

DOL ISSUES MODEL NOTICES FOR ADMINISTERING ARPA COBRA SUBSIDIES

Hodgson Russ Employee Benefits Alert
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On April 7, 2021, the U.S. Department of Labor issued guidance and model notices necessary for group health plan sponsors to implement the 100% COBRA premium assistance subsidies mandated by the American Rescue Plan Act (“ARPA”). ARPA requires employers who sponsor group health plans (other than coverage consisting only of excepted benefits) to pay the COBRA premiums on behalf of “assistance eligible individuals” (“AEIs”) during the period from April 1 through September 30, 2021. Plan sponsors must also provide another opportunity to elect COBRA coverage for AEIs who failed to elect COBRA when initially offered, or who subsequently dropped COBRA coverage after enrolling, provided that such AEIs are still within their maximum COBRA coverage period. Read our article providing a detailed analysis of the ARPA COBRA premium assistance subsidy requirements [here](#).

The FAQs provide clarification regarding several important issues:

- The definition of AEI applies both for purposes of the COBRA premium assistance subsidies, and for the extended election opportunity. An AEI is an individual who:
 - (1) is eligible for COBRA continuation coverage by reason of:
 - a qualifying event that is a reduction in hours (such as reduced hours due to change in a business's hours of operations, a change from full-time to part-time status, taking of a temporary leave of absence, or an individual's participation in a lawful labor strike, as long as the individual remains an employee at the time that hours are reduced); or
 - an involuntary termination of employment (not including a voluntary termination); and
 - (2) elects COBRA continuation coverage (Q&A-3).
- The premium assistance subsidy not only applies to group health plans subject to federal COBRA, but also group health plans that provide continuation coverage under state “mini-COBRA” statutes (Q&A-1 and 2). Employers should confirm with their insurance carriers regarding the availability of the premium assistance subsidy and the extended COBRA election opportunity.

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- Both the COBRA premium assistance subsidy and the extended COBRA election opportunity apply to all qualified beneficiaries for whom the qualifying event was a reduction in hours or involuntary termination of employment prior to April 1, 2021. Hence, plan sponsors must take care to ensure that the DOL Model Notice regarding the extended election opportunity are provided to all qualified beneficiaries (Q&A-5 and 16).
- An individual who would otherwise qualify as an AEI is not eligible for either the COBRA premium assistance subsidy or the extended election opportunity if the individual is eligible for other group health plan coverage (such as through a new employer or a spouse's employer), or Medicare. Because employers may not be aware of the availability of other coverage, plan sponsors should proceed with identifying and issuing the DOL Model Notices as appropriate to all potential AEIs, including all qualified beneficiaries (Q&A-3).
- An AEI who is enrolled in individual health insurance coverage through the Marketplace is permitted to switch to the group health plan of a former plan sponsor offering COBRA coverage with premium assistance subsidies, but only on a prospective basis. Individuals electing to switch Marketplace coverage will no longer be eligible to receive any premium tax credits associated with such coverage. The AEI will be permitted to rejoin a Marketplace insurance program during a special enrollment period for the 60 day period after the COBRA premium assistance subsidies end, or the AEI exhausts COBRA coverage (Q&A-18, 19 and 21).
- AEIs are not required to pay any of the COBRA premium cost during the subsidized period from April 1 through September 30, 2021, including any administrative fee. However, AEIs who were enrolled in COBRA coverage prior to the commencement of the subsidy period on April 1, 2021 are not entitled to a refund for COBRA premiums paid prior to that date (Q&A-8, 9 and 14).
- The employer may allow AEIs to elect other coverage than was available at the time of the qualifying event, provided that the coverage is also available to similarly-situated active employees, has a lower premium than the coverage the AEI was enrolled in at the time of the qualifying event, and does not consist solely of excepted benefits (health flexible spending accounts, QSEHRAs, etc.) (Q&A-15 and 17).
- The extended deadline relief offered in the DOL's Disaster Notice 2021-01 (see our article [here](#)) is separate from the right of AEIs to obtain COBRA premium assistance subsidies or take advantage prospectively of the ARPA extended election opportunity. Thus, qualified beneficiaries could choose to elect unsubsidized COBRA coverage commencing from a date before the ARPA premium assistance subsidy period of April 1, through September 30, 2021. However, the DOL has stated that expanded timeframes for electing COBRA coverage available under Disaster Notice 2021-01 do not apply to the 60 day period required for AEIs to elect the ARPA COBRA premium assistance subsidies or expanded election opportunity (Q&A-13).

Absent from this guidance is additional detail regarding the implementation of the payroll tax credits or overpayment reimbursements by which employers are made whole for the premium assistance subsidies.

Please contact [Amy Walters](#) (716.848.1481) or [Mike Flanagan](#) (716.848.1480) to discuss these developments in greater depth and how they affect your group health plans.

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The FAQs are available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ehsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>.

The model notices are available at <https://www.dol.gov/cobra-subsidy>.