

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### **EBSA issues COBRA subsidy model notices and FAQs**

EBSA has issued model notices for communicating the availability of COBRA premium assistance provided by the American Rescue Plan Act to those qualified beneficiaries who are eligible for the subsidy. It also issued FAQs intended to help individuals understand when and how they may be eligible for premium assistance. These FAQs also address some issues related to the notice requirements.

#### **Background**

The American Rescue Plan Act (ARPA) provides “premium assistance” (i.e., a subsidy) from the federal government to help certain “assistance eligible individuals” (AEIs) pay for periods of COBRA coverage (or state continuation coverage) that begin on and after the first day of the month following the date of enactment (March 11, 2021) and ending on September 30, 2021. Thus, for most group health plans, the subsidy will be available with respect to premiums for COBRA coverage beginning April 1, 2021. The subsidy is 100% of the amount that a qualified beneficiary would otherwise be required to pay for COBRA coverage and is available for medical, dental, and vision coverage and for health reimbursement accounts (but not health flexible spending accounts). The DOL’s Employee Benefits Security Administration (EBSA) has now released model notices and FAQs addressing the premium assistance.

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#### **Authors**

Leslye Laderman, JD, LL.M.  
Richard Stover, FSA,  
MAAA

#### **Who is an assistance eligible individual?**

An “assistance eligible individual” (AEI) is a qualified beneficiary who meets these three requirements:

- Lost group health coverage due to an *involuntary* termination of employment or a reduction in hours
- Was eligible for COBRA coverage during the period commencing April 1, 2021 and ending September 30, 2021
- Elects COBRA coverage

Qualified beneficiaries who initially waived or elected, but subsequently dropped, COBRA coverage may be AEIs if they would have satisfied the requirements had they maintained coverage.

## Model notices

EBSA released the following model notices:

1. Model ARPA General Notice and COBRA Continuation Coverage Election Notice

This model election notice may be used for all COBRA qualified beneficiaries who experience new qualifying events between April 1, 2021 and September 30, 2021.

2. Model COBRA Continuation Coverage Notice in Connection with Extended Election Periods

This model notice is provided to two groups of qualified beneficiaries:

- Qualified beneficiaries who are currently enrolled in COBRA due to a loss of coverage that is the result of either an involuntary termination of employment or a reduction in hours.
- Qualified beneficiaries who are not currently enrolled in COBRA but would be eligible for the premium assistance if they had elected COBRA or maintained COBRA coverage. This second group of qualified beneficiaries could include those who experienced qualifying events as far back as October 2019. These qualified beneficiaries have an extended election period to enroll in COBRA coverage that would be effective April 1, 2021 (or earlier if they are eligible to make an election under the COVID relief extension).

**How do these deadlines interact with the COVID relief extension?**

The timeframe extensions provided as part of COVID-19 relief (see our *FYI* from **May 7, 2020**) do not apply to the provision of this notice or the new COBRA election. A qualified beneficiary who does not make an election within 60 days may still be eligible for COBRA, but they will not be eligible for premium assistance.

This notice must be provided to qualified beneficiaries by May 31, 2021. Qualified beneficiaries then have 60 days from the date of the notice to make an election.

3. Model Alternative Notice of ARPA Continuation Coverage Election

This notice is provided in connection with insured coverage subject to state continuation requirements.

4. Model Notice of Expiration of Premium Assistance

This notice is provided to qualified beneficiaries receiving the COBRA premium subsidy at least 15, but no more than 45, days before the subsidy expires.

## 5. Summary of COBRA Premium Assistance Provisions under the ARPA

This notice, which is included when the other notices are provided, sets out a summary of the COBRA subsidy provisions and two model forms that can be used by a qualified beneficiary to:

- Request treatment as an AEI
- Notify the plan of eligibility for other coverage that would end eligibility for premium assistance

Plan sponsors should discuss these new notices with their COBRA administrator and identify the populations who should receive the notices.

## FAQs

The EBSA release also includes a set of FAQs that are generally directed to COBRA qualified beneficiaries rather than plan sponsors. However, there are two questions that discuss the notice obligation.

Question #10 describes the various notice obligations imposed by ARPA. Much of the information is reflected in the instructions for using the model notices.

Question #11 sets out the information that must be included in the notice if a group health plan chooses not to use the model COBRA election and extended election notices. This includes:

- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium assistance
- A description of the additional election period (if applicable to the individual)
- A description of the requirement that the AEI notify the plan when they become eligible for coverage under another group health plan or eligible for Medicare and the penalty for failing to do so
- A description of the right to receive the premium assistance and the conditions for entitlement
- If offered by the employer, a description of the choice to enroll in a different coverage option available under the plan

The notices must also include the forms necessary for establishing eligibility for the premium assistance.

## In closing

The EBSA releases provide useful information to help plan sponsors meet their notice obligations under ARPA; they should discuss the notice requirements with their COBRA administrators and identify the populations who should receive them.

Additional guidance is required to address many open questions for plan sponsors.

### **American Rescue Plan Act two-part webinar series**

Replays of both of our recent ARPA webinars are available. In the first, our team of experts explored the [impact of the Act on pension plan funding](#) and in the second, we addressed the [Act's compliance implications on employment, health, and welfare benefits](#).

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