



# New DOL Rules: Employers Need to Notify Participants of COBRA, Special Enrollment and Claims Deadlines

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New guidance issued by the Department of Labor (DOL) provides a new procedure for tolling COBRA, special enrollment and claims deadlines for employee benefit plans. Unlike the 2020 guidance which tolled deadlines for all participants until 60 days after the end of the COVID-19 National Emergency declaration, the most recent guidance requires employers to track each individual employee's tolling period based on their individual circumstances.

Different employees will have different deadlines after the application of the tolling procedures. For example, qualified beneficiary A whose election period began on February 1, 2020 will have a very different relief period compared to qualified beneficiary B whose election period began on June 1, 2020.

Employers will have to devote special attention to this guidance to ensure proper tracking of employee's relief periods. The guidance also strongly recommends employers send updated notices out to employees regarding the new tolled deadline procedures. Finally, the guidance strongly recommends that employers send reminder notices to each employee when his or her individual relief period is ending. The guidance is administratively burdensome, and employers need to be aware of its content.

In late April 2020, the DOL, Department of Treasury, and the Internal Revenue Service (IRS) issued a Joint Notice. The DOL also separately issued Disaster Relief Notice 2020-01. Both Notices extended certain deadlines for benefit plans given the novel COVID-19 outbreak. Together, the notices provided participants relief from COBRA, special enrollment and claims deadlines, mostly impacting welfare plans, and also provided more limited relief to employers. These notices were discussed in-depth in our previous article [DOL and IRS issue COVID-19 Benefit Plan Rules, COBRA Deadline Extensions and Updated Model COBRA Forms](#).

A key feature of the Joint Notice was that an “Outbreak Period” was to be ignored in determining the deadline for participants to elect special enrollment in a health plan, elect or pay for COBRA coverage, or make or appeal a benefit plan claim. The “Outbreak Period” was described as the period from March 1, 2020 until 60 days after the announced end of the COVID-19 National Emergency. Group health plans, disability and other welfare plans, and employee retirement plans covered by ERISA or the Internal Revenue Code (Code) were directed to disregard the Outbreak Period for plan participants, beneficiaries, qualified beneficiaries or claimants when administering certain aspects of the plan such as enforcing the deadline to elect COBRA and pay the related premiums and deadlines to file claims under plan procedures.

Under ERISA and the Code, the DOL does not have the authority to extend the tolling period for over one year. As the anniversary of the Joint Notice’s tolling period expiration neared, stakeholders pushed the DOL for further guidance regarding the tolling period and how to address the ongoing COVID-19 pandemic given the soon-expiring tolling period.

On February 17, 2021, the DOL finally answered the call and issued Disaster Relief Notice 2021-01 (the Notice), providing further guidance to plan administrators regarding how to deal with the tolling issues after March 1, 2021. The Notice was coordinated with and reviewed by the Department of Treasury, the IRS, and the Department of Health and Human Services. Those agencies advised the DOL that they concur with the guidance outlined in the Notice. The DOL’s solution: plan administrators should apply the term “Outbreak Period” on a person-by-person basis, considering the circumstances of each individual participant and when their outbreak period began. This means that it is a plan administrator’s responsibility to determine each individual participant’s “Outbreak Period” and toll the applicable deadlines for up to a year from that specific date. The deadlines for each individual will be tolled until the earlier of (i) one year from the date the individual was first eligible for the relief, or (ii) the end of the “Outbreak Period” defined in the prior guidance (i.e., 60 days after the announced end of the National Emergency).

Let's look at a hypothetical. Consider Abe, whose COBRA election period started on February 15, 2020. Under the old guidance, his election deadline was tolled until 60 days after the announced end of the National Emergency. Under the new guidance, Abe's election deadline was tolled for one year starting March 1, 2020. Therefore, his tolling period ended February 28, 2021 and the remainder of his 60-day election period resumes on March 1, 2021. In effect, the new guidance means Abe's elections are due earlier than originally thought under the old guidance.

On the other hand, consider Betty, whose COBRA election period started on June 15, 2021. Under the old guidance, her election deadline was tolled until 60 days after the announced end of the National Emergency. Under the new guidance, however, Betty's election deadline tolling starts on June 15, 2021, meaning her individual relief period would end on June 14, 2022 (or 60 days after the announced end of the National Emergency, if earlier) and her 60-day election period would start immediately after the end of the tolling period.

The guidance also strongly encourages administrators to send out notices to employees in the following situations:

- Where a plan administrator knows, or should know, that the end of a relief period could expose a participant or beneficiary to a risk of losing protections, benefits, or rights under the plan, a notice should be sent to the individual regarding the end of the one-year relief period and should likely include information based on their own customized extension period.
- Notices may need to be reissued or amended if the prior notice failed to provide accurate information describing the new extension deadlines.
- Plan administrators should consider making enrollees aware of other coverage options, such as Special Enrollment Periods under the Health Insurance Marketplace.

Adhering to this guidance will certainly cause plan administrators a lot of headaches in the coming months.

Frost Brown Todd is here to help with form notices and counsel that will help you implement this guidance. For assistance in interpreting and applying this new guidance to your own plan, please contact [Alison Stemler](#), [Carl Lammers](#), [Edward Rivin](#) or any other attorney with Frost Brown Todd's [Employee Benefits & ERISA](#) practice group.

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