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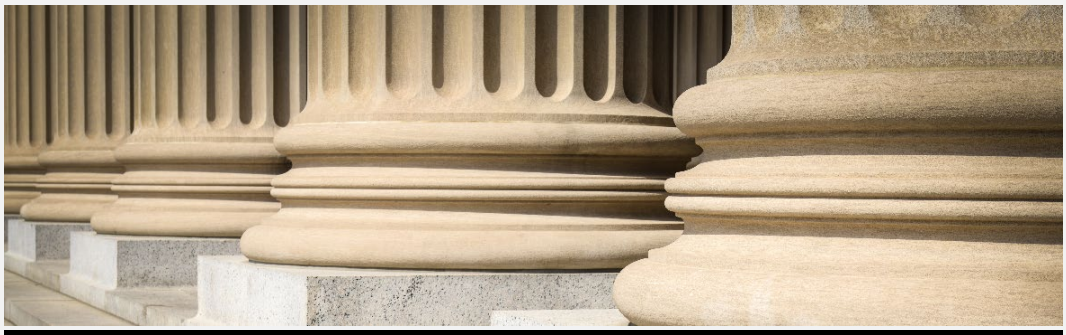

Rewards Policy Insider
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In this Issue:

DOL Issues FAQs, Model Notices Relating to COBRA Premium Subsidy

The Department of Labor's Employee Benefits Security Administration has established a new web page for the American Rescue Plan Act's COBRA premium subsidy, which includes a set of "frequently asked questions" (FAQs) and model notices that employers can use to meet the related notice requirements. The new guidance answers some questions, but not all.

Background

For the period April 1, 2021 through September 30, 2021 (the "Applicable Period"), "Assistance Eligible Individuals" (AEIs) are not required to pay any COBRA premiums. Instead, this cost will be borne by the Federal government in the form of an advanceable, refundable credit that employers (or, in some cases, insurers) can claim against their Hospital Insurance payroll tax liability. AEIs generally are those COBRA beneficiaries whose COBRA qualifying event was a reduction in hours or an involuntary termination of employment.

Because some individuals would be AEI's but for the fact they didn't elect COBRA when offered, or they failed to maintain COBRA coverage, employers must offer an Extended Election Period to give them an opportunity to benefit from the subsidy. Employers must provide a notice of this Extended Election Period by May 31, 2021, and individuals have 60 days from the date the notice is provided to make an election. For individuals making this election, COBRA coverage will be effective as of April 1, 2021 or, if the individual so chooses, the date of the election.

Notice of Extended Election Period

The FAQs clarify that, for purposes of the employer's responsibility to provide the Notice of Extended Election Period, as well as the individual's 60-day election period, the DOL's "Outbreak Period" relief does not apply. In other words, these 60-day periods are hard deadlines.

The website includes a model Notice of Extended Election Period that employers can use to satisfy this requirement. There is also a model Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021 that must accompany the Notice of Extended Election Period in order to meet the applicable content requirements.

Note that the Notice of Extended Election Period and Summary of COBRA Premium Assistance Provisions is designed to be provided to anyone whose COBRA qualifying event was a reduction in hours or involuntary termination that occurred after October 1, 2019 and before April 1, 2021, regardless of whether they elected COBRA and/or are still on COBRA. Still unclear is what, if anything, is required for individuals who experienced a reduction in hours or involuntary termination before October 1, 2019 but are still within their maximum COBRA period due to a disability extension.

Updated General COBRA Notice

For individuals who experience any COBRA qualifying event during the period from April 1 through September 30, 2021, the website has an updated model ARPA General Notice and COBRA Continuation Coverage Election notice. This is also meant to be distributed with the Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021.

Notice of Expiration of Premium Assistance

Finally, the website includes a model Notice of Expiration of Premium Assistance. This notice must be provided to any AEI who is approaching the end of the premium subsidy either because their COBRA maximum coverage period is ending or the premium subsidy is ending. It does not have to be provided to someone who is losing eligibility for the premium subsidy because they are eligible for other group health plan coverage or Medicare. When required, this notice must be given at least 15 days, but no more than 45 days, before the individual's premium subsidy ends.

Model Notices are Optional

All of the model notices referenced above are optional. Plan sponsors can use them but are not required to. However, the model notices offer an easy way for plan sponsors to make sure they are satisfying all of the applicable content requirements.

Health FSAs, HRAs, and HSAs Can Pay for Certain PPE, IRS Announces

IRS Announcement 2021-7 clarifies that health FSAs, HRAs, and HSAs can pay for certain personal protective equipment (PPE), such as masks, hand sanitizer, and sanitizing wipes, if purchased for the primary purpose of preventing the spread of COVID-19.

Some health FSAs and HRAs may need to be amended to take advantage of the IRS's ruling, but not all. In particular, plans that define eligible reimbursements by reference to the IRC section 213(d) definition of "amounts paid for medical care" probably do not need to be modified. Plans with more limited definitions of eligible expenses may need to be changed if the plan sponsor wants to allow their health FSAs and HRAs to be used for this purpose.

If an amendment is required, the Announcement authorizes calendar year plans to make the change retroactive to January 1, 2020, at the plan sponsor's election. But if the amendment is effective as of January 1, 2020, the amendment will need to be adopted no later than December 31, 2021. If the plan sponsor wants to make the change retroactive to January 1, 2021, the amendment will need to be adopted no later than December 31, 2022.

The full text of Announcement 2021-7 is available here.

DOL Issues Cybersecurity Guidance for ERISA Plan Sponsors, Fiduciaries, and Others

The U.S. Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) has issued its first-ever cybersecurity guidance for ERISA plan sponsors, fiduciaries, recordkeepers, and plan participants. According to a DOL press release, the approximately 140 million participants in ERISA pension and defined contribution plans holding roughly $9.3 trillion in assets are at risk from internal and external cybersecurity threats. The press release also notes, "ERISA requires plan fiduciaries to take appropriate precautions to mitigate these risks."

Although the documents generally reference retirement plans, the same principles are also applicable to health and welfare benefit plans.

The guidance consists of three separate documents:

- Tips for Hiring a Service Provider. With respect to hiring and monitoring service providers that keep plan records and otherwise help keep plan data secure, this document outlines a series of tips for meeting ERISA's fiduciary standards. Among other things, it provides the following advice:

  "Look for service providers that follow a recognized standard for information security and use an outside (third-party) auditor to review and validate cybersecurity. You can have much more confidence in the service provider if the security of its systems and practices are backed by annual audit reports that verify information security, system/data availability, processing integrity, and data confidentiality."

- Cybersecurity Program Best Practices. Noting that plan fiduciaries have an obligation to mitigate cybersecurity risks, this document details 12 best practices for recordkeepers and other service providers responsible for plan-related IT systems and data, and for plan fiduciaries responsible for hiring and monitoring such providers. The 12 best practices are:
  1) Have a formal, well documented cybersecurity program
  2) Conduct prudent annual risk assessments
  3) Have a reliable annual third-party audit of security controls
  4) Clearly define and assign information security roles and responsibilities
  5) Have strong access control procedures
  6) Ensure that any assets or data stored in a cloud or managed by a third-party service provider are

subject to appropriate security reviews and independent security assessments

7) Conduct periodic cybersecurity awareness training
8) Implement and manage a secure system development life cycle (SDLC) program
9) Have an effective business resiliency program addressing business continuity, disaster recovery, and incident response
10) Encrypt sensitive data, stored and in transit
11) Implement strong technical controls in accordance with best security practices
12) Appropriately respond to any past cybersecurity incidents.

- Online Security Tips. This document focuses specifically on what retirement plan participants can do to reduce the risk of fraud and loss to their accounts.