



AMERICAN BENEFITS  
COUNCIL

*Benefits Briefing Webinar*

**COBRA Subsidy Implementation**

**May 27, 3:30 p.m. ET**

# Today's Speakers

## **Katy Johnson**

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**American Benefits Council**  
**Moderator**

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## **David Sydlik**

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**Internal Revenue Service**

**American Benefits Council**

# **Benefits Briefing Webinar**

## **COBRA Subsidy Implementation**

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Katie Bjornstad Amin, Principal with Groom Law Group

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# COBRA Subsidy – In General

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- Enacted as part of the American Rescue Plan Act
- 100% subsidy, April 2021 through September 2021
- Federal-government provided
- Similar to COBRA subsidy in American Recovery and Reinvestment Act of 2009 but key differences
- Alliance to Fight for Health Care
- American Benefits Council March 18<sup>th</sup> Letter
- Guidance from Departments of Labor and Treasury and IRS

# Eligibility for the COBRA Subsidy

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- **Assistance Eligible Individuals (“AEIs”)**
  - Certain qualifying events only – reduction of hours or involuntary termination of employment
  - Eligible for COBRA for some or all of April 2021 – September 2021
  - Elects COBRA
- **Application to spouse and dependents**
- **Multiple qualifying events**

# Disqualifying Coverage

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- Lose eligibility for COBRA subsidy if eligible for disqualifying coverage
  - Most group health plan coverage – but there are exceptions
  - Medicare
- Eligibility for retiree coverage
- Impact of disqualifying coverage on COBRA subsidy for all types of coverage (e.g., vision and dental COBRA)
- Spousal coverage

# Verification of Subsidy Eligibility

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- How employers confirm/document eligibility for COBRA subsidy
  - Employee self-certification or attestation
  - Other methods
- Employer reliance
- Record retention



# Coverage Eligible for COBRA Subsidy

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- Federal COBRA and State mini-COBRA
- Includes employer-provided vision and dental plans, retiree coverage if offered under the same group health plan, and health reimbursement arrangements (HRAs)
- Application of subsidy to extended COBRA periods due to a second qualifying event, disability, or State mini-COBRA law
- Application of subsidy to higher cost plans



# Involuntary Termination/Reduction in Hours

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- “Involuntary” termination is not defined in the statute but is defined in Notice 2021-31
  - “a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services”
- Facts and circumstances
- Does not apply if termination was due to gross misconduct

# Involuntary Termination/Reduction in Hours

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- Reduction in hours
  - Can be voluntary or involuntary
- Extent to which COVID-19 related circumstances give rise to involuntary termination or reduction in hours
- Involuntary terminations in circumstance in which employee terminates under a “window” program

# Extended Election Period

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- Extended election period provided for individuals who were enrolled in COBRA but dropped or who never elected COBRA but are still in their COBRA eligibility period
- Federal COBRA only
- Application to COBRA period extensions due to disability or second qualifying events
- To discuss later – interaction with “outbreak period” guidance

# Amount of Tax Credit

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- The “premium payee” may claim a tax credit equal to the amount of the COBRA premiums not paid by the AEI
- Up to 102% of COBRA premium
- Guidance on determination of tax credit if employer subsidizes COBRA
  - Severance agreements
  - Taxable payments instead of COBRA subsidies

# Interaction with Outbreak Period

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- DOL/Treasury/IRS extended certain COBRA deadlines for one-year (or, if earlier, the end of the “outbreak period”)
  - Qualified beneficiary qualified event notice to plan
    - Including disability extension and 2<sup>nd</sup> qualifying event
  - Plan’s election notice
  - Qualified beneficiary COBRA election
  - Qualified beneficiary premium payments
- ARPA-related deadlines are not extended

# Notices

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- **ARPA notice as part of general election notice**
  - For qualifying events April 1, 2021 and after
  - Due 44 days after qualifying event
- **Extended election period notice**
  - For qualifying events prior to April 1, 2021
  - Due by May 31, 2021
- **DOL has provided model notices and guidance**

# Claiming the Tax Credit

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- Entity that claims the credit
  - Multiemployer plan – the plan
  - Plan subject to Federal COBRA and self-insured plans – the employer
  - Insured plan subject to state mini-COBRA – the insurer
- Generally claimed on IRS Form 941, quarterly
- Advance credits claimed on IRS Form 7200
- Employer obligation to refund the credit?



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# Questions