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Department of Labor Issues Guidance, Model Notices for COBRA Premium Subsidies Under the American Rescue Plan Act

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On April 7, 2021, the U.S. Department of Labor (DOL) issued much needed [guidance](#) to employers and their COBRA administrators on the “COBRA premium subsidy” provision of the American Rescue Plan Act (ARPA). This provision requires employers to subsidize COBRA coverage for Assistance Eligible Individuals (AEIs) and their beneficiaries and to provide notice to AEIs who are losing their health care coverage and are eligible for COBRA premium assistance.

Review of Federal COBRA Subsidy

Under the ARPA, the federal government will pay 100% of COBRA insurance premiums from April 1, 2021 through September 30, 2021 for individuals who lose health coverage due to a qualifying event, such as a reduction in hours or involuntary termination of employment. In short, this subsidy applies to anyone who lost health insurance through a qualifying event within the past 18 months, even if it was unrelated to the COVID-19 pandemic.

The COBRA premium assistance provisions apply to all group health plans sponsored by private sector employers subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA).

Employers are responsible for paying health insurance carriers for the eligible individual’s continued coverage and will obtain a subsidy through a payroll tax credit against their quarterly taxes. If the credit exceeds the amount of payroll

taxes from the employer, the credit will be refundable when the employer submits their quarterly tax return.

Model Notice Requirements Provided by Department of Labor

ARPA requires employers to provide certain notice to AEIs informing them of the COBRA premium assistance offered to them under the Act **no later than May 31, 2021. Employers who fail to provide the requisite notice may be subject to an excise tax under the Internal Revenue Code.**

Fortunately, the DOL published model notices that employers and health carriers may use to adhere to the ARPA notice requirements. The DOL’s model notices and a summary of each document can be found below:

(1) [Summary of COBRA Premium Assistance Provisions Under ARPA](#)

Employers **must** provide this summary to all COBRA-qualified beneficiaries (not just to AEIs). This document outlines the eligibility requirements and includes the relevant forms employees must submit to obtain COBRA premium assistance.

(2) [Model ARPA General Notice and COBRA Continuation Coverage Election Notice](#) – (For use by group health plans for qualified beneficiaries who have qualifying events occurring from April 1, 2021 through September 30, 2021)

This model notice must be provided to all COBRA-qualified beneficiaries (not just to AEs) who experience any COBRA-qualifying event.

(3) [Model COBRA Continuation Coverage Notice in Connection with Extended Election Periods](#) (For use by group health plans for qualified beneficiaries currently enrolled in COBRA continuation coverage because their hours were reduced or they were involuntarily terminated [AEIs], as well as those who would currently be AEs if they had elected and/or maintained COBRA continuation coverage)

This model notice must be provided to all AEs who, as of April 1, 2021, were either (a) enrolled in COBRA continuation coverage due to a qualifying event, or (b) could have been enrolled in COBRA continuation coverage but were not, either because they did not elect such coverage or did elect such coverage but failed to maintain it. In essence, this model notice provides AEs with an additional opportunity to receive subsidized COBRA continuation coverage.

(4) [Model Alternative Notice of ARPA Continuation Coverage Election Notice](#) (For use by insured coverage subject to state continuation requirements between April 1, 2021 and September 30, 2021)

This model notice is for COBRA coverage subject to state health plan continuation requirements (such as in New York).

ARPA does not change any requirements under state continuation coverage programs. Rather, the Act allows AEs who elect continuation coverage under a state program to receive the ARPA premium subsidy from April 1, 2021 through September 30, 2021.

New York employers that are subject to state health plan continuation requirements — also known as “Mini-COBRA” programs — should use this document to elect ARPA subsidized Mini-COBRA coverage.

(5) [Model Notice of Expiration of Premium Assistance](#) (For use by group health plans to Assistance Eligible Individuals 15-45 days before their premium assistance expires)

This model notice must be used to notify AEs that their premium assistance is set to expire. Note that the exact date in which the premium subsidy expires must be provided.

AEIs who receive the above model notices and wish to have subsidized COBRA continuation coverage must elect such coverage within 60 days after receiving the notice.

An individual’s eligibility for the ARPA premium assistance ends if the individual becomes eligible for other group health coverage, such as through new employment, a relative’s plan or their enrollment in Medicare.

Main Takeaway for Employers

Employers are **strongly encouraged** to use these model notices to comply with ARPA’s notice requirements. Employers can use these model notices immediately and should work with their COBRA administrators to customize these notices in a timely manner.

Additional Information

Along with the above model notices, the DOL also published new guidance in the form of Frequently Asked Questions (FAQs) to assist employers in adhering to ARPA’s notice requirements. The DOL’s FAQs can be found [here](#).

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