



# ARPA Regulations & BASIC COBRA's Administration Response



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## ➤ Presenter



### **Tammy Parr**

Tammy Parr is a Regional Director at BASIC serving the New England region. With over 35 years of experience working with COBRA, Tammy leverages her expertise to ensure clients and insurance brokers are fully compliant every step of the way. Clients appreciate Tammy's extensive regulatory knowledge, which allows her to recognize and satisfy personalized needs for companies of all sizes and industries. Insurance brokers love working with Tammy because they know she wants the best for their clients.

# COBRA - Consolidated Omnibus Budget Reconciliation Act of 1985



## Main intent

- Provide temporary access to health insurance when it would have been lost
- Shift healthcare cost from public sector to the private sector
- Reduce healthcare premiums and lost tax revenues by reducing the number of uninsured medical expenses

# ➤ What Is COBRA?

- “COBRA” is the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended
- Provides for continuation of existing group health plan coverage for qualifying employees, covered spouses and covered dependents
- Legally protected right under the Internal Revenue Code, Employee Retirement Income Security Act of 1974, and the Public Health Service Act



# ➤ Who Must Comply With COBRA?

- All employers with 20 or more employees on 50% of their typical business days in the preceding calendar year
- Common Ownership
  - a controlled group of corporations (Code §414(b));
  - a group of trades or businesses under common control (Code §414(c));
  - an affiliated service group (Code §414(m)); and
  - certain other arrangements described in regulations (Code §414(o)).<sup>55</sup>
- Exceptions
  - Small employer plans, federal government plans, church plans
- Downsizing employer rule
  - Shrinking: subject to COBRA until calendar year after the average number of employees is less than 20 and can't drop COBRA for those individuals already covered by COBRA

# ➤ Who Qualifies?

- **Qualified Beneficiaries (“QB”)**
  - Covered employees (but only if, on the day before a qualifying event, they are covered under a plan by virtue of being covered employees, and only as to the qualifying events of termination of employment or reduction of hours);
  - Federally recognized spouses and dependent children of covered employees (but only if, on the day before a qualifying event, they are covered under a plan by virtue of being a covered employee's spouse or dependent child); and
  - Children born to, or adopted by, a covered employee during a period of COBRA continuation coverage
- **QB Rights** – QB have the same rights, under the same terms and conditions, as a similarly situated non-COBRA beneficiary (active employee)



# ➤ What Is Eligible Coverage?

## Eligible

- Medical
- Dental
- Vision
- Prescription
- Health FSA (unless limited obligation applies)
- HRA
- Certain EAPs

## Not Eligible

- Dependent Care FSA
- HSA
- LTD
- STD
- Life Insurance

# ➤ Qualifying Events

- Voluntary Termination
- Involuntary Termination
  - Gross misconduct exception
- Reduction of Employee's Hours
  - Change in premium arrangement
- Death of Employee
- Divorce or Legal Separation
  - Removals in anticipation of the event
- Medicare Entitlement (in extremely rare circumstances)
- Dependent Child ceasing to be a dependent

## ➤ FMLA Leave of Absence

- Beginning of FMLA leave *is not* a qualifying event
- End of FMLA leave *is* a qualifying event *if* employee does not return to work
  - Even if employee did not maintain coverage during FMLA leave
  - Even if employee doesn't repay premiums in arrears during leave

# ➤ Notices – Most Notable

- **Initial/General Notice** – Informs employees of their COBRA rights and responsibilities (generally within 90 days of commencement of plan coverage) QB
- **Election/Qualifying Event Notice** – Plan administrator informs all QBs of their right to continue health insurance under COBRA with reference to a specific Qualifying Event
  - Clock starts with triggering event, unless delayed employer rule is adopted and reflected in procedures (COBRA maximum period and notification period begins with loss of coverage)
  - Employer notice to plan administrator within 30 days, plan administrator to QB within 14 days (or 44 days total where employer and plan administrator are same)
- **Notice from QB to the plan administrator** – Divorce, Dependent ceasing to be a Dependent, Secondary Event, Disability Determination, or no longer deemed disabled

# ➤ Notices – Other Mandatory

- **Notice of unavailability** – Where plan administrator determines that the QBs covered by the qualifying event notice are not entitled to COBRA (or second QE extension)
- **Notification of plan changes** – Same schedule as SMMs
- **Notice of insignificant premium underpayment** – As soon as possible and give reasonable period for payment
- **Early termination** – As soon as administratively possible
- **ERISA disclosures & open enrollment materials** – SPD must contain COBRA information and can serve as initial notice if provided to all individuals covered under the Plan (e.g., spouse and dependents) so separate notice is advisable, SBCs, SMMs
- **Disclosure to health care providers** – During election period, the 45-day premium payment period, and the 30-day premium grace period
- **Conversion notice** – During the last 180 days of COBRA maximum coverage period

# ➤ Notices – Optional But Recommended

- **Expiration** – During the last 60 days of COBRA if terminating at maximum coverage period
- **Coupon Books/Invoices** – Should indicate they are reminders and not bills, and payment is due even if the coupon or invoice is not provided
- **Confirmation of COBRA election** – Can serve to eliminate confusion
- **Advance notice of premium changes** – DOL has informally advised that COBRA cannot be terminated for insufficient payment if QB not provided reasonable advance notice of increased premiums and opportunity to pay increased premiums
- **Late premium payment reminder letters**
- **Letters regarding loss of dependent status, or spouses or children dropped of coverage, eligibility for Medicare resulting in COBRA termination**



# ➤ EBSA Disaster Relief Notice 2021-01

## Legislative Updates

# ➤ EBSA Disaster Relief Notice 2021-01

- At the midnight hour on the sunset of the COBRA extensions (Feb. 28, 2021) the DOL issued a new “tolling period” under this Notice
  - Will be applied individual-by-individual
  - Deadline to be tolled until
    - One year from date individual was first eligible for relief, or
    - The end of the Outbreak period (60 days after)
  - What does that mean?

# ➤ EBSA Disaster Relief Notice 2021-01

## What are employers to do?

- Consider new notices/announcements to participants and beneficiaries
- Review previous notices; will likely need updating to new guidelines/deadlines, etc.
- Those self-administering should consider outsourcing to a TPA (BASIC)

## DOL advises: In guidance;

- “Employers should be administering in a manner taking into account difficulty facing individuals during Pandemic;
- Exercise extreme caution to be taken and provide appropriate notice before denying an individual a benefit or right based upon a failure to take action within the applicable timeframes”

# ➤ American Rescue Plan Act of 2021

## Legislative Updates

# ➤ Extended Subsidy for COBRA Premiums

## ARPA contains Federal Government Subsidy of 100% of COBRA Premiums for Certain Qualified Beneficiaries (QB)

- Subsidy runs from April 1st through September 30th, 2021
- Subsidy only for continuation of coverage due to involuntary termination or reduction in hours
- QBs pay \$0.00, Employer pays full premium to carrier or covers QBs at no cost to participant on self-insured plan
  - GHP coverage same as COBRA (Includes Medical, Dental, Vision, HRA, etc.)
- Employer recovers lost premium through a payroll tax credit (Quarterly Medicare taxes)
- Previously eligible individuals not currently covered have a second bite at the apple to enroll
  - Not automatic, eligible individuals must elect COBRA coverage
- Significant new notice requirements

# ➤ “Assistance Eligible Individuals”

“Assistance eligible individuals” are eligible for the COBRA premium subsidies:

- Employees (including their spouses and dependent children) who become eligible for COBRA due to an **involuntary** termination of employment or reduction in hours
- The involuntary termination of employment or reduction in hours does not need to occur during the period in which COBRA premium subsidies are available
- Individuals who become eligible for COBRA for other reasons (e.g., divorce or legal separation, dependents “aging out”) **are not eligible** for COBRA premium subsidies



# ➤ Premium Assistance Eligibility

To be eligible for the premium assistance, an AEI:

- **MUST** have a COBRA qualifying event that is a reduction in hours or an involuntary termination of a covered employee's employment;
- **MUST** elect COBRA continuation coverage;
- **MUST NOT** be eligible for Medicare; AND
- **MUST NOT** be eligible for coverage under any other group health plan, such as a plan sponsored by a new employer or a spouse's employer.
  - This restriction does not include coverage under a plan that provides only excepted benefits, a qualified small employer health reimbursement arrangement, or coverage under a health flexible spending arrangement.

# ➤ Changes in Coverage

- If permitted by the employer, assistance eligible individuals may be allowed to switch to a lower-cost coverage option under COBRA (does not include excepted benefits, medical FSAs, or QSEHRAs)
- The following individuals are entitled to another opportunity to elect COBRA effective April 1, 2021
  - Assistance eligible individuals who have not elected COBRA as of April 1, 2021
  - Any qualified beneficiary who previously elected COBRA but discontinued COBRA before April 1, 2021
  - Interaction with EBSA Disaster Relief Notices 2020-01 and 2021-01

## ➤ Tax Credit

- The following entities are eligible for the tax credit against the entity's Medicare tax
  - A multiemployer (union) plan
  - The plan sponsor of a self-funded group health plan, or a fully insured plan that is subject to federal COBRA
  - The insurer of all other fully insured plans (i.e., fully insured plans not subject to federal COBRA)

# ➤ Required Notifications

- Notice of availability of subsidy to all AEIs
  - DOL provided model notice on April 7, 2021
  - Employer has until May 31, 2021 to send notice
  - *In most cases, the DOL favors late over never*
- Notice of Special enrollment period
  - DOL provided model notice on April 7, 2021
- Notice of subsidy Expiration must be sent 15-45 days prior to expiration
  - DOL to provide model notice within 6 weeks from ACT

## ➤ DOL Guidance

- COBRA Premium Assistance under the American Rescue Plan Act of 2021
- COBRA Premium Subsidy dedicated page, available at <https://www.dol.gov/COBRA-subsidy>
- FAQs, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebesa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>

# ➤ DOL Guidance - Model Notices

- General Notice and Election Notice  
<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-general-and-election-notice.pdf>
- 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.pdf>
- Alternative Notice  
<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-alternative-election-notice.pdf>
- 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.pdf>
- Summary of the COBRA Premium Assistance Provisions  
<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.pdf>



# ➤ COBRA Penalties

## AEI Penalties

- Those that elect COBRA continuation coverage with premium assistance, and then become **eligible** for other group health plan coverage or become **eligible** for Medicare, **MUST** notify the plan in writing.
- Failure to provide this notice is subject to a penalty of \$250 (or if the failure is fraudulent, the greater of \$250 or 110% of the premium assistance provided after termination of eligibility).

## Employer Noncompliance with the COBRA Subsidy.

- **IRS Excise tax of \$100 / day per individual**
- **Employers also subject to investigation by Department of Labor (DOL)**



# Now's the Time to Act!

- ARPA has added additional work and burden to employers who must comply with COBRA.
- Now is the time to choose a COBRA partner that can alleviate that workload and assumes liability for all required administrative procedures and regulations to protect employer interests.

## Request a COBRA Proposal Today

For you or your client at this link:

<https://www.basiconline.com/request-a-proposal/>

BASIC Sales  
888-602-2742

QUESTIONS



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