

## **IRS UPDATES COBRA AUDIT GUIDELINES**

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The IRS recently updated its audit guidelines for field agents conducting reviews of employers COBRA programs.

In these updated guidelines, the IRS has advised agents that any COBRA audit should consist of a review of the following minimum level of documentation: (i) the employers procedure manual; (ii) form letters; (iii) internal audit procedures; (iv) the underlying group health plan documents; and (v) details of any past or pending COBRA-related litigation. If any of the foregoing materials appear deficient or problematic, agents are advised to make follow-up inquiries relating to the number of qualifying events, the method of notifying qualified beneficiaries, the method of notifying the plan administrator in connection with qualifying events, qualified beneficiary elections and the amount of premiums paid by COBRA beneficiaries. In performing more comprehensive reviews, the IRS advises agents to request an employer's federal and state employment tax returns; lists of individuals affected by qualifying events; and lists of individuals covered by each group health plan and to compare those lists against the employer's personnel records.

In outlining these materials, the IRS appears to have the expectation that agents will be seeking to confirm that an employer is offering COBRA coverage under all of the group health plans that are legally required to offer COBRA coverage, that all participants terminating employment are being offered COBRA coverage; that those being offered COBRA coverage are being provided the opportunity to elect any and all appropriate coverages and that the cost of those coverages are in conformance with applicable law. For qualified beneficiaries denied COBRA coverage for the reason of gross misconduct, the IRS advises agents to review unemployment records to determine whether the employer took an inconsistent position regarding an employee's termination of employment for purposes of collecting unemployment benefits.

As part of the revised guidelines, the IRS also notes that COBRA excise tax penalties may be waived upon a showing of reasonable cause and the IRS indicates that a showing of reasonable cause may be supported by an employer showing that it maintains an active compliance program; relies upon professional advice; and has an auditing process in place for monitoring compliance.

The issuance of revised audit guidelines suggests that the IRS may be undertaking an initiative to increase its COBRA audit activity period for employers. An employer should contemplate the

possibility of such audits and take affirmative steps to insulate itself by making sure either the employer or its third party recordkeeper maintains a detailed COBRA procedure manual that is compliant with applicable law and has a process for conducting periodic internal audits to monitor compliance with the COBRA program in operation.

## MEET THE TEAM



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