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IRS Clarifies COBRA Deadlines in Latest Tolling Notice

On Wednesday, the Internal Revenue Service ("IRS") and Department of Treasury ("Treasury") released guidance (Notice 2021-58) clarifying certain deadlines relating to COBRA continuation coverage in connection with the ongoing pandemic, and the Departments of Labor ("DOL") and Health and Human Services ("HHS") concur with this new guidance. As discussed in our prior blog post, the IRS, Treasury, and DOL had previously released several pieces of guidance delaying and extending many common deadlines for employee benefit plans, with which HHS broadly concurred.

Ordinarily, a participant has up to 60 days after they receive a COBRA notice to elect COBRA coverage, and another 45 days after the election is made to make the first COBRA premium payment. In addition, group health plans are generally required to give participants at least a 30-day grace period for payment of each subsequent monthly premium payment. Under prior COVID-relief guidance, these deadlines were extended by up to one year during the pandemic. Notice 2021-58 clarifies that the one-year extension applies individually to each covered deadline for each participant, but that each one-year extension applicable to a given participant runs concurrently. The result is that the total amount of disregarded time with respect to a given participant's COBRA election and initial payment deadlines under a given plan cannot exceed one year.

For example, suppose that the regular 60-day deadline to elect COBRA expired in 2020 during the outbreak period, and the outbreak period continues indefinitely. If the participant elects COBRA 75 days after receiving the COBRA notice, then for purposes of determining the deadline to make an initial payment, the participant is treated as having made an election on day 60. Thus, the total amount of time that the participant has to make the initial payment is 1 year plus 105 days (60+45) after the date the COBRA notice was provided. However, if the participant elected COBRA within the 60-day period, then the 45-day clock would start immediately when the participant elected COBRA. Thus, the deadline for making a COBRA premium payment is 1 year and 45 days after the date that the COBRA election was made. Similarly, subsequent premium payments are due within one year after the date that they would have been due had all prior elections and payments been timely made under ordinary law and plan terms.

Some plans, applying a more liberal interpretation of prior guidance, may have already extended coverage to participants whose COBRA premium payments would otherwise have been late under this new rule. In response, the IRS has offered a limited transition rule under which an initial COBRA premium payment will not be treated as late if (1) it is/was made no later than November 1, 2021, and (2) it is/was made within 1 year and 45 days after the election date.

The IRS also clarified that the 1-year extension of deadlines does not affect certain deadlines relating to notices and elections with respect to COBRA premium assistance under the American Rescue Plan Act (discussed in our prior blog post).