



COBRA Subsidy and Claim Substantiation: A Reminder and a Refresher

The following general summary is intended to educate employers and plan sponsors on the potential effects of recent government guidance on employee benefit plans. This summary is not and should not be construed as legal or tax advice. The implications of this legislation are complex and very fact specific. As always, we strongly encourage employers and plan sponsors to consult competent legal or benefits counsel for all guidance on how the actions apply in their specific circumstances.

A reminder: COBRA Subsidy Expiration Notices Due Soon

The COBRA subsidy period introduced by the American Rescue Plan Act of 2021 (ARPA) will soon end. ARPA – signed into law by President Biden on March 11, 2021 – provides a 100 percent federal subsidy of COBRA continuation coverage premiums for certain qualified beneficiaries who became eligible for COBRA continuation due to an involuntary termination or reduction in hours (Assistance Eligible Individuals, or AEIs). This federal subsidy is available for continuation coverage periods from April 1, 2021 through September 30, 2021.

ARPA requires employers and plan administrators to provide AEIs a “Notice of Expiration of Premium Assistance” at least 15 days - but no more than 45 days - prior to the expiration of their COBRA premium assistance. AEIs receiving the COBRA subsidy must be furnished a notice advising of the expiration of the subsidy, the date on which the subsidy is to expire (either due to the end of the subsidy period or the end of the AEI’s maximum COBRA coverage period), and a statement that the individual may be eligible for coverage without premium assistance through either COBRA continuation coverage or under a group health plan. This notice is not required for instances in which the loss of the Subsidy is due to the AEI becoming eligible for other group health plan coverage or Medicare.

As this notice requirement was introduced when ARPA was first enacted, it is an important reminder to those employers and plan administrators with AEI populations still receiving COBRA premium assistance as of September 30, 2021 that they will need to be furnished these letters between August 16, 2021 (i.e., 45 days before the end of the subsidy period) and September 15, 2021 (i.e., 15 days prior to the September 30, 2021 end date).

HealthEquity/WageWorks is currently hard at work preparing and sending these notices on behalf of our clients who opted to take advantage of our ARPA administrative service solution.

Click [here](#) to view previous updates and alerts concerning ARPA.



A Refresher: Health Flexible Spending Account (FSA) Debit Card Substantiation Rules

On April 27, 2021, the Internal Revenue Service (IRS) released Information Letter 2021-0013* to address a request for information about substantiation rules for health FSA debit card transactions. While the information letter does not provide *new* guidance, it serves as valuable reiteration of the rules for those cafeteria plan administrators for purposes of plan operation and decision-making.

Health FSA plan participants who are offered – and use – electronic debit cards to pay for eligible healthcare expenses up to their respective FSA election amount are generally expected to substantiate such expenses with information from an independent third party describing (1) the service or product; (2) the date(s) of service or sale; and (3) the amount of the expense. Letter 2021-0013 notes that some debit card transactions may not provide all the information necessary to appropriately substantiate that the debit card transaction was for an eligible healthcare expense. For example, the debit card transaction may provide the amount of the transaction, a general category for the service merchant, and the specific service provider, but not the item or service provided in the transaction. If the debit card transaction does not satisfy the substantiation requirements, the plan administrator must request more information to substantiate the medical expense and deactivate the debit card if the expense in question is not substantiated in a timely fashion.

An independent third party must provide a statement verifying the medical expense, either automatically or after the transaction. If, at the time and point of sale, an independent third party provides information to verify that the charge is for a healthcare expense, then that expense is substantiated, and no further review is needed (“real-time substantiation”).

Furthermore, the health FSA sponsor may coordinate with an individual’s health insurance provider to use information provided in an explanation of benefits to fully substantiate a debit card transaction. Payment of recurring expenses for health care expenses incurred at certain providers matching the amount, medical care provider, and timeframe of previously approved expenses can be approved without additional substantiation. The IRS notes in this letter that the health FSA may impose more stringent standards than those described above to ensure that the health FSA is used only to pay for or reimburse eligible medical expenses.

* <https://www.irs.gov/pub/irs-wd/21-0013.pdf>