

May 25, 2021

Answers to questions asked at our May 13th Presentation: *American Rescue Plan Act of 2021, What Employers Should Know about New COBRA Coverage Obligations.*

Following the presentation, we contacted the US Department of Labor to address certain ambiguities in their FAQ document as well as follow up to questions asked during our presentation that, at the time, did not have clear answers from the Department of Labor regarding:

1. Eligibility for the COBRA premium assistance subsidy for, and notice obligations to, individuals eligible for the second 18 months of COBRA coverage due to: (A) a second qualifying event, or (B) the New York mini-COBRA statute extension;
2. Eligibility for the COBRA premium assistance subsidy for limited scope vision and dental plans; and
3. The impact of a dependent's eligibility for Medicare or other group health insurance on the premium subsidy.

Additionally, on May 18 the IRS issued a Notice (2021-31) regarding *Premium Assistance for COBRA Benefits*. Based on our call with the Department of Labor and the recent IRS Notice, we are providing additional information related to these questions.

Question 1

Are individuals who receive COBRA premium assistance and who are eligible for extended coverage between April 1, 2021, and September 30, 2021, eligible to receive the ARPA-21 subsidy?

- Yes, in the following circumstance: The IRS guidance confirms that if an individual (1) became eligible to receive COBRA continuation coverage due to a reduction in hours or involuntary termination, (2) experienced disability or a second qualifying event, or an extension under NYS mini-COBRA, and (3) remains on COBRA continuation coverage for the extended period, such an individual would be eligible to receive COBRA premium assistance to the extent the additional periods of coverage fall between April 1, 2021, and September 30, 2021.
- With respect to notice obligations: (A) an employer would be responsible to provide notice of eligibility for this subsidy to an individual who is eligible for extended COBRA continuation coverage due to disability or a second qualifying event (and subsequently, would receive the tax credit); and (B) an insurer would be obligated to provide notice to an individual who is eligible for COBRA continuation coverage due to an extension under NYS mini-COBRA (and subsequently, would receive the tax credit). These notices would need to be provided to individuals by May 31, 2021.
- *Note that these individuals would have original qualifying events prior to October 1, 2019, related to termination of employment or reduction of hours.*

Question 2

Does the NYS COBRA Extension (adding 18 months to the federal 18 months) apply to ARPA-21?

- As discussed above, the IRS guidance has expressly confirmed that if the original qualifying event was a reduction in hours or an involuntary termination of employment,

COBRA premium assistance is available to individuals who have elected and remained on COBRA continuation coverage for an extended period due to an extension under NYS mini-COBRA to the extent the additional period of coverage falls between April 1, 2021, and September 30, 2021.

- In such instance, employers would receive the subsidy and would only be obligated to provide notice for the beneficiary's eligibility period under the employer group health plan, i.e., COBRA continuation coverage. Issuers of coverage (insurers) are obligated to provide notice of coverage and will receive the premium subsidy for the extended period of coverage under the NYS mini-COBRA statute. Under APRA-21 Issuers of coverage are required to use the form of Alternative Notice specified by DOL.

Question 3

Are dental and vision plans covered under the notice requirements and subsidy if they are separate plans?

- Yes, dental and vision plans are eligible for the COBRA subsidy if they are part of a group health plan. COBRA premium assistance is available for COBRA continuation coverage of any group health plan, except a health FSA under § 106(c) offered under a § 125 cafeteria plan. Group health plans may include vision-only and dental-only plans, regardless of whether the employer pays for a portion of the premiums for active employees.
- However, limited scope dental and limited scope vision plans are considered excepted benefits and, therefore, COBRA continuation coverage or the premium subsidy are not available in such instances.
- Vision and dental plans are considered excepted benefits and limited scope if (i) they are provided under a separate policy, certificate or contract of insurance; or (ii) are otherwise not an integral part of a group health plan. These benefits will be considered to not be an integral part of a group health plan if (A) the participant may decline coverage; or (B) claims for the benefits are administered under a contract that is separate from claims administration for any other benefits under the plan.
- The plans are considered to be limited scope dental or vision if they provide benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or treatment of the eye.

Question 4

If an Assistance Eligible Individual's ("AEI") dependent is not eligible to receive the subsidy because they are eligible for Medicare or insurance through another group health plan, do they have to take the other insurance?

- Dependents who are Medicare eligible or eligible for other group health insurance would not necessarily need to take the other insurance if they are still otherwise eligible to receive COBRA continuation coverage, but they are not eligible to receive the subsidy. When the AEI receives the notice regarding his or her eligibility to receive the premium subsidy, the notice form requires information about dependents and whether or not dependents would also be eligible for the subsidy. The AEI has an obligation to answer all questions truthfully. If the AEI's dependents are not eligible to receive the subsidy, the AEI may switch from a family to single coverage plan (depending on what the plan permits) or the AEI may stay on a current family plan. In that case, the AEI would receive the premium assistance for his or her COBRA premiums, but would be required to pay the full premium for any dependent not eligible to receive the subsidy. We have verbally confirmed this guidance with the Department of Labor.

Where can I find the IRS ARPA-21 guidance?

- The IRS FAQs regarding ARPA-21 can be found here: <https://www.irs.gov/pub/irs-drop/n-21-31.pdf>

If you have any questions regarding the presentation, this supplemental information, or the APR-21 COBRA premium subsidy, please reach out to either or the attorneys below

If you have any questions regarding the presentation or this supplemental information or the APR-21 COBRA premium subsidy, please reach out to Scott Carroll (scarroll@lippes.com) or Elise Edwards (eedwards@lippes.com).