

COBRA: Recent Developments and Surviving an IRS Audit

Todd Eason, CAS, CFC
DataPath, Inc.



DPAS ANNUAL CLIENT APPRECIATION CONFERENCE 2011

American Recovery and Investment Act of 2009 (ARRA)

- Involuntary Terminations: Sept. 1, 2008 – May 31, 2010
- 15 periods (typically a month) of COBRA premiums subsidized at 65%



ARRA Ended in August 2011

- Issue 1: Any delayed COBRA due to severance packages?
- Issue 2: Any subsidized premiums not previously claimed
- Issue 3: Retroactive requests to be considered an Assistance Eligible Individual (AEI)
- Issue 4: IRS Audits



Delayed COBRA

- Some unintended consequences of severance packages kept former employees on the plan after termination
- This could delay the start of COBRA and thus the start of the ARRA 15 months of subsidy
- Possible AEI stragglers



Unreported Subsidized Premiums

- Have you performed an audit to ensure you have received credit for all subsidized premiums?
- Do you have copies of all the 941 payroll tax forms previously submitted?



It's Not Too Late!

- Credits can be claimed in the same period as payments were made
- A review of all previous 941s
 - Review for accuracy and completeness
 - Copies on file in case of an audit



Retroactive Requests for Treatment of an AEI

- Regulations state it must be done within 60 days of termination
- Reality is IRS is honoring any request prior to COBRA expiration



IRS Audits are Occurring Now

- Random
- In response to individual challenges



The IRS Form 4564 for Audits:

- Complete list of all individuals claimed on 941s
- Attestation documents for all AEI
- Insurance invoices for premiums
- Proof of AEI's 35% payment in full
- Copies of all credit returns
- Copies of Summary Plan Descriptions (SPD)
- Copy of policies and procedures manual
- Proof of training of COBRA administrator
- Copy of all notice templates
- Specific notices may be requested for particular individual or time



IRS Form 8928 Self Reporting of COBRA Incidents

- Self initiated payment of COBRA non-compliance
- \$100 - \$200 per day per incident excise tax
- Maximum fine of \$500,000



What to Do When an Incident is Discovered

- Must not have been intentional
- Must be corrected within 30 days of discovery
- Individual affected must not be in any worse condition
- Then no penalty will be assessed



How to Avoid an Audit or How to Survive When One Happens

- Send all notices required on time
- Send all notices to all affected individuals
- Proof of all notices sent (USPS 3877)
- Use complete and compliant notices



Questions?



DPAS ANNUAL CLIENT APPRECIATION CONFERENCE 2011