

IMPORTANT COVID-19 UPDATE

AMERICAN RESCUE PLAN ACT UPDATE COBRA SUBSIDY MODEL NOTICES AND FAQs ISSUED

On April 7, 2021, the U.S. Department of Labor (DOL) issued [FAQs](#) and [model notices](#) for the COBRA premium assistance (subsidy) provisions of the [American Rescue Plan Act](#) (ARPA). The notices and the FAQs appear on a new DOL [COBRA Premium Subsidy webpage](#) dedicated to the ARPA COBRA subsidy. ARPA requires that full COBRA premiums be subsidized for “Assistance Eligible Individuals” for periods of coverage between April 1 and September 30, 2021. See our [update](#) for background on these rules.

Subsidy Creates New Notice Requirements

This new COBRA subsidy creates new notice requirements (different from the basic COBRA general notice rule). For example, new notices must now be provided to **all** individuals who will lose coverage due to any COBRA qualifying event between April 1 and September 30, 2021, and a separate notice must be provided to anyone who may be eligible for the subsidy due to involuntary termination or reduction in hours occurring before April 1, 2021 (i.e., generally involuntary terminations or reductions in hours occurring back to October 2019, where the 18 month period would begin November 1, 2019).

Model Notices

The new [model notices](#) released by the DOL are the following:

- **Model ARP General Notice and COBRA Continuation Coverage Election Notice:** [MS Word](#) | [PDF](#): for any qualified beneficiary who loses coverage due to a reduction in hours or involuntary termination of employment with COBRA beginning at some point between April 1 - September 30, 2021 (may be provided as a supplement to a standard COBRA election notice or its terms may be incorporated into a COBRA election notice)

- **Model Notice in Connection with Extended Election Period:** [MS Word](#) | [PDF](#): for all Assistance Eligible Individuals who are still in their 18-month COBRA window in April 2021
- **Model Alternative Notice:** [MS Word](#) | [PDF](#): for plans subject to state continuation coverage
- **Model Notice of Expiration of Premium Assistance:** [MS Word](#) | [PDF](#): to let Assistance Eligible Individuals know that their subsidy will expire and that the individual may be eligible for unsubsidized COBRA, Medicaid or the Health Insurance Marketplace
- **Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021:** [MS Word](#) | [PDF](#): includes the forms necessary for establishing eligibility for the subsidy

The guidance package confirms that employers have until May 31, 2021, to provide the extended elections notices and notify “Assistance Eligible Individuals” of the opportunity to elect subsidized coverage. Individuals will then have 60 days following the date that notice is provided to elect subsidized coverage. Individuals can begin subsidized coverage on the date of their election, or April 1, 2021, as long as the involuntary termination or reduction in hours supporting the election right occurred before April 1, 2021. The Model Notices are available, but are not mandated and can be modified as long as the final notices include the required detail. Plans are encouraged to use these new DOL model notices to meet their notice obligations under the COBRA subsidy provisions of the ARPA.

FAQs

The DOL guidance contains 21 [FAQs](#) largely directed at individuals and focused on subsidy eligibility and duration and how subsidized coverage fits with other types of health coverage that may be available (such as Marketplace, Medicaid, and individual coverage). The FAQs address that employees must certify on election forms that they are not eligible for other employer coverage or Medicare and will notify the employer if they subsequently become eligible for such coverage. Failure to do so will subject the individual to a tax penalty of \$250, or if the failure is fraudulent, the greater of \$250 or 110% of the premium subsidy. The availability of other coverage will not, however, impact the employer’s initial obligation to identify potential Assistance Eligible Individuals and provide the required notices and election forms. The FAQs also remind employers that the DOL will ensure ARPA benefits are received by eligible individuals and employers will face an excise tax for failing to comply for each day the employer is in violation of the COBRA rules.

More Guidance Needed

Since ARPA was enacted, employers have been struggling to understand the rules and their application to several open questions. So while the Notices and FAQs do answer important questions on the administration of the subsidies, they do not address many other open issues, such as what is an “involuntary termination”, how does an existing separation agreement with employer subsidized COBRA affect the federal subsidy, or details on how the corresponding payroll tax credit will work. Therefore, we are hopeful that employer directed guidance will be issued shortly to address these open issues.

COBRA Vendors Essential

In the meantime, employers and COBRA administrators now have the notice language to begin administering this new election right and they will want to be sure to timely provide notices to the right group of individuals. Employers should coordinate with their COBRA administrators to ensure compliance related to managing the election changes, notice requirements, and billing. Employers ultimately remain responsible for compliance, so vendors will depend on employers to report affected qualified beneficiaries and those who may be newly eligible for the special election and subsidy.

Conner Strong & Buckelew will continue to monitor further developments on these rules and we will provide ongoing alerts and updates as new information becomes available. Please contact your Conner Strong & Buckelew account representative toll-free at 1-877-861-3220 with any questions. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).

