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You've Sent the COBRA Special Extended Election Period Notices – What's Next?

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Due to tight timelines and an initial sprint to issue the special extended COBRA election period notices by the May 31st deadline, plan administrators may not have focused on the other COBRA-related notice requirements under the American Rescue Plan Act (ARP). This blog post focuses on these other notices – for individuals who become entitled to COBRA coverage on or after April 1st, and for individuals approaching the end of their ARP-subsidized coverage period.

Individuals Who Become Entitled to COBRA Coverage on or After April 1, 2021

The DOL issued new model COBRA notices for qualified beneficiaries who become entitled to COBRA coverage during the period from April 1, 2021 through September 30, 2021. These updated models are to be used for notifying qualified beneficiaries of their COBRA rights in connection with *all* types of qualifying events, not just reduction of hours or involuntary termination of employment. The models contain an updated COBRA election form.

In addition, the DOL's *"Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021"* must be included with the COBRA notice in order to comply with the ARP notification requirements. This Summary contains a form to request the COBRA premium assistance (*i.e.,* the COBRA premium subsidy), as well as a form for a participant to notify the plan of subsequent eligibility for other group health coverage or Medicare (and, thus, ineligibility for the subsidy). The model notices expire on October 31, 2021, although they will not apply to qualifying events occurring after the subsidy period ends on September 30, 2021.

The normal deadlines for plan administrators to provide COBRA notices apply. However, the rules governing the deadlines for participant elections are a bit more complex.

- To receive COBRA premium assistance under ARP, an assistance eligible individual who meets the subsidy requirements must elect COBRA and return the premiums assistance election form within 60 days. (Although the DOL model notices indicate that this 60-day period starts upon receipt of the notice, we understand that the DOL did not intend to modify the general standard which is based on when notice is provided).
- The extended COBRA election and payment deadlines under earlier COVID-19 relief continue to apply for COBRA elections, but do *not* apply to elections of COBRA with the premium subsidy. This means the period for qualified beneficiaries to elect *unsubsidized* COBRA coverage is tolled until the end of the "Outbreak Period", up to a maximum of one year (as explained in more detail in our earlier posts).

The model DOL COBRA notice includes optional language if the employer or other plan sponsor is allowing assistance eligible individuals to change their plan coverage option. This is permissible if the other option is offered to similarly-situated active employees and does not cost more than the coverage the individual was enrolled in at the time of the COBRA qualifying event. Plans are not required to allow individuals to change their COBRA coverage options; but if changes are being allowed, the applicable optional language should be included in the COBRA notice. Individuals will have 90 days to elect a change in coverage options.

Plan administrators should also note that the DOL updated the model COBRA notices with respect to some issues unrelated to ARP. It remains to be seen whether the DOL will carry over these updates into the general model COBRA notice once these models expire.

Notice Regarding the Expiration of the COBRA Premium Subsidy

Another notice that plan administrators have to provide is a notice that the ARP COBRA premium subsidy will expire for an assistance eligible individual. This notice must be sent within 15-45 days before the subsidy expires (unless the subsidy expires due to the individual becoming eligible for other group health coverage or Medicare). This notice of expiration must alert assistance eligible individuals to the fact that the COBRA premium subsidy will be expiring soon and specify the date of expiration. The notice must also inform them that they may be eligible for unsubsidized COBRA coverage, or coverage through Medicaid or the Health Insurance Marketplace. A model expiration notice can be found here.

Because an individual's COBRA premium subsidy will end when their maximum COBRA period ends (or September 30th, if earlier), plan administrators will want to quickly identify whether anyone entitled to the special 60-day election period is nearing the end of their potential COBRA period. For example, if a qualified beneficiary lost coverage due to a reduction of hours of employment on November 1, 2019, their 18-month COBRA coverage period (if elected) would end on April 30, 2021. Although counter-intuitive, under a strict reading of the law, the plan administrator would have until May 31st to notify the individual of their special enrollment opportunity and potential COBRA premium subsidy for April, but would have had to send notice of the subsidy's expiration by April 15th. Perhaps more commonly, the deadline for sending an expiration notice may occur after the special election notice is sent, but before the 60-day election period has expired.

The guidance does not provide any indication of deadline relief with respect to subsidies expiring shortly after issuance of the model notice, so plan administrators should consult with counsel and use good faith efforts to meet the deadline or, if not possible, to notify individuals as soon as practicable.

More Information to Come

Stay tuned for more insights about the new DOL guidance on the COBRA premium subsidy, and on the expected IRS guidance regarding how to implement the subsidy and apply for the tax credits.

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