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DOL Issues Model COBRA Notices Related to Premium Subsidies and Extended Election Period Required by ARPA

The Department of Labor (DOL) recently issued four model notices that employers can use to provide the required notices about the new COBRA premium subsidies available to individuals who lose employer group health coverage due to an employee's reduction in hours or involuntary termination of employment. These individuals are referred to as assistance eligible individuals (AEIs), and they also have an extended period to elect COBRA. We discussed the subsidies and extended election period created by the American Rescue Plan Act (ARPA) in our March client alert "The Return of COBRA Subsidies: Flashbacks of 2009."

Employers are required to notify employees and former employees regarding the premium subsidies, the extended deadline that some individuals have to elect COBRA, and just before an individual's subsidies end. Although employers are not required to use the DOL's model forms, the DOL considers use of its model COBRA notices, when properly customized by the employer, to be good faith compliance of COBRA's notice requirements.

Many employers rely on a COBRA vendor to provide all needed COBRA notices, but employers should confirm with their vendor that the notices will be timely provided. The deadlines for certain notices are fast approaching, so employers should focus on compliance with these requirements now. It would be advisable to discuss the list of individuals to be given the notice, and even if a COBRA vendor confirms it will send the required notices, employers may want to consider sending the notices as well, even if doing so is repetitive, to ensure all requirements are met. Of the four notices, three are relevant for employers.

- **Model ARPA General Notice and COBRA Continuation Coverage Election Notice**
    - This is an updated version of the DOL's Model COBRA Election Notice that should be sent qualified beneficiaries who experience qualifying events between April 1 and September 30, 2021. Despite the DOL's title for this notice, this is not a "General Notice" given to new participants. This notice can be customized and used instead of the employer's regular COBRA Election Notice, or an employer could pull out the subsidy information and send it along with the employer's regular COBRA Election Notice.
    - This updated Election Notice explains the new subsidies, but the DOL asks that Plan/COBRA administrators also attach the DOL's *Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021* when sending the Election Notice. The summary contains information on ARPA and forms for an individual to give required notice to the employer that they are eligible for the premium subsidy, or that they have ceased to be eligible for the premium subsidy.
    - Employers will need to decide whether to allow AEIs to enroll in coverage that is different than the coverage they were enrolled in before the qualifying event occurred (as long as the different coverage is not more expensive than their prior coverage). The Election Notice includes optional information and an optional place to allow these elections if an employer wishes to do so.
- **Model COBRA Continuation Coverage Notice in Connection with Extended Election Periods**
    - This notice must be sent no later than May 31, 2021 to AEIs currently enrolled in COBRA continuation coverage and to individuals who would currently be AEIs if they had elected and/or maintained COBRA continuation

coverage.

- Like the Election Notice discussed above, the DOL's *Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021* should be attached to the notice.
- AEIs have 60 days from the date the notice is mailed to them to elect COBRA with premium assistance for a period beginning on or after April 1, 2021.

- **Model Alternative Notice of ARPA Continuation Coverage Election Forms**
  - This Election Notice is for use by health insurers who offer employer group health coverage to small groups that are not subject to COBRA but are subject to state "mini-COBRA" laws. Only health insurers are required to give this notice.
- **Notice of Expiration of Period of Premium Assistance**
  - This notice must be sent to AEIs 15 to 45 days before their premium subsidies expire.
  - Under ARPA, the Notice of Expiration only needs to be sent to AEIs whose subsidies will end due to the expiration of the maximum COBRA period or the end of the COBRA subsidies on September 30, 2021 (not to AEIs whose coverage expires due to eligibility for Medicare or another group health plan that consists of more than excepted benefits).

The DOL's new model notices are available here along with a list of FAQs related to the new ARPA requirements. If you have any questions about the new COBRA notice requirements under ARPA, contact Kellie Money or any other attorney in Frost Brown Todd's Employee Benefits & ERISA practice group.