

Blog Post

ARPA COBRA Premium Subsidy – Time for Employer Plans to Update COBRA Notices

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Employers should be busy preparing tailored COBRA continuation coverage notices for certain individuals, addressing complicated election and altered COBRA premium topics that took effect only in recent weeks. Below, we offer practical summaries and specific timing suggestions for the anxiously awaited model notices that have now been released. Notices will soon reach Americans who could receive up to six months of free COBRA coverage after having lost their active employee coverage within a certain time frame due to either an involuntary termination of employment or a reduction in hours.

As background, recall our [prior blog post](#), describing those new COBRA subsidy requirements as provided by the American Rescue Plan Act of 2021 (ARPA), the latest in a string of COVID-19-related governmental financial assistance. Model notices had been expressly contemplated under ARPA at the time of its passage. As promised, the U.S. Department of Labor (DOL) then issued model notices and additional guidance. It is that latest DOL guidance that is summarized below and found in full [here](#).

Although use of the model election notices is not mandatory, the DOL considers appropriate use of the

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model election notices to be good faith compliance with the election notice content requirements of COBRA under ARPA. In this blog post, we will discuss the notices in more detail and outline notable considerations for employers and plan administrators.

Model Notice in Connection with Extended Election Period – Due by May 31, 2021

This notice is to be used for individuals who had already lost active coverage prior to passage of ARPA. For most employers, this notice will be distributed in greater numbers than all the other notices described in this post and will be directed to the population that employers have recently identified as “assistance eligible individuals.” Specifically, the notice describes the subsidy that is available to these assistance eligible individuals who experience a qualifying event that is either a reduction in hours or an involuntary termination of employment (except where the termination on account of gross misconduct). Under ARPA, assistance eligible individuals who experienced their qualifying event before April 1, 2021, but either did not elect COBRA when it was first offered or elected COBRA but later dropped it, are eligible for an additional COBRA election period, as long as the individual’s applicable continuation period has not ended. **The notice of an extended election period must be provided to assistance eligible individuals by May 31, 2021.** The model notice states that individuals must elect COBRA and the subsidy within 60 days of receipt of the notice.

Model General Notice and COBRA Continuation Coverage Election Notice – As Soon As Practicable, Following a Qualifying Event (the standard 44-day deadline under COBRA will apply)

The DOL provided a revised general notice that describes the COBRA premium subsidy and includes an election notice for qualified beneficiaries. The notice is designed to be distributed to all qualified

beneficiaries who have qualifying events occurring from April 1, 2021 through September 30, 2021. Remember, this notice includes information related to the premium subsidy, and other rights and obligations under ARPA, as well as all of the information required in an election notice required pursuant to the DOL's final COBRA notice regulations.

Model Alternative Notice – As Soon As Practicable, Following a Qualifying Event

This notice is just for use with state “mini-COBRA” situations. Specifically, the ARPA COBRA subsidy must also be made available to assistance eligible individuals covered by insured plans that are subject to state continuation requirements. The DOL has issued a model notice specific to these insured plans.

Model Notice of Expiration of Premium Assistance – To Be Distributed between August 15-September 15, 2021, or Earlier upon an Early Expiration Date

Employers and plans must also provide a subsidy expiration notice within 45 to 15 days prior to the expiration of a subsidy. The expiration notice must be provided where premium subsidy assistance will end as a result of the expiration of the individual's (1) subsidy period or (2) COBRA continuation period. Plan sponsors and administrators should carefully track upcoming expiration periods for participants with continuation periods that will expire before the end of the ARPA subsidy term, while subsequently preparing for a “mass mailing” of expiration notices for participants with subsidies that will end effective September 30, 2021. We note that an expiration notice is not required where an individual's COBRA subsidy ends because they have become eligible for alternative health coverage.

Additional Points to Consider

- The DOL also released a “*Summary of the COBRA Premium Assistance Provisions under the*

American Rescue Plan Act of 2021.” The summary must be distributed with the Model General Notice and the Model Extended Election Period Notice.

- The extensions under the Joint Notice and EBSA Disaster Relief Notice 2021-01, which we discuss in a prior [blog](#) do not apply to the notices or the election periods related to COBRA premium assistance available under ARPA. In other words, the deadlines we list are “real” deadlines, not subject to further delays.
- The DOL FAQs emphasize that individuals may be eligible for premium assistance if they experience a qualifying event that is either an involuntary termination or “because of their own or a family member’s reduction in hours.” This means that a qualifying event could be either a voluntary reduction in hours or an involuntary reduction in hours. In contrast, a termination would have to be involuntary to be eligible.
- Assistance eligible individuals cannot be required to pay any COBRA administration fee that would otherwise be charged.
- The COBRA premium subsidy is available for continuation coverage under Federal COBRA (which generally applies to all group health plans maintained by private-sector employers with 20 or more employees, or by state or local governments), as well as for group health insurance coverage under comparable state continuation coverage (“mini-COBRA”) laws.

The IRS is expected to release additional guidance describing premium subsidy mechanics, including how to apply for reimbursement payroll tax credits and to how to receive advance credits. Stay vigilant for guidance as it becomes available. In the meantime, if you have questions about your obligations as an employer under COBRA, please contact your Akerman attorney.

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