



UBA  
Compliance Advisor

## What every HR leader should know about compliance



### Compliance Recap

May 2021

June 8, 2021

10-Minute Read

May 2021 was a somewhat busy month in the benefits industry. The absence of a significant amount of agency guidance during the summer months is to be expected. However, the IRS finally issued guidance on the temporary 100% COBRA subsidy mandated by the American Plan Rescue Act of 2021 (the ARP), following guidance issued by the U.S. Department of Labor (DOL). The IRS also issued guidance on the Dependent Care Assistance Program (DCAP) carryover of unused benefits and on the child tax credit under the ARP. In addition, the IRS issued the 2022 limits for health reimbursement arrangements (HRAs) and health savings accounts (HSAs). The Biden Administration lowered the cost of marketplace plans and the DOL issued guidance on fiduciary cybersecurity obligations under ERISA covered plans.

#### IRS COBRA Subsidy Guidance

On May 18, 2021, the IRS issued [IRS Notice 2021-31](#) in the form of FAQs, which provides extensive guidance on the COBRA subsidy under the American Rescue Plan Act of 2021 (ARP). The COBRA subsidy is required to be provided to eligible individuals who have not exhausted the maximum COBRA coverage period as of April 1, 2021, with the ARP extending to those individuals an opportunity to make a COBRA election during a special election period beginning on April 1, 2021, and ending on May 31, 2021. The duration of the COBRA Subsidy period is six months, ending on September 30, 2021.

#### *Involuntary Termination of Employment*

Q&A 24 of the IRS guidance clarified that involuntary termination of employment means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employee's employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. The IRS indicated that an employee-initiated termination of employment constitutes an involuntary termination of employment for purposes of COBRA premium assistance if, based on the facts and circumstances, the termination of employment constitutes a termination for good reason due to employer action that results in a material negative



change in the employment relationship for the employee analogous to a constructive discharge. As an example, the guidance provides that if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that the employee was willing and able to continue performing services, so that, absent the voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary. This could occur, for example, if an employer agrees to classify an employee's termination of employment as voluntary, notwithstanding the employee's involuntary termination, to assist the employee in obtaining subsequent employment.

Please see our [Advisor](#) for more detail on the subject.

#### *Reduction in Hours*

In the IRS guidance, Q&A 21 provides that a qualified beneficiary's voluntary reduction in hours may be a qualifying event that would make the individual COBRA- and subsidy-eligible. The guidance confirms that the reduction in hours is a qualifying event whether voluntary or involuntary.

Please review our [Advisor](#) for more detail on the subject.

#### **Taxation of DCAP Carryover Amounts**

IRS Notice 2021-26 addressed the taxation of dependent care benefits, provided through a Dependent Care Assistance Program (DCAP) in taxable years ending in 2021 and 2022 due to the application of either the carryover or the extension of a claims period under the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the Act), enacted as part of the Consolidated Appropriations Act on December 27, 2020 (CAA). Under the Act, DCAPs may carry over unused benefits from a plan year ending in 2020 to a plan year ending in 2021 and from a plan year ending in 2021 to a plan year ending in 2022. Alternatively, the Act allows a DCAP to extend its claims period for a plan year ending in 2020 or 2021 to 12 months after the end of the plan year for unused benefits remaining in the DCAP. The Notice clarifies that if dependent care benefits would have been excluded from income if used during the preceding taxable year (that is, during the taxable year ending in 2020 or 2021, as applicable), they will remain excludable from gross income and are not wages of the employee for the taxable years ending in 2021 and 2022. In addition, the benefits will not be taken into account for purposes of the application of the limits under Section 129 of the Internal Revenue Code (Code) to other dependent care benefits available for the taxable years ending in 2021 and 2022.

For 2020, the DCAP limit could not exceed \$5,000, or \$2,500 in the case of a separate return filed by a married individual. The American Rescue Plan Act of 2021 (ARP) increased the DCAP limit to \$10,500 for the taxable year beginning after December 31, 2020, and before January 1, 2022.

Please review our [Advisor](#) for more detail on the subject.

#### **Advanced Availability of the Increased Child Tax Credit**

The ARP increased the maximum Child Tax Credit (CTC) and allows taxpayers to receive an advance of the CTC. For 2021, the CTC is increased to \$3,600 for children under the age of 6 and to \$3,000 per child for children between ages 6 and 17. On May 17, 2021, the IRS and Department of the Treasury announced that the increased CTC payments will be made on the 15th of each month unless the 15th falls on a weekend or holiday. The payments are scheduled to begin in July 2021. Eligible families will



receive a payment of up to \$300 per month for each child under age 6 and up to \$250 per month for each child age 6 and above.

Please review our [Advisor](#) for more detail on the subject.

### **IRS Issues 2022 HSA and HRA Limits**

The IRS issued Revenue Procedure 2021-25 on May 10, 2021, to announce the 2022 inflation adjusted amounts for health savings accounts (HSAs) under Section 223 of the Internal Revenue Code (Code) and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs). For calendar year 2022, the HSA annual limitation on deductions for an individual with self-only coverage under a high deductible health plan is \$3,650. For plan years beginning in 2022, the maximum amount that may be made newly available for the plan year for an excepted benefit HRA is \$1,800. Treasury Regulation §54.9831-1(c)(3)(viii)(B)(1) provides further explanation of the calculation.

Please review our [Advisor](#) for more detail on the subject.

### **Biden Administration Lowers Costs in the Marketplace Health Plans**

The Biden Administration used its rulemaking authority to lower health care costs for consumers and improve access to health care in connection with health plans sold on the Affordable Care Act's (ACA) exchanges. The maximum out-of-pocket cost has been lowered by \$400. The Final 2022 Rules reduced the annual limitation on cost sharing for eligible enrollees with incomes between 100% and 200% of the federal poverty level (FPL) to \$2,900 for self-only coverage and \$5,800 for other-than-self-only coverage. The Final 2022 Rules also reduced the annual limitation on cost sharing for eligible enrollees with incomes above 200% and through 250% FPL to \$6,950 for self-only coverage and \$13,900 for other-than-self-only coverage.

Please review our [Advisor](#) for more detail on the subject.

### **DOL Guidance on Fiduciary Cybersecurity for Employee Benefit Plans**

The DOL announced new guidance for plan sponsors, plan fiduciaries, record keepers and plan participants on best practices for maintaining cybersecurity. Although much of the guidance is intended to protect retirement benefits, the rules also generally apply to health and welfare benefits subject to the ERISA. The guidance comes in three forms: 1) Tips for Hiring a Service Provider, 2) Cybersecurity Best Practices and 3) Online Security Tips. Plan sponsors, fiduciaries, and third-party service providers should seriously evaluate their current cybersecurity protocol and processes in order to prevent regulatory and civil liability in connection with cybersecurity breaches affecting employee benefit plans.

Please review our [Advisor](#) for more detail on the subject.

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