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American Rescue Plan Act of 2021

*What Employers Should Know About New
COBRA Coverage Obligations*

Presented by: Lippes Mathias Health Care Team
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Agenda

- > American Rescue Plan Act of 2021 (“ARPA-21”) COBRA Premium Subsidy Summary
- > COBRA Continuation Coverage and Other Continuation Coverage
- > COBRA Premium Assistance Overview and Beneficiary Eligibility Requirements
- > Employer Notice Obligations and Election Periods
- > Overview of Required Notices
- > Subsidy Payment Process
- > Penalties

American Rescue Plan Act of 2021

- > ARPA-21 provides for 100% subsidy of COBRA premiums
 - Free (subsidized) coverage that is not taxable
- > Six months from April 1, 2021 through September 30, 2021
- > Subsidy and notice and election requirements apply to employers that are subject to COBRA and also to certain governmental employers and insurance plans that are subject to state mini-COBRA statutes.
- > Subsidy is paid to employers/insurers through federal payroll tax credits.

COBRA Coverage

- > COBRA continuation coverage requirements applies to private employers and employee organizations (unions) that are subject to ERISA and that have 20 employees or more on typical business days during prior calendar year
- > Eligible for continuation coverage if involuntary termination (other than for gross misconduct) or a reduction of hours and no longer eligible for coverage as full-time employee. Qualifying events other than termination of employment include – death of employee, divorce, disability, losing dependent status, termination of coverage upon entitlement to Medicare and bankruptcy (regarding retiree health coverage).

COBRA Coverage Cont'd

- > Employers are required to provide notice of eligibility for COBRA.
Employees generally pay up to 102% of the group premium.
- > Continuation coverage for 18 months for up to 36 months if disabled.
Other rules for bankruptcy and retiree coverage.

COBRA Coverage Cont'd

- > COBRA eligibility terminates as soon as :
 - No longer an employer group health plan
 - Non-payment of premiums
 - Eligibility and enrollment under another group health plan with no pre-existing condition provision
 - Dependent becomes entitled to Medicare after electing COBRA
 - No longer disabled
- > COBRA does not apply to church plans (unless they voluntarily elect to be covered by ERISA) or governmental plans.

Other Continuation Coverage

- > Governmental plans are required to provide continuation coverage through the Public Health Services Act, see 42 USCA 300bb-1 et seq.
- > Several states, including New York, have mini-COBRA statutes which require group health insurers (not employers) to provide continuation insurance coverage to employees and dependents following termination of the group health insurance.

COBRA Premium Assistance Applicability

- > ARPA-21 COBRA premium assistance notice and coverage obligations apply to the following entities:
 - Group health plans sponsored by employers and employee organizations that are subject to COBRA
 - Governmental plans that are subject to the Public Health Service Act continuation of coverage requirements
 - Insurers that are subject to a state program that provides continuation of coverage comparable to COBRA

COBRA Premium Assistance Applicability Cont'd

- > ARPA-21 does not apply to the following plans:
 - Church plans that have not elected to be subject to ERISA (except to the extent purchasing group insurance covered by state mini-COBRA laws)
 - Qualified small employer health reimbursement arrangements and Health FSAs
 - Retiree only plans
 - Coverage that provides only excepted benefits (e.g., limited scope vision and dental benefits that are not an integral part of a group health plan, accident only plans, etc.)

COBRA Premium Assistance Eligibility

- > Who is eligible to receive a COBRA premium assistance and required to receive notices (Assistance Eligible Individual or AEI)?
 - Need to meet all of the following criteria:
 - Eligible person
 - Eligible qualifying event
 - Eligible date of qualifying event
 - Timely elects to receive the coverage and subsidy

COBRA Premium Assistance Eligibility Cont'd

> Who is eligible to receive a COBRA premium assistance and required to receive notices (Assistance Eligible Individual or AEI):

- Eligible qualified COBRA beneficiaries:
 - Former employees
 - Dependents
- Eligible qualifying events:
 - Involuntary termination of employment (other than for gross misconduct); or
 - Reduction of hours (while still an employee), which under COBRA can include:
 - Reduced hours due to a change in the business' hours,
 - Change from full-time to part-time status,
 - Temporary leave of absence, or
 - Participation in a lawful labor strike
 - Does not include any other qualifying events under COBRA.

COBRA Premium Assistance Eligibility Cont'd

- Period of time (when the qualifying event occurred):
 - Eligible for COBRA coverage from April 1, 2021 to September 30, 2021 due to loss of employment or reduction in hours; or
 - If terminated or reduced hours prior to April 1, anyone who would still be within their COBRA maximum coverage period if they had elected coverage prior to April 1.
 - This generally refers to employees or dependents whose qualifying events occurred on or after October 1, 2019.
 - Persons who discontinued coverage due to inability to pay COBRA premiums are still eligible.
- Timely election to receive coverage and subsidy
 - 60 days from receipt of notice of opportunity to enroll and receive subsidy.
 - This period is not extended by the COVID-19 notice of extensions that were issued by DOL and IRS.

COBRA Coverage and Subsidy Duration

- > Subsidy covers 100% of premium cost for the COBRA coverage. Non-taxable. AIEs are not required to pay any administrative fees that may be normally charged with the COBRA premium.
- > Eligibility for subsidy ends on earliest to occur of:
 - September 30;
 - The date after the AEI's 18-month COBRA continuation of coverage period expires;
 - The first day of the month after the AEI becomes eligible for Medicare or a group health plan coverage (other than excepted benefits, small employer HRA or health FSA).
 - "Eligible for Medicare" means the individual met the criteria for Medicare coverage and has attained age 65 (but does not necessarily mean that they have applied for Social Security Benefits in order to be entitled to Medicare). Different than "entitled to Medicare" under COBRA.
- > AEI must notify the plan if he or she becomes eligible for Medicare or another group health plan.

Employer Notice Obligations

- > In order for an Assistance Eligible Individual to obtain COBRA with premium assistance, AEI must receive appropriate notice.
- > DOL has provided Model Notices:
 - (1) General Notice | (2) Extended Election Notice | (3) Alternative Election Notice
- > No requirement to use the model notice, but it may help you comply with the applicable notice requirements.
- > ARPA notice requirements are in addition to “general” COBRA notice; can be added to existing COBRA notice letter or provided separately.

Employer Notice Obligations Cont'd

- > Notice content, generally:
 - Prominent description of COBRA subsidy and when it applies
 - Forms necessary to establish eligibility for subsidy
 - Plan administrator contact information (name, address, phone number)
 - Duration of special ARPA election period
 - Description of AEI's obligation to notify plan if the AEI is no longer eligible and description of the penalty for not doing so
 - Option to enroll in cheaper alternative coverage, if employer offers this option
- > Notices to be provided within 60 days of qualifying event and AEI has 60 days to elect COBRA continuation coverage with premium assistance

General Notice: AEIs Eligible between April 1 – September 30

- > For use by group health plans for qualified beneficiaries who have qualifying events occurring from April 1, 2021 - September 30, 2021
- > AEIs have 60 days from receipt of “General Notice” to elect or forfeit right to elect COBRA with ARPA-21 premium assistance
- > Premium assistance does not extend beyond September 30, 2021, even if eligible coverage period does.

Extended Election Notice: Eligible Employees Pre-April 1, 2021

- > For use by group health plans for qualified beneficiaries:
 - Currently enrolled in COBRA continuation coverage, due to a reduction in hours or involuntary termination (Assistance Eligible Individuals)
 - Those who would currently be Assistance Eligible Individuals if they had elected and/or maintained COBRA continuation coverage

Extended Election Notice: Eligible Employees Pre-April 1, 2021 Cont'd

- > Extended Election Notice provides AEIs opportunity to elect COBRA with premium assistance long after their original COBRA elections were due.
- > “Extended Election Notice” in Connection with Extended Election Period must be provided by May 31, 2021
 - Coverage starts with the first coverage period beginning on or after April 1
- > Extended election period does not extend the maximum period of COBRA continuation coverage had COBRA continuation coverage been originally elected

Alternative Notice: Plans & Coverage Not Subject to COBRA

- > For use by group health insurers subject mini-COBRA requirements for Assistance Eligibility Individuals eligible for COBRA premium assistance between April 1, 2021 and September 30, 2021

Notice of Expiration of Premium Assistance

- > Model notice also provided by DOL
- > Must include the following:
 - COBRA premium assistance expiration date
 - Alternative coverage may be available without premium assistance (e.g. Continuing COBRA coverage through remainder of COBRA eligibility period, coverage under another group health plan, coverage through Exchange)
- > Delivery between 15-45 days prior to end of subsidy
- > Not required for AEI whose coverage ends due to expiration of eligibility
- > Not required if an AEI's COBRA eligibility expires

So, How Do Employers Get Paid?

- > Once qualified beneficiaries elect COBRA with premium assistance, employers or group health plans are responsible for paying COBRA premiums.
- > In turn, the premium is reimbursed dollar for dollar directly to the employer, plan administrator, or insurance company through a COBRA premium assistance credit, which is a payroll tax credit against Medicare tax.

So, How Do Employers Get Paid? Cont'd

- > Applies against Medicare taxes for each calendar quarter; typically received upon quarterly tax filing
 - Employer receives tax credit if:
 - Self-insured plan
 - Insured plan subject to federal COBRA
 - Insurer receives tax credit if:
 - Insured plan not subject to federal COBRA, mini-COBRA applies
 - Plan receives tax credit if:
 - Multiemployer plan
- > To the extent credit amounts exceed Medicare taxes, will be treated as a refund of an overpayment

Penalties

> Assessed on AElS:

- Limits on Premium Assistance:
 - AEI becomes eligible for Medicare or coverage under other group health plan
- Tax Penalties for Failure to Notify Plan of End of Eligibility:
 - Greater of \$250 or 110% of the premium assistance provided under ARPA-21 after termination of eligibility
- No penalty if failure to notify plan was due to reasonable cause and not willful neglect

> Assessed on Employers or Multiemployer Plans:

- May be subject to an excise tax under the Internal Revenue Code for failing to satisfy the COBRA continuation coverage requirements.
- This tax could be as much as \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the taxpayer is in violation of the COBRA rules.

DOL Recent Guidance

- > DOL issued FAQs about COBRA Premium Assistance under ARPA-21
- > Provides clarifications and examples about:
 - Applying for premium assistance & how premium assistance will be provided to Assistance Eligible Individuals
 - Notice issuance and election timing
 - COBRA premium assistance eligibility

Status of IRS Rulemaking/Guidance

- > The IRS has not yet provided any additional guidance with respect to ARPA-21 generally, including the COBRA premium assistance. The IRS has only provided a statement that it is still currently reviewing and expects to publish guidance in the future.

Q&A

Additional USDOL Resources

COBRA Premium Subsidy Webpage

<https://www.dol.gov/COBRA-subsidy>

Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021

<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.docx>

COBRA Premium Assistance under the American Rescue Plan Act of 2021 FAQs

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>

Model General Notice and COBRA Continuation Coverage Election Notice

<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-general-and-election-notice.docx>

Model Notice in Connection with Extended Election Period

<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-extended-election-periods-notice.docx>

Model Alternative Notice

<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-alternative-election-notice.docx>

Model Notice of Expiration of Premium Assistance

<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/notice-of-premium-assistance-expiration-premium.docx>

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