



Regulatory Update

Department of Labor Releases COBRA Subsidy Website and Model Notices

Issue Date: April 2021

The Department of Labor (DOL) has released model notices and a COBRA subsidy information website related to the COBRA subsidy that was passed as part of the American Rescue Plan Act of 2021 (ARPA).

The website will be a central location that the DOL uses to inform individuals of their potential right to take advantage of the subsidy, and to assist employers with fulfilling their compliance obligations.

COBRA Subsidy Background

ARPA includes COBRA premium assistance that will cover 100% of COBRA premiums for certain Qualified Beneficiaries (QBs), referred to as Assistance Eligible Individuals (AEIs), who have federal or state continuation of coverage rights following an involuntary termination of employment or reduction in hours. An AEI will pay nothing for applicable COBRA coverage from April 1, 2021 through September 30, 2021. The employer will generally pay the full premium due to the carrier, or cover QBs at no cost on a self-insured plan. Employers will then recover the lost COBRA premiums through a payroll tax credit. There are also significant new notice requirements. Some previously eligible COBRA QBs not currently enrolled because they waived COBRA, or who elected COBRA and subsequently dropped it, will have a second chance to enroll in COBRA coverage to take advantage of the subsidy. An AEI is not eligible for the premium assistance if their applicable maximum coverage period expires, or when they become eligible for other group health plan coverage or Medicare.

Notice Requirements

ARPA requires employers to update existing COBRA election notices with new language describing the subsidy. There is also a new special notice that employers must send to any individuals who experienced a COBRA event due to an involuntary termination or reduction in hours and who are still within their maximum coverage period. This notice informs these individuals of their right for a second chance at electing COBRA coverage. The special notice must be sent to AEIs no later than May 31, 2021. Finally, a notice must be sent to anyone receiving the premium assistance informing them when the subsidy is about to end. This notice must be sent between 15 – 45 days prior to the expiration of the subsidy.



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DOL Model Notices and Website

The DOL has released model notices and a “Summary of COBRA Premium Assistance Provisions” document that employers can use to communicate with AEs. The DOL makes it clear that employers are not required to use these exact notices, but it is expected that most employers’ administrators will use language from the model notices, or a version of the model notices, as they attempt to communicate COBRA subsidy election opportunities and requirements to AEs.

Model Notice Observations:

- The notice instructions state that the employer should include the “Summary of COBRA Premium Assistance Provisions” document which is also provided on the DOL website. This document includes a form that AEs should use to request enrollment, and does a much better job of explaining who is eligible for the premium assistance than the language included in the model notices.
- The COBRA subsidy rules allow an employer to permit AEs to select a cheaper plan than what was originally available due to their original COBRA event. However, this is optional, and many employers may not allow this choice. The model notices contain a significant amount of information related to this optional plan choice. Employers not offering this option will need to remove all that language to avoid confusion.
- The instructions make it clear that the notice must include any form or document the employer requires that is necessary for the AE to elect continuation.

The DOL’s COBRA subsidy website can be found at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/COBRA/premium-subsidy>, and includes the model notices, an FAQ, and other general COBRA related information.

Summary

The FAQ material released today is participant focused, and very general in nature. It does not answer many of the questions employers have regarding the proper administration of the COBRA subsidy. It is expected that both the DOL and IRS will be releasing additional employer-focused guidance over the course of the next few weeks.

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