



**EMPLOYERS/PARTICIPANTS: This communication pertains to the IRS and DOL Joint Guidance that was released in April of 2020 and subsequently updated on February 26, 2021. This information does not apply to the recent Stimulus Bill released in December of 2020 that allowed for permissive actions by the Plan.**

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Hello,

The IRS and DOL issued joint guidance (Disaster Relief Notice 2020-01) in April of 2020 that directed Plan Sponsors and group health plans to disregard the periods of time between March 1, 2020 and 60 days after the announced end of the COVID-19 National Emergency when calculating certain periods of time for group health plans. This was called the “outbreak period”. Basically, plans were required to stop counting with respect to certain time periods during the outbreak period. Once the outbreak period ended, plans could resume the time periods. Although the end date of the outbreak period was identified in the notice as 60 days after the end of the national emergency, the relief was a product of ERISA Section 518, which imposes a 1 year maximum. Since the outbreak period began March 1, 2020, many believed it would end in its entirety on February 28, 2021. On February 26, 2021, the DOL issued updated guidance in Notice 2021-01 to explain the application of the 1 year maximum and clarify the end of the outbreak period.

Under Notice 2021-01, the outbreak period will not end in its entirety until 60 days after the end of the National Emergency (i.e. likely well beyond February 28, 2021); however, the 1 year maximum will be applied to individually affected time periods. Thus, the outbreak period for each individually affected time period will end at the earlier of:

- ) One year from the date the person was first eligible for relief;
- ) 60 days after the announced end of the National Emergency.

What this means is that plans can begin counting again with respect to certain time periods even though the Outbreak Period has not ended in its entirety. Consider the following examples.

## COBRA Elections

In the absence of the Outbreak Period, Bob’s COBRA election period would have begun May 1, 2020. If the Outbreak Period has not ended in its entirety, the Outbreak Period will end for Bob with respect to this election period on April 30, 2021—1 year after the start of Bob’s election period. Bob will then have 60 days to elect COBRA beginning May 1, 2021. His new election date is June 29, 2021.

NOTE: The agencies provide a simple formula for applying the 1 year to identify the new due date. Instead of measuring the 1 year period from the beginning of the election period and then adding the disregarded days of the election period, you can simply add 1 year to the otherwise applicable due date to identify the new election period. You arrive at the same date either way. For example, in the example above, Bob’s original COBRA election due date would have been June 29, 2020. If you add 1 year to that date, his new election due date becomes June 29, 2021.



## COBRA Premium Payments:

Monthly COBRA premiums are typically due on the 1<sup>st</sup> of the month with a grace period of 30 days after the 1<sup>st</sup> day of the month. Assume that Sue was on COBRA but stopped paying premiums in April 2020. If the Outbreak Period has not ended in its entirety, the Outbreak Period for Sue with respect to the April premium will end March 31, and Sue will be required to pay the April premium within 30 days, or April 30, 2021. Or said another way, Sue's original end date for paying the April 2020 premium was April 30, 2020; therefore, Sue's new end date for the April 2020 premium is April 30, 2021—1 year after the original end date of April 30, 2020.

## Health FSA Plan Years ending 12/31/2019 with a run out period ending 3/31/20:

In this example, 59 days of the run out period for the 2019 Health FSA plan year had already expired when the Outbreak Period began on March 1, 2020, which means the remaining 31 days were disregarded (or not counted). The outbreak period for this run out period ended February 28, 2021—1 year after it was first affected by the outbreak period, and participants will have 31 days—until March 31, 2021—to submit claims from the 2019 plan year. Or said another way, the original due date for the 2019 plan year run out period was March 31, 2020. Thus, the new due date will be March 31, 2021. The 1 year period will operate the same way with respect to run out periods for the 2019 plan year that would have ended, in the absence of the outbreak period, later. For example, if your run out period for the 2019 plan year would have ended April 30, 2020, then the new due date for the 2019 plan year run out period is April 30, 2021.

### **So, what does all of this mean to you, as the Plan Sponsor?**

- 1) The Plan Sponsor is required to notify COBRA members of their individual, personalized 12 month suspension period. COBRA members appear to be defined as those that have elected COBRA, those that have not yet elected COBRA but had an event during this time period, those that elected and paid for COBRA but subsequently stopped paying for COBRA during this time period. We can assist you with these notices. The timing, content and cost of such notifications will be sent to our COBRA clients in a separate communication.
- 2) You should consider providing notice to your current employees regarding the impending end to the run out period for the 2019 Health FSA plan year. NOTE: the outbreak period did not apply to Dependent Care FSAs.
- 3) If you are extending the run out period for the 2019 or 2020 plan years because you have extended the grace period for those plan years in accordance with relief provided in the Consolidated Appropriations Act, please notify us as soon as possible so that we can modify our records accordingly.

I am sure you have questions. As always, we are here to answer your questions and provide any guidance we can. If you would like to schedule a call to discuss any of these matters in more detail, please contact Kelsey Zelazny at [kelsey@taxsaverplan.com](mailto:kelsey@taxsaverplan.com).



Thank You,  
TaxSaver Plan