



Employee Benefits & Executive Compensation ADVISORY ■

APRIL 18, 2023

Not So Fast: Putting the Brakes on the Rush to End the Outbreak Period

Pursuant to informal conversations with both the Employee Benefits Security Administration (EBSA) and IRS officials, H. Joint Res. 7 by itself has no impact on the end of the Outbreak Period, even though the National Emergency under the National Emergencies Act officially ended when President Biden signed the joint resolution on April 10, 2023. Consequently, the emergency period for purposes of the Outbreak Period will still end May 11, 2023, which means the Outbreak Period will still end July 10, 2023, as previously announced by the Departments of Labor and Treasury in [FAQs Part 58](#).

How can that be?

The May 4, 2020 [Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak](#) from the agencies and EBSA Disaster Relief [Notice 2021-01](#) both indicated that the Outbreak Period would end 60 days after the end of the National Emergency or “such other date announced by the agencies in a future notification.” The agencies indicated in [FAQs Part 58](#) on March 29, 2023 that the National Emergency (and the Public Health Emergency) would end May 11, 2023; therefore, the Outbreak Period would end July 10, 2023. Although President Biden signed H. Joint Res. 7, ending the national emergency declaration under the National Emergencies Act on April 10, the agencies have informally indicated that the date announced in [FAQs Part 58](#)—May 11, 2023—represents the end of the National Emergency for purposes of the Outbreak Period.

We also point out that H. Joint Res. 7 only ended the National Emergency declaration under the National Emergencies Act and not any declaration made pursuant to the Stafford Act (or the Public Health Emergency declaration by the Department of Health and Human Services (HHS)). The Outbreak Period is a function of ERISA §518 and IRC §7508A, each of which grants authority to the agencies following certain declarations made pursuant to the Stafford Act and/or Public Health Emergency declaration by HHS—not the National Emergencies Act. Based on our own analysis, it appears that H. Joint Res. 7 has no impact on relief granted under Stafford Act declarations, such as the Outbreak Period. Similarly, H. Joint Res. 7 has no impact on relief granted under the HHS Public Health Emergency, which will end on May 11.

You can subscribe to future **Employee Benefits & Executive Compensation** advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Members of Alston & Bird's Employee Benefits & Executive Compensation Group

Emily Seymour Costin
+1 202 239 3695
emily.costin@alston.com

H. Douglas Hinson
+1 404 881 7590
doug.hinson@alston.com

Steven C. Mindy
+1 202 239 3178
steven.mindy@alston.com

Michael L. Stevens
+1 404 881 7970
mike.stevens@alston.com

R. Blake Crohan
+1 404 881 4625
blake.crohan@alston.com

James S. Hutchinson
+1 212 210 9552
jamie.hutchinson@alston.com

Earl Pomeroy
+1 202 239 3835
earl.pomeroy@alston.com

Margaret E. Studdard
+1 404 881 7291
ellie.studdard@alston.com

Meredith Gage
+1 404 881 7953
meredith.gage@alston.com

Michelle Jackson
+1 404 881 7870
michelle.jackson@alston.com

Cremeithius M. Riggins
+1 404 881 4595
cremeithius.riggins@alston.com

Kerry T. Wenzel
+1 404 881 4983
kerry.wenzel@alston.com

Ashley Gillihan
+1 404 881 7390
ashley.gillihan@alston.com

Kenneth M. Johnson
+1 919 862 2290
kenneth.johnson@alston.com

Syed Fahad Saghir
+1 202 239 3220
fahad.saghir@alston.com

Kyle R. Woods
+1 404 881 7525
kyle.woods@alston.com

David R. Godofsky
+1 202 239 3392
david.godofsky@alston.com

Edward T. Kang
+1 202 239 3728
edward.kang@alston.com

John B. Shannon
+1 404 881 7466
john.shannon@alston.com

Amy Heppner
+1 404 881 7846
amy.heppner@alston.com

Laurie Kirkwood
+1 404 881 7814
laurie.kirkwood@alston.com

Carolyn E. Smith
+1 202 239 3566
carolyn.smith@alston.com

John R. Hickman
+1 404 881 7885
john.hickman@alston.com

Blake Calvin MacKay
+1 404 881 4982
blake.mackay@alston.com

Dakota Sneed
+1 404 881 7668
dakota.sneed@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2023

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ +1 404 881 7000 ■ Fax: +1 404 881 7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Rue Guimard 9 et Rue du Commerce 87 ■ 3rd Floor ■ 1000 Brussels ■ Brussels, 1000, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ +1 704 444 1000 ■ Fax: +1 704 444 1111
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ +1 214 922 3400 ■ Fax: +1 214.922.3899
FORT WORTH: Bank of America Tower ■ 301 Commerce ■ Suite 3635 ■ Fort Worth, Texas, USA, 76102 ■ +1 214.922.3400 ■ Fax: 214 922 3899
LONDON: 4th Floor, Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44 0 20 3823 2225
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ +1 213 576 1000 ■ Fax: +1 213 576 1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ +1 212 210 9400 ■ Fax: +1 212 210 9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ +1 919 862 2200 ■ Fax: +1 919 862 2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ +1 415 243 1000 ■ Fax: +1 415 243 1001
SILICON VALLEY: 755 Page Mill Road ■ Building C - Suite 200 ■ Palo Alto, California, USA 94304-1012 ■ +1 650 838 2000 ■ Fax: +1 650 838 2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ +1 202 239 3300 ■ Fax: +1 202 239 3333