Interaction with ARPA COBRA Subsidy

The extensions described above do not apply to the periods for providing the required notice of the ARPA extended election period or for electing COBRA continuation coverage with COBRA premium assistance. Employers were required to inform assistance eligible individuals of their COBRA subsidy rights by May 31, 2021, and individuals were required to elect the COBRA subsidy within 60 days of receiving the COBRA subsidy notice. However, for individuals who timely elected the COBRA subsidy, an election of retroactive COBRA coverage back to the original loss of coverage date must have been made on or before the end of the 60-day election window or their right to retroactively elect COBRA for months prior to April 2021 was waived. Finally, note that extended premium payment deadlines continue to apply after the end of the COBRA premium assistance period (April – September 2021) if the individual is still eligible for COBRA continuation coverage.

Additional details and examples can be found in [IRS Notice 2021-58](#).

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