

IRS Issues Guidance Clarifying the Application of COVID-19 Outbreak Period Extensions for Electing COBRA Continuation Coverage and Paying COBRA Premiums

by Lisa S. Boehm on October 11, 2021

On October 6, 2021, the IRS issued Notice 2021-58, providing helpful guidance on COBRA continuation coverage in two key areas: (1) the application of the extended timeframes for electing COBRA continuation coverage and paying COBRA premiums in response to the on-going COVID-19 national emergency, and (2) the interaction of the extended timeframes with the COBRA premium subsidy available under the American Rescue Plan Act of 2021 (“ARPA”).^[1] This post summarizes the guidance and encourages COBRA administrators and plan administrators of group health plans to review the ten examples provided in the Notice.

Background

COBRA is a federal law that permits qualified beneficiaries who lose coverage under a group health plan to elect continuation coverage during the 60-day period after the COBRA election notice is sent. If COBRA continuation coverage is elected, the group health plan may not require the payment of any premium sooner than 45 days after the qualified beneficiary elects COBRA continuation coverage. In addition, a group health plan must treat COBRA premium payments as timely if they are made within thirty days after the date due (or within any longer period as applied to or under the group health plan).

Guidance published jointly by the IRS, Department of Treasury and the Department of Labor (the “Agencies”) in May, 2020 (the “Joint Notice”) extended certain tax filing, election and payment deadlines in response to the on-going COVID-19 national emergency. In a nutshell, the Joint Notice extended these deadlines by requiring that plans subject to ERISA or the Internal Revenue Code disregard the period for certain action from March 1, 2020, until 60 days after the announced end of the national emergency or such other date announced by the Agencies in a future notice (the “Outbreak Period”), subject to a maximum disregarded period of one year. (See our May 13, 2020 blog post for a more complete summary of the health and welfare benefit plan-related deadline extensions provided in the Joint Notice.)

In February, 2021 the Department of Labor issued EBSA Disaster Relief Notice 2021-01, which clarified that the disregarded periods apply from the date each individual or plan was first eligible for relief under the Joint Notice, meaning the applicable periods under the Joint Notice and Disaster Relief Notice (collectively, the “Emergency Relief Notices”) are disregarded until the earlier of: (1) one year from the date the individuals and plans were first eligible for the relief, or (2) 60 days after the announced end of the Outbreak

Period. At the end of the disregarded period, the applicable timeframes that were disregarded under the Joint Notice kick in.

The Joint Notice provided extensions for the following COBRA timeframes:

- the 60-day election period for COBRA continuation coverage;
- the dates for making COBRA premium payments;
- the dates for individuals to notify the group health plan of a qualifying event or determination of disability; and
- the date for providing a COBRA election notice.

The ARPA was enacted on March 11, 2021, and, in relevant part, provides for a temporary COBRA premium subsidy for assistance eligible individuals for certain periods of coverage. (See our [May 24, 2021 blog post](#) for more information on the ARPA COBRA premium subsidy.)

Guidance on the Application of the Outbreak Period Extensions to COBRA Election and COBRA Premium Payment Timeframes

IRS Notice 2021-58 clarifies that the disregarded period for qualified beneficiaries to elect COBRA continuation coverage and the disregarded period for making initial and subsequent COBRA premium payments generally run concurrently. To illustrate the timeframes that apply to individuals making initial COBRA payments under the Emergency Relief Notices during the Outbreak Period, the Notice provides the following rules:

1. An individual electing COBRA continuation coverage after the initial 60-day COBRA election period (determined without regard to the Emergency Relief Notices) generally has one year and 105 days (60 days to make the initial COBRA election plus 45 days to make the initial COBRA premium payment) after the date the COBRA election notice was provided to make the initial COBRA premium payment; and
2. An individual electing COBRA continuation coverage within the initial 60-day COBRA election period (determined without regard to the Emergency Relief Notices) has one year and 45 days after the date of the COBRA election to make the initial COBRA premium payment.

Notice 2021-58 also provides that the initial election for COBRA continuation coverage must be made by the earlier of: (1) one year and 60 days after the individual's receipt of the COBRA election notice, or (2) the end of the Outbreak Period. The IRS explains that applying the disregarded periods in this way (*i.e.*, running them concurrently) means that individuals who delay electing COBRA continuation coverage may not have more than one year of total disregarded time for their COBRA election and initial COBRA premium

payment. The Notice includes the following example: An individual generally cannot delay electing COBRA continuation coverage for six months and then add another full year to the disregarded period for purposes of determining the due date for the initial COBRA premium payment (resulting in a total of 18 months of disregarded time for both the COBRA election and payment of the initial COBRA premium); instead, the maximum disregarded period of one year is applied concurrently to the timeframe for the COBRA election and initial COBRA premium payment.

Notice 2021-58 does, however, include an exception to the general rule that disregarded periods for COBRA elections and initial COBRA premium payments run concurrently. The exception provides transition relief for COBRA premium payments due before November 1, 2021 under the Emergency Relief Notices. Specifically, the transition relief provides that an individual will not be required to make the initial COBRA premium payment before November 1, 2021, even if that date is more than one year and 105 days after the date the COBRA election notice was received, provided the individual makes the initial COBRA premium payment within one year and 45 days after the date of the COBRA election. The transition relief is intended to avoid inequitable outcomes (*i.e.*, the IRS surmises that because some individuals may have assumed that the disregarded period for making the initial COBRA premium payment begins on the date of the COBRA election, individuals who made COBRA elections more than 60 days after receipt of the COBRA election notice may have less time than they anticipated to make their initial COBRA payment). Due to the timing of the publication of the transition relief, individuals for whom the transition relief is intended will have less than 4 weeks to make their initial COBRA premium payment.

Lastly, Notice 2021-58 provides that for each COBRA premium payment after the initial premium payment, the maximum time an individual has to make a payment while the Outbreak Period continues is one year from the date the payment would have been due in the absence of the Emergency Relief Notices, including the required 30-day grace period, but subject to the transition relief described above.

Guidance on the Interaction of the Extended COBRA Timeframes with the ARPA COBRA Premium Subsidy

Notice 2021-58 reiterates that the extended timeframes under the Emergency Relief Notices do not apply to the periods for providing the required notice of the ARPA extended election period or for electing COBRA continuation coverage with the COBRA premium subsidy available under ARPA. In addition, the Notice states that an individual who has a disregarded period under the Emergency Relief Notices may elect retroactive COBRA continuation coverage (subject to the guidance provided in the Notice) and may elect COBRA continuation coverage with the premium subsidy for any period for which the individual is eligible for the subsidy. The disregarded periods under the Emergency Relief Notices continue to apply, however, to COBRA premium payments after the end of the

COBRA premium subsidy period, to the extent the individual remains eligible for COBRA continuation coverage and the Outbreak Period has not ended.

Guidance Includes Helpful Examples

Part VI of Notice 2021-58 includes ten examples illustrating how COBRA elections and premium payments are treated under the new guidance, which COBRA administrators and plan administrators of group health plans should find instructive.

If you have any questions regarding the guidance in IRS Notice 2021-58, please contact a member of Verrill's [Employee Benefits & Executive Compensation Group](#).

[1] The guidance has been coordinated with the Departments of Labor and Health and Human Services.



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