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Additional Guidance on the ARPA's COBRA Subsidy

On April 7, 2021, the U.S. Department of Labor ("DOL") issued FAQs and model forms relating to the American Rescue Plan Act's ("ARPA") mandatory 100% COBRA subsidy for certain qualified beneficiaries. The subsidy applies to coverage periods beginning on and after April 1, 2021, and ends September 30, 2021. The ARPA allows employers to claim a refundable payroll tax credit against the employer share of Medicare taxes to offset the premium subsidy.

Key Takeaways:

The guidance issued by the DOL clarifies the following key points:

- The FAQs clarify that individuals are eligible for the subsidy if the qualifying event consists of (a) a reduction in hours, or (b) involuntary termination of employment.
- The FAQs clarify that the pandemic-related deadline extensions under previous IRS and DOL guidance do not apply to notice or election periods relating to COBRA premium assistance under the ARPA.
- The FAQs emphasize that the subsidy applies to plans subject to federal COBRA (including non-federal governmental plans) and to continuation coverage required by state law (sometimes referred to as "mini-COBRA"). Thus, employers who are not subject to federal COBRA but who provide health benefits may have an obligation to provide the subsidy and related notices.
- The FAQs confirm that the subsidy applies to group health, dental, and vision plans, but not health flexible spending accounts.
- The model forms include provisions relating to election change opportunities. The ARPA permits, but does not require, plan sponsors to provide the election change opportunity. Accordingly, employers may need to modify the model forms.
- The model forms include documents an employee can use to request premium assistance or notify an employer of eligibility for other coverage.

Employer Considerations:

In light of the DOL's guidance, employers should keep the following considerations in mind.

First, employers should remain alert to special notice deadlines relating to the ARPA's premium subsidy, including the following:

- Individuals who experience a reduction in hours or involuntary termination of employment from April 1, 2021 to September 30, 2021 must receive notice of the premium subsidy separately or with the COBRA election notice.
- Individuals who are eligible for the ARPA's extended election period must receive notice of that election period and the premium subsidy by May 31, 2021. This includes eligible individuals who are still within their 18-month maximum COBRA period (i.e., the applicable qualifying event occurred on or after October 1, 2019).
- Individuals who receive premium subsidies must receive notice that the assistance will expire 15 to 45 days before the subsidy expires.

Second, employers that rely on a third party for COBRA administration should contact the vendor to confirm compliance with the ARPA and related guidance.

Third, employers that perform their own COBRA administration should contact employee benefits counsel with questions relating to this guidance.

Finally, if individuals who are eligible for the ARPA premium subsidy have already paid premiums for a period of coverage beginning on or after April 1, 2021, such premiums must be refunded within 60 days.

For More Information:

The DOL's FAQs and model forms are available through the [DOL's website](#).

To listen to a recent podcast featuring attorneys [Katie Joseph](#) and [Tara Stingley](#) discussing the Additional Guidance on the ARPA's COBRA Subsidy, please [CLICK HERE](#). To hear their podcast addressing The American Rescue Plan Act and Its Impact on Employee Benefits, please [CLICK HERE](#).

If you have questions regarding the COBRA subsidy or related issues, please contact a member of the Cline Williams [Employee Benefits Practice Group](#) or call (402) 474-6900.

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