

COMPLIANCE BULLETIN



Clarifying Guidance on COBRA Deadline Extension Relief

IRS [Notice 2021-58](#) clarifies the application of certain COBRA deadline extensions for **electing COBRA coverage** and **paying COBRA premiums** under prior relief that was issued as a result of the COVID-19 outbreak (“Emergency Relief”). Under the Emergency Relief, up to one year must be disregarded in determining the due dates for individuals to elect COBRA coverage and pay COBRA premiums during the Outbreak Period (i.e., 60 days after the announced end of the National Emergency).

Notice 2021-58 clarifies that the disregarded periods to elect COBRA coverage and make initial and subsequent COBRA premium payments **generally run concurrently**. The guidance provides the following rules to illustrate the applicable time frames:

- If an individual elected COBRA coverage within the initial 60-day COBRA election time frame, they will have **one year and 45 days after the date of the election** to make their initial COBRA premium payment.
- If an individual elected COBRA coverage outside of the initial 60-day COBRA election time frame, they generally will have **one year and 105 days after the date the COBRA notice was provided** to make the initial COBRA premium payment (subject to transition relief).

The guidance also addresses the interaction of the Emergency Relief with the COBRA subsidies that were made available for certain eligible individuals under the American Rescue Plan Act (ARPA).

Action Steps

Employers should carefully review the guidance and consult benefits counsel to ensure their ongoing compliance with the Emergency Relief, as clarified by Notice 2021-58.

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Standard COBRA Deadlines

COBRA Election Deadline

The standard deadline for individuals to elect COBRA coverage is typically within 60 days of receiving a COBRA election notice.

Premium Payment Deadline

The standard deadline to make COBRA premium payments is generally at least 45 days after the date of the initial COBRA election, with a grace period of at least 30 days for subsequent payments.

Extended COBRA Deadlines

Emergency Relief

The Emergency Relief disregards the standard COBRA deadlines until the earlier of: **(1) one year from the date individuals were first eligible for relief;** or (2) the end of the Outbreak Period.

Notice 2021-58

On Oct. 6, 2021, Notice 2021-58 clarified that the **disregarded periods to elect COBRA coverage and to make COBRA premium payments generally run concurrently.**

ApexBenefits



Application of Emergency Relief to COBRA Elections and Paying COBRA Premiums

Individuals must make the initial COBRA election by the earlier of:

- One year and 60 days after the individual's receipt of the COBRA election notice; or
- The end of the Outbreak Period.

Applying the disregarded periods in this way means that individuals who delay electing COBRA may not have more than one year of total disregarded time for the COBRA election and initial COBRA payment. For example, an individual generally may not delay electing COBRA coverage for six months and then add another full year to the disregarded period for purposes of determining the deadline for making the initial COBRA premium payment (resulting in a total of 18 months of disregarded time for both the COBRA election and initial COBRA payment). Instead, the maximum disregarded period of one year is applied concurrently to the timeframe for the COBRA election and initial COBRA premium payment. However, these timeframes are **subject to the transition relief provided below**.

For each subsequent COBRA 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 originally would have been due in the absence of the Emergency Relief (including the mandatory 30-day grace period), but **subject to the transition relief provided below**.

Notice 2021-58 Transition Relief

Because some individuals may have assumed that the disregarded period for making the initial premium payment begins on the date of the COBRA election, individuals who made elections more than 60 days after receipt of the election notice may have less time than they anticipated to make their initial premium payment. Thus, Notice 2021-58 provides that **in no event will an initial COBRA premium payment be due before Nov. 1, 2021 (even if Nov. 1, 2021 is more than one year and 105 days after the date the election notice was received), as long as the individual makes the initial COBRA premium payment within one year and 45 days after the election date.**

This transition relief is an exception to the general rule that disregarded periods for COBRA elections and initial COBRA payments run concurrently with respect to each individual.

Interaction with ARPA COBRA Premium Subsidy

The extensions under the Emergency Relief **do not apply** to the timeframes for electing COBRA coverage with ARPA premium subsidies, or for providing the required notice of the ARPA extended election period. An individual who has a disregarded period under the Emergency Relief may elect retroactive COBRA coverage, subject to the clarifying guidance in Notice 2021-58, and may elect COBRA coverage with ARPA premium subsidies for any period for which the individual is eligible for premium assistance. However, the disregarded periods under the Emergency Relief continue to apply to payments of COBRA premiums after the end of the ARPA premium subsidy period, to the extent that the individual is still eligible for COBRA coverage and the Outbreak Period has not ended.

Examples

Notice 2021-58 provides 10 comprehensive examples to illustrate how COBRA elections and premium payments are treated under Notice 2021-58, including how to apply the ARPA premium subsidies. All of the examples assume that the group health plans have calendar month coverage periods, with premium payments due by the first of the month, and that the plans provide that qualified beneficiaries must make COBRA premium payments within the statutory 30-day grace period.