



Compliance Services Alert

June 29, 2021

Upcoming key compliance deadlines and reminders for third quarter 2021

With the deluge of federal guidance recently related to the COVID-19 “outbreak period” and, among other things, new federal COBRA subsidies under the American Rescue Plan Act (ARPA), it’s easy to let the run-of-the-mill reporting and disclosure responsibilities – not to mention the new obligations reflected in recent guidance and legislation – slip through the cracks. We’ve summarized below the key reporting and disclosure obligations for the third calendar quarter in 2021.

We’ve continued, for this third quarter reminder, to separate our entries into three categories: **standard federal** deadlines, **state and local** deadlines, and **pandemic-related** reminders. Within each category we follow our typical chronological approach. *Deadlines may or may not be applicable to your group depending on employer and plan characteristics.*

Here are potential action items for the third calendar quarter of 2021:

DATE	ACTIONS	NOTES
STANDARD FEDERAL DEADLINES		
Aug. 2	Submit PCORI tax	The PCORI tax is applicable to insured and self-funded plans, but the plan sponsor is responsible for the tax only with respect to self-funded plans. The calculation is \$2.54 per covered life for plan years that ended Jan. 1, 2020 – Sept. 30, 2020, and \$2.66 per covered life for plan years that ended Oct. 1, 2020 – Dec. 31, 2020. The payment for all plan years ending in 2020 is due Aug. 2, 2021 (typically July 31, but that day falls on a Saturday this year). The fee does not apply to most “excepted benefits” or to health reimbursement arrangements (HRAs) where the HRA and associated medical plan are self-insured and have the same plan year.

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		<p>The PCORI tax may NOT be paid with ERISA plan assets in most cases (there is an exception for certain multiemployer plans); it is the responsibility of the employer or plan sponsor. The tax is submitted with and reported on IRS Form 720 for the second calendar quarter, under Part II of that Form.</p> <p>For more details, see our recent alert on the PCORI filing responsibility for 2021.</p>
<p>Aug. 2</p>	<p>File Form 5500 for plan year ending Dec. 31, 2020 <i>Unless extension is obtained</i></p>	<p>ERISA plans with a calendar year plan year generally must file Form 5500 by July 31 annually, unless the plan sponsor obtains an extension. That date gets pushed to Aug. 2 this year, as July 31 falls on a Saturday.</p> <p>This applies to all calendar year ERISA plans, unless otherwise exempted. Filing is completed electronically through the Department of Labor’s (DOL) EFAST2 portal. More information on how to file electronically can be found here.</p> <p>Welfare plans (other than MEWAs) that are fully insured, unfunded or a combination of both, are excused from filing if they have fewer than 100 participants covered on the first day of the ERISA plan year.</p> <p>Form 5500 extensions are available by filing a Form 5558 with the DOL on or before the filing’s initial due date. Filing Form 5558 can allow the plan up to an additional 2 ½ months to complete the filing.</p>
<p>Sept. 30 <i>(or Dec. 15, if Form 5500 is filed under an extension)</i></p>	<p>Distribute Summary Annual Report (SAR) <i>For calendar year plans</i></p>	<p>A summary of the plan’s financial performance for the previous calendar year must be distributed to participating employees, former employees, COBRA beneficiaries and Qualified Medical Child Support Order (QMCSO) recipients within nine months of the close of that plan year.</p> <p>The SAR requirement does not apply to self-funded plans that pay benefits exclusively from employer’s general assets, even if those assets include employee contributions, so long as those contributions are made through a Section 125 cafeteria plan.</p> <p>SAR language is rather standard, and the disclosures may be made according to the DOL’s requirements for electronic disclosure, if desired.</p>
<p>Aug. 31 and Sept. 30</p>	<p>File Form 5500 for plan years ending Jan. 31, 2021, and Feb. 28, 2021, respectively</p>	<p>ERISA plans must file a Form 5500 at least annually unless the plan is exempted from the filing requirement. Filing is accomplished electronically through the DOL’s EFAST2 portal.</p> <p>Form 5500 extensions are available by filing a Form 5558 with the DOL on or before the filing’s initial due date. Filing Form 5558 allows the plan up to an additional 2 ½ months to complete the filing.</p>

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SELECT STATE AND LOCAL DEADLINES		
July 30	Make San Francisco HCSO contributions for the prior calendar quarter	Required if the employer is subject to the San Francisco Health Care Security Ordinance (HCSO) and, with respect to enrollees in a self-insured plan, is not taking advantage of the <i>annual</i> true-up calculation method of self-insured expenditures allowed by the HCSO. Fully insured plan sponsors cannot use the annual true-up method.

PANDEMIC-RELATED REMINDERS – OUTBREAK PERIOD REQUIREMENTS

In April 2020, and again in February 2021, federal authorities issued guidance under which welfare benefit plans are required to suspend the running of certain action periods related to COBRA elections and premium payments, HIPAA special enrollment requests, and submission of claims, appeals and requests for third-party review of denied medical claims. Generally, any given action period (e.g., the 60 days a COBRA qualified beneficiary has to elect COBRA after the plan sends the COBRA election packet) is suspended until the earlier of:

- The date that is 12 months after the date the suspension began (although it is unclear whether, with respect to COBRA premium payment due dates for example, each monthly due date is extended for a year after the extension applicable to the month before), and
- The date that is 60 days after the president rescinds the presidential national emergency declaration related to COVID-19.

The following disclosures relate to this outbreak period guidance.

As soon as practicable, if required	Re-issue or supplement notices or disclosures regarding certain COBRA deadlines, HIPAA special enrollment request deadlines, and claims/appeals submission deadlines	Federal “outbreak period” guidance indicates that plan disclosures issued prior to or during the pandemic may need to be reissued or amended if such disclosures failed to provide accurate information regarding the time in which participants and beneficiaries are required to take action, specifically if the prior disclosures did not adequately describe the effect of federal “outbreak period” guidance on COBRA, HIPAA special enrollment and claims/appeals action periods and deadlines. NOTE: While federal authorities made this admonition in their February 2021 guidance, it will be difficult to accomplish on account of vagaries in that guidance, particularly with respect to how to calculate the date on which the running of the relevant action periods, particularly with respect to COBRA premiums, begins again. Lockton has prepared a model notice for consideration by its clients. Contact your account service team.
As soon as practicable, if required	Alert individuals to the impending loss of protections, benefits or rights under a plan due to expiration of	Federal “outbreak period” guidance recommends where plan fiduciaries know, or should reasonably know, that the end of the relief provided under that guidance may cause a participant or beneficiary to lose protections, benefits or rights under the plan, that the administrator or other fiduciary

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	<p>“outbreak period” protections, and provide notice of other healthcare coverage options, such as ACA marketplaces</p>	<p>should consider affirmatively sending a notice regarding the end of the individual’s relief period and reminding the individual of the availability of healthcare coverage in an ACA marketplace. Including with such notice the standard federal marketplace notice, which typically is provided within 14 days of new hire, should be adequate for this latter purpose. We are hopeful that federal authorities provide model language for this notice of impending loss of protections, benefits or rights.</p>
<p>Various times</p>	<p>Adjust COBRA election and premium payment, HIPAA special enrollment request, and plan claim, appeal and request for third-party review due dates</p>	<p>To accommodate and comply with the federal “outbreak period” guidance, plan administrators will need to adjust the running of relevant action periods and deadlines with respect to affected participants and beneficiaries.</p> <p>See our original alert from April 2020 and our updated alert from March 2021 for more information.</p>
<p>Various times</p>	<p>Provide ERISA-related notices and disclosures</p>	<p>Federal “outbreak period” guidance gave plan administrators leeway, where that leeway is necessary, to provide ERISA-related notices and disclosures (e.g., COBRA election packets) to plan participants and beneficiaries later than would otherwise be required, as long as the administrator provides the notices and disclosures <i>as soon as practicable</i>.</p> <p>Administrators are also granted wider latitude to provide these notices and disclosures via email or a continuously available website. See our alert for more information.</p> <p>It seems unlikely, this late into the pandemic, that tardy notices and disclosures will be acceptable to federal regulators.</p>

PANDEMIC-RELATED REMINDERS – COBRA SUBSIDIES

The American Rescue Plan Act of 2021 (ARPA) provides for 100% COBRA subsidies, for up to six months beginning April 1, 2021, for individuals who are not eligible for Medicare, a qualified small employer health reimbursement arrangement (QSEHRA), or other group coverage other than excepted benefits (e.g., dental, vision or health FSA coverage), and who either:

- *Category 1 individuals:* Lose healthcare coverage (other than under a health FSA) due to a reduction in work hours or an involuntary termination of employment if their COBRA coverage period would include at least part of the COBRA subsidy window from, generally, April 1 – Sept. 30, 2021, or
- *Category 2 individuals:* Lost healthcare coverage (other than under a health FSA) due to a reduction in work hours or an involuntary termination of employment if, generally speaking, their COBRA coverage period *would have included* – had they elected COBRA when offered, or continued COBRA if they elected it and dropped it – at least part of the COBRA subsidy window from, generally, April 1 – Sept. 30, 2021.

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IRS guidance, issued in May, relating to the ARPA COBRA subsidies includes a number of nuances, particularly related to eligibility for COBRA subsidies during an extended COBRA window due, for example, to a second qualifying event, disability extension or state-imposed extension. For more information see our [alert](#).

The following disclosures pertain to these COBRA subsidies.

<p>Within 30 days of the qualifying event (44 days for self-insured healthcare plans), for <i>Category 1 individuals</i> described above</p>	<p>Temporarily modify COBRA election forms for <i>Category 1 individuals</i> described above</p>	<p>For <i>Category 1 individuals</i>, plan administrators must amend (or include supplemental information with) their COBRA coverage election forms to reflect in clear and understandable language:</p> <ul style="list-style-type: none"> • A description, displayed in a prominent manner, of the qualified beneficiary’s right to the COBRA subsidies and any conditions on such right • Any forms or paperwork necessary for the individual to show or attest to their eligibility for the subsidy (e.g., that the individual is not eligible for other group coverage (other than excepted benefits like dental, vision or health FSA coverage), Medicare or a QSEHRA) • The name, address and telephone number necessary to contact the plan administrator or other person who has relevant information to share with the COBRA qualified beneficiary regarding the COBRA subsidies • A description of the obligation of the qualified beneficiary to notify the plan if the beneficiary is or becomes eligible for other group coverage (other than excepted benefits like dental, vision or health FSA coverage), Medicare or a QSEHRA, and the tax penalty for failing to do so • If the plan administrator is willing to permit it, the opportunity to enroll in a different (less expensive) coverage option, for purposes of COBRA continuation coverage <p>NOTE: Federal regulators issued model notice language in early April 2021. Those models can be found here, at the bottom of the webpage.</p>
<p>No later than May 30, for <i>Category 2 individuals</i> described above</p>	<p>Provide a special COBRA election notice to <i>Category 2 individuals</i> described above</p>	<p><i>Category 2 individuals are entitled to a second, special COBRA election opportunity</i> to avail themselves of the COBRA subsidies. Plan sponsors must have provided them with a special COBRA election notice, by May 30, 2021, that includes the information that must be provided to <i>Category 1 individuals</i>, plus:</p> <ul style="list-style-type: none"> • A description of the <i>Category 2 individuals’</i> 60-day election period that begins with the date the plan administrator provides the special election notice <p>NOTE: Federal regulators issued model notice language in early April 2021. Those models can be found here, at the bottom of the webpage.</p>

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<p>No more than 45 days and no less than 15 days before the subsidies provided to a COBRA qualified beneficiary are scheduled to end</p>	<p>Notify COBRA qualified beneficiaries who are receiving COBRA subsidies that the subsidies are about to end, if termination of the subsidies occurs for reasons other than eligibility for other coverage</p>	<p>The COBRA subsidies, for Category 1 and Category 2 individuals receiving those subsidies, will end on the earlier of:</p> <ul style="list-style-type: none"> • Sept. 30, 2021 (or, if the plan provides COBRA coverage on a non-calendar monthly basis, at the end of the last periodic COBRA coverage period beginning in Sept. 2021) • The end of the individual's maximum COBRA coverage period, measured from their qualifying event date • The date the individual becomes eligible for other group coverage (other than excepted benefits like dental, vision or health FSA coverage), Medicare or a qualified small employer health reimbursement arrangement (QSEHRA) <p>Where the termination of subsidies occurs other than due to eligibility for other coverage, the plan administrator must send a notice, within the time noted at left, alerting the individual that their COBRA subsidy is about to expire and offering suggestions for replacement coverage.</p> <p>NOTE: Federal regulators issued model notice language in early April 2021. Those models can be found here, at the bottom of the webpage.</p>
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