

DOL Issues Guidance on Federally Funded COBRA Premium Subsidy – FAQs and Model Notices Provide Clarification for Employers

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Who Needs to Know

Employers.

Why It Matters

On March 25, Troutman Pepper reported on the 100% federally funded COBRA premium subsidy included in the American Rescue Plan Act (ARPA), noting the need for additional guidance on a number of issues. In response to questions from stakeholders, the Department of Labor (DOL) issued FAQs on April 7, providing much needed guidance on the COBRA premium subsidy. While the FAQs and centralized web page provide employers with some clarity on the implementation and administration of the COBRA premium subsidy, additional guidance is still needed.

On March 25, we reported on the 100% federally funded COBRA premium subsidy included in the American Rescue Plan Act (ARPA), noting the need for additional guidance on a number of issues. See [“COVID-19 Resource Guide for Human Resources Professionals: 100% Federally Funded COBRA is Almost Here — What You Need to Know.”](#) In response to questions from stakeholders, the Department of Labor (DOL) issued [FAQs](#) on April 7, providing much needed guidance on the COBRA premium subsidy. While the FAQs provide employers with some clarity on the implementation and administration of the COBRA premium subsidy, additional guidance is still needed.

The ARPA COBRA premium subsidy provisions require employers and insurers to provide “assistance eligible individuals” (AEIs) with a 100% subsidy for premiums otherwise owed for COBRA coverage during the period from April 1, 2021 to September 30, 2021 (Subsidy Period). An AEI is a qualified beneficiary whose COBRA qualifying event is an involuntary termination of employment or reduction of hours, who is not otherwise eligible for Medicare or other group health plan coverage, and who actually elects COBRA coverage. The FAQs confirm the following aspects of the ARPA COBRA premium subsidy available to AEIs:

- The COBRA premium subsidy applies to group health plans required to provide continued coverage under state mini-COBRA laws.
- AEIs do not include individuals terminated for gross misconduct or individuals eligible for group health coverage

through Medicare or a new employer's or spouse's plan (other than a plan providing only excepted benefits, a qualified small employer health reimbursement arrangement, or a health flexible spending arrangement).

- Prior agency guidance extending the deadline for electing COBRA coverage for up to one year during the COVID-19 "Outbreak Period" does not apply to the additional 60-day COBRA election opportunity available to potential AEIs not currently receiving COBRA coverage. This means that the additional election period runs for 60 days, and 60 days only, after the additional election opportunity notice is provided. Potential AEIs must elect COBRA continuation coverage within this 60-day election period or lose their right to elect subsidized COBRA continuation coverage.
- If a potential AEI's qualifying event occurred prior to April 1, 2021, the election period for subsidized COBRA continuation coverage does not eliminate the AEI's right to elect COBRA continuation coverage starting from the prior qualifying event, including under the extended timeframe allowed during the COVID-19 Outbreak Period.
- Potential AEIs can use the additional election period to change from individual market health insurance coverage to subsidized COBRA continuation coverage.
- Potential AEIs have flexibility in selecting the date COBRA coverage becomes effective. Specifically, potential AEIs can begin their coverage prospectively from the date of their election or, if a potential AEI's qualifying event occurred prior to April 1, 2021, the potential AEI can begin COBRA coverage on April 1, 2021, even if he/she receives an election notice and makes that election after April 1, 2021.
- The additional election opportunity does not extend the duration of COBRA coverage — a potential AEI who elects COBRA coverage during the additional election opportunity is entitled to COBRA coverage for up to 18 months following the date of the qualifying event.
- Enrollment in subsidized COBRA coverage will make AEIs ineligible for any premium tax credit (or advance payments of the premium tax credit) for Affordable Care Act Marketplace (Marketplace) coverage otherwise available during that period.
- When the Subsidy Period ends, AEIs may qualify for a special enrollment period to enroll in coverage through the Marketplace or individual market health insurance coverage outside of the Marketplace.
- Employers failing to satisfy the COBRA requirements for the COBRA premium subsidy may be subject to excise taxes of up to \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the employer is in violation of the COBRA requirements.

To further assist employers, the DOL created the "COBRA Premium Subsidy" web page, which centralizes information about the COBRA premium subsidy and includes model notices. Unless specifically modified by the ARPA, the existing requirements for the time and manner of delivery of COBRA notices continue to apply. However, prior agency guidance extending the deadline for providing COBRA notices and making COBRA elections for up to one year during the COVID-19 Outbreak Period does not apply to the notices or election

periods related to the ARPA COBRA premium subsidy.

- **The Model ARPA General Notice and COBRA Continuation Coverage Election Notice**, which should be used for all qualifying events occurring from April 1, 2021 to September 30, 2021, alerts the recipient to the availability of the ARPA COBRA premium subsidy, and includes a COBRA coverage election form.
- **The Model COBRA Continuation Coverage Notice in Connection with Extended Election Periods** should be provided no later than May 31, 2021 to all potential AEIs not currently receiving COBRA coverage and whose maximum COBRA coverage period has not expired.
- **The Model Alternative Notice of ARPA Continuation Coverage Election Notice**, which should be used in lieu of the above notices by group health plans subject to state continuation requirements (*i.e.*, state mini-COBRA laws), should be provided by May 31, 2021 to potential AEIs not currently receiving coverage and whose maximum COBRA coverage period has not expired and for all qualifying events occurring from April 1, 2021 through September 30, 2021.
- **The Model Notice of Expiration of Period of Premium Assistance**, which should be provided 15 to 45 days before the expiration of the COBRA premium subsidy, informs AEIs that their COBRA premium subsidy is ending.
- **The Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021** provides individuals with a summary of the ARPA COBRA premium subsidy and includes forms that individuals, who believe that they are AEIs, can use to notify their employer (or former employer), as well as forms to inform the plan of ineligibility for the COBRA premium subsidy due to eligibility for other coverage. This summary and the related forms should be included when any of the first three notices listed above are sent to individuals.

Despite the welcomed additional guidance and model notices, employers still remain eager for clarity on open substantive questions, such as whether termination for good reason is considered an involuntary termination eligible for the subsidy, whether already existing subsidized COBRA obligations (*e.g.*, pursuant to separation agreements) are tolled during the Subsidy Period, and whether the subsidy is available to AEIs whose maximum COBRA coverage period overlaps with the Subsidy Period as a result of a second qualifying event. In addition, the IRS has yet to issue guidance with details on how to claim the federal tax credit used to reimburse the cost of these COBRA subsidies. We hope to receive additional guidance from the federal agencies on these and other outstanding questions soon.

If you have any questions or require assistance, please contact any member of the Troutman Pepper Employee Benefits and Executive Compensation Practice Group or the COVID-19 Response Task Force. We are here to help you in any way that we can. This alert reflects guidance as of April 15, 2021.

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