



Department of Labor Releases COBRA Subsidy Model Notices and Frequently Asked Questions

As previously reported¹, the American Rescue Plan Act of 2021 (ARPA) introduced a 100 percent federal subsidy of COBRA continuation coverage premiums for periods of coverage between April 1, 2021 and September 30, 2021 (the “Subsidy Period”) for qualified beneficiaries who are eligible for COBRA coverage (or comparable state continuation coverage) due to the covered employee’s involuntary termination of employment. These individuals are referred to as “Assistance Eligible Individuals” (AEIs).

ARPA also provides a second 60-day election period to qualified beneficiaries that experienced an involuntary termination of employment or reduction of hours who have not elected COBRA by April 1, 2021, as well as to those who previously elected COBRA but subsequently lost it before April 1, 2021 (e.g., due to non-payment of premiums).

ARPA also requires any COBRA election notices provided by plan administrators to qualified beneficiaries entitled to elect COBRA coverage during the Subsidy Period to include information advising of the subsidy. The Department of Labor (DOL) – in coordination with the Treasury and the Department of Health and Human Services (collectively, the “Agencies”) was directed to provide model subsidy notices no later than 30 days following ARPA’s enactment (i.e., no later than April 11, 2021).

In addition, ARPA requires plan administrators to notify AEIs when their COBRA subsidy will expire, within 15-45 days before its scheduled expiration. The Agencies were further directed to release a model expiration notice within 45 days of ARPA’s enactment (i.e., no later than April 26, 2021).

Model Notices and Frequently Asked Questions

On April 7, 2021, the DOL released² guidance in the form of Frequently Asked Questions regarding the COBRA subsidy, as well as model notices that can be used when administering ARPA’s COBRA subsidy requirements. The DOL’s guidance includes:

- FAQs About COBRA Premium Assistance Under the American Rescue Plan Act of 2021³;
- Model General Notice and COBRA Continuation Coverage Election Notice⁴;

¹https://www.healthequity.com/doclib/compliance/Compliance_Alert_American_Rescue_Plan_Act_COBRA_Subsidy_Final_3.12.2021.pdf

² <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

³ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>

⁴ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-general-and-election-notice.pdf>

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- Model Notice in Connection with the Extended Election Periods⁵;
- Model Alternative Notice⁶;
- Model Notice of Expiration of Premium Assistance⁷; and
- A Summary of COBRA Premium Assistance Provisions⁸.

Although the 21 FAQs and model notices provided some welcome confirmations and clarifications (e.g., it confirms that the temporarily suspended COBRA election and payment deadlines under the DOL Employee Benefits Security Administration [EBSA] Disaster Relief Notice 2020-01 and the Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak⁹ do not apply to the second 60-day election period or the deadline by which the plan must issue ARPA-related notices), the guidance does not address many outstanding questions – such as what constitutes an “involuntary” termination of employment, how do employer-provided subsidies interact with the federal COBRA subsidy, or the technical aspects of how the payroll tax credit will work.

As the provisions of ARPA contain a number of procedural similarities to the COBRA changes introduced by the American Recovery and Reinvestment Act of 2009 (“ARRA”), it is possible the IRS will similarly publish its own set of FAQs to address these outstanding ARPA questions.¹⁰

Conclusion

As the subsidy effective date has come – and potentially eligible qualified beneficiaries are identified and notified of their rights and responsibilities – more questions and opportunities for clarification will undoubtedly arise. HealthEquity will continue to stay abreast of this topic and – as additional guidance is available – we will advise accordingly.

⁵ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-extended-election-periods-notice.pdf>

⁶ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-alternative-election-notice.pdf>

⁷ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/notice-of-premium-assistance-expiration-premium.pdf>

⁸ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.pdf>

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<https://healthequity.com/doclib/compliance/DOL%20Issues%20Guidance%20on%20Maximum%20COVID%20Periods.pdf>

¹⁰ The IRS published Notice 2009-27 to clarify some of the ambiguities of ARRA (see <https://www.irs.gov/pub/irs-drop/n-09-27.pdf>)