



DOL Issues Guidance to Help Employers Understand Obligations Regarding COBRA Premium Assistance Provisions in the American Rescue Plan Act

Insights

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The recently enacted American Rescue Plan Act (ARPA) provides for 100% premium assistance to certain qualified beneficiaries for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) for periods of coverage beginning on or after April 1, 2021 and ending September 30, 2021. The new law allows assistance for eligible individuals to forego paying applicable COBRA coverage premiums but be deemed to have made full payment. Employers will be able to claim employment tax credits to offset the amounts (including applicable administrative fees) of unpaid COBRA premiums.

ARPA left many questions unanswered, and employers have been awaiting further guidance from the U.S. Department of Labor (DOL). Additionally, ARPA charged the DOL with drafting model templates for various COBRA-related notices mandated by the law. The DOL has now issued a set of Frequently Asked Questions and a series of Model Notices to help clarify how employers must comply with ARPA's COBRA assistance provisions. What do employers need to know about this April 7 release?

Who is Eligible?

Eligible qualified beneficiaries include anyone who, due to a reduction in hours or an involuntary termination of employment, becomes eligible for or already has effective COBRA continuation coverage during the period that begins April 1, 2021 and ends September 30, 2021.

There had been some question as to whether reductions in hours had to be involuntary for an individual to be eligible for ARPA COBRA premium assistance. DOL FAQ #3 provides that an Assistance Eligible Individual (AEI) includes any COBRA qualified beneficiary who is eligible for COBRA due to a reduction in hours such as reduced hours due to a 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 employed when their hours are reduced. This list is not exhaustive, but it does clarify that even voluntary reductions in hours would qualify for ARPA COBRA premium assistance.

Neither the FAQ nor the model notices provide details regarding how an employer should determine whether an individual's termination of employment is involuntary. FAQ #3 does provide that any

termination that meets the definition of “gross misconduct” under general COBRA rules would disqualify a qualified beneficiary from COBRA coverage in general and, therefore, ARPA premium assistance specifically. But, while guidance under similar COBRA subsidy legislation passed in 2009 provided a working definition of involuntary termination, DOL has neither cross-referenced that language nor developed any other standard to assist employers in determining whether someone is an AEI. In fact, the FAQs state only that an AEI is a qualified beneficiary who is eligible for COBRA coverage due to an “involuntary termination of employment (not including a voluntary termination)” and elects COBRA continuation coverage. We anticipate further guidance to help employers understand what constitutes a qualifying involuntary termination.

FAQ #10 confirms that ARPA COBRA premium assistance is not available to AEIs whose maximum COBRA coverage period expired before April 1, 2021. The FAQ specifies that this generally means those with a reduction in hours or involuntary termination of employment that occurred before October 1, 2019 will not be AEIs. You will need to examine records to determine which individuals are on COBRA currently or could be on COBRA if they had elected coverage or not terminated coverage early, due to a reduction in hours or involuntary termination of employment to be sure to capture everyone who should receive a notice of premium assistance rights under ARPA.

New Election Period for Certain AEI

FAQ #5 explains that a qualified beneficiary whose qualifying event was a reduction in hours or an involuntary termination of employment prior to April 1, 2021 and who either did not elect COBRA continuation coverage when it was first offered, or who elected COBRA coverage but is no longer enrolled – for example, because an individual dropped coverage because he or she could not afford COBRA premiums – may have a second chance to elect COBRA coverage. Employers must provide these AEI with a new election notice by May 31, 2021. AEI will have 60 days from the date the notice is provided to make a new election. DOL has provided a model notice for this purpose.

Additionally, FAQ #5 confirms that prior COVID-19-related guidance that tolled general COBRA notice and election deadlines during the Outbreak Period associated with the National Emergency declared due to the pandemic does not apply to ARPA notices or election periods. Thus, employers must take steps to furnish newly required election notices before May 31, 2021, and AEI must make an election within 60 days of the notice regardless of any extended deadlines under prior guidance.

FAQ #16 clarifies that each qualified beneficiary has independent COBRA election rights. Thus, if a family member did not elect COBRA when first eligible but would otherwise be an AEI, that family member has a new right to elect COBRA coverage even if other family members already have COBRA continuation coverage. In no event will any new ARPA election period extend the maximum COBRA continuation coverage period for any AEI.

Finally, the FAQs provide that a potential AEI can choose whether to elect continuation coverage beginning on or after April 1, 2021 (or prospectively from an eligible qualifying event that occurs after April 1, 2021) or beginning from an earlier qualifying event date (including extended dates

after April 1, 2021) or beginning from an earlier qualifying event date (including extended dates under prior COVID-19 extension guidance) if eligible to make such an election. However, any premium assistance under ARPA will apply only to periods of coverage beginning on or after April 1, 2021 and ending on September 30, 2021.

Model Notices

In addition to specific election notices to AEI, FAQ #10 states that new general and election notices that address ARPA premium assistance apply only to qualified beneficiaries whose qualifying event between April 1, 2021 and September 30, 2021 is a reduction in hours or involuntary termination of employment. Plan administrators can either amend existing COBRA qualifying event notices or include a separate clear and understandable written notice that:

- describes any forms necessary for establishing COBRA premium assistance eligibility;
- provides the name, address, and telephone information for the plan administrator or other individual maintaining relevant information regarding COBRA premium assistance;
- explains the extended election period available to Extended Qualified Beneficiaries;
- notifies qualified beneficiaries that they must tell the group health plan if they become eligible for other group health coverage or Medicare or be subject to a \$250 penalty (higher if intentional); and
- prominently describes the right to subsidized coverage as well as any conditions on receiving subsidized coverage.

DOL has provided [new model notices](#) that incorporate the elements ARPA requires. Moreover, DOL has produced [a model Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021 \(ARPA COBRA Summary\)](#) to include with its model general and election notices. The ARPA COBRA Summary includes an application for individuals to submit to employers to be treated as AEI as well as a model form for AEI to notify employers if they no longer qualify for COBRA premium assistance because they become eligible for other group coverage or Medicare.

Premium Assistance Expiration

Individuals will cease to be eligible for COBRA premium assistance for any month of coverage that begins on or after the earlier of the date they become eligible for either other group health coverage or Medicare. Some employers had questioned whether coverage on the Health Insurance Marketplace would disqualify someone from being an AEI, but FAQ #3 states that individuals with such individual coverage (or individual coverage through Medicaid) can be AEI. COBRA premium assistance also will cease the day after the maximum COBRA coverage period for any AEI whose maximum coverage period expires between April 1, 2021 and September 30, 2021.

ARPA requires plan administrators to provide clear and understandable written notice prior to premium assistance expiring except when it expires because an individual becomes eligible for

other group health coverage or Medicare. The premium assistance expiration notice must clearly state when COBRA premium assistance will expire. It must also explain that the individual still may be eligible for group health coverage without premium assistance under either COBRA or another group health plan.

Plan administrators must provide this notice during a period that begins 45 days before premium assistance will expire and ends 15 days before premium assistance expires. The DOL has provided a model premium assistance expiration notice.

Premium Assistance Tax Credits

As with prior health coverage provisions under the Families First Coronavirus Relief Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security Acts (CARES Act), the COBRA premium assistance under ARPA will be in the form of dollar-for-dollar credits against required employer quarterly employment taxes. The tax credits will equal the COBRA premiums not paid by individuals eligible for assistance under ARPA. Employers will not be able to claim a COBRA premium assistance tax credit for any amounts paid for which they also are claiming tax credits as qualified wages under the CARES Act or qualified health plan expenses under the FFCRA.

ARPA also requires employer plan sponsors to refund any COBRA premiums paid by individuals who are eligible for premium assistance for any periods of coverage for which they paid beginning on or after April 1, 2021 and ending September 30, 2021. Plan sponsors must refund these premiums no later than 60 days after the date on which an individual made the premium payment but can claim a tax credit to offset the refunded premiums. FAQ #7 states that employers should not collect COBRA premiums for any periods of coverage beginning on or after April 1, 2021 and before an employer has sent a new election notice that outlines ARPA premium assistance, but only if an individual has requested to be treated as an AEI. The FAQs give an example of using a newly created DOL model request to be treated as an AEI, but cautious employers might wish to consider not collecting premiums from individuals who contact the employer and ask for AEI treatment by some other means.

Presumably the Treasury Department will provide further guidance, including necessary forms and instructions for seeking advance credits, regarding the mechanics of receiving available tax credits.

Permissible Coverage Election Changes

The FAQs confirm that a plan sponsor has the option to allow qualified beneficiaries to switch their group health plan election to a different employer-sponsored plan provided that:

- the premium cost for that plan is not higher than for the plan in which the qualified beneficiary is enrolled;
- the plan sponsor offers the plan to similarly situated active employees; and

- the coverage is not just excepted benefits, a qualified small employer health reimbursement arrangement (QSEHRA) or a health flexible spending arrangement (HFSA).

The FAQs clarify that employers who opt to allow this opportunity to change plan coverage options must notify employees and permit them 90 days after providing notice to elect to change coverage. The DOL model COBRA notices contain optional language employers may include to satisfy this notice requirement if they choose to allow employees to make such changes.

Conclusion

We expect forthcoming IRS guidance to provide greater detail regarding the exact process employers will follow to claim available COBRA premium assistance tax credits. We will continue to monitor this issue and provide relevant updates as needed. You should ensure you are subscribed to [Fisher Phillips' Insights](#) to gather the most up-to-date information. If you have questions about any aspect of this new law and its impact on your workplace, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Benefits Practice Group](#).

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