

THE BEACON

Exclusive Compliance Alerts from MZQ Consulting

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GUIDANCE ISSUED ON COBRA SUBSIDY PROGRAM

On Wednesday April 7, 2021, the Department of Labor issued a set of frequently asked questions on the COBRA subsidies created by the American Rescue Plan Act (ARPA) along with five model notices needed to help implement the subsidies.

The [FAQs](#) themselves largely reiterate information about the subsidy that was included in the statute. However, they do highlight certain points that are worth reiterating. Specifically, the FAQs emphasize that:

- A qualified beneficiary (i.e., person otherwise eligible for COBRA) may be eligible for the subsidy only if the applicable qualifying event is a reduction in hours or an involuntary termination of employment. Note that the FAQs do not include additional guidance for employers on how to define involuntary termination but do reiterate that COBRA is not available in the case of a termination for gross misconduct.
- Any reduction in hours can count for this purpose (whether or not that reduction was voluntary). Examples of reductions in hours that could trigger a termination of coverage include a change in a business's hours, moving from full-time to part-time and a temporary leave of absence that results in a loss of coverage.
- Eligibility for a major medical plan sponsored by another employer makes a qualified beneficiary ineligible for the subsidy. This is the case even if that coverage is available through a spouse's employer.
- The subsidy IS available for excepted benefits including stand-alone dental and vision plans.
- An individual may be eligible for the subsidy if they are currently covered through an government-exchange or Medicaid. However, if they elect the subsidy they will lose any applicable premium tax credit.
- Individuals are required to notify the plan sponsor if they are or become ineligible for the subsidy. Failure to do so will trigger a \$250 penalty (or 110% of the premium if the failure is fraudulent).
- The subsidy and opportunity to elect coverage is available even if the qualified beneficiary experienced a break in coverage (i.e., has not been on COBRA since their original eligibility date).
- After a subsidy election is made, coverage can begin prospectively or retroactively to April 1, 2021. Note that the election DOES NOT need to be retroactive to the date of the original loss of coverage. A break in coverage is permitted for this purpose.
- Individuals eligible for the subsidy will have 60 days from the date of their election notice to elect the subsidized coverage. The extended timeframes under the Outbreak Period rules DO NOT apply to the COBRA subsidy.



It is also worth noting that the DOL "reminds" plan sponsors and employees in these FAQs that the penalty for a plan sponsor failing to comply with COBRA notice requirements is \$100/qualified beneficiary per day (capped at \$200/family per day).

As noted above, five new model participant notices were also released. These notices are:

- (1) [Summary of the COBRA Premium Assistance Provisions](#). A 1-page summary of the subsidy along with a Request for Treatment as an Assistance Eligible Individual form. This summary and form are intended to be included with the election notices.
- (2) [Notice in Connection with Extended Election Period](#). This notice is designed to be sent to any qualified beneficiary who already received an election notice and now has a new opportunity to elect COBRA and take advantage of the subsidy. The Summary of the COBRA Premium Assistance Provisions and Request for Treatment as an Assistance Eligible Individual form is intended to be provided with this notice.
- (3) [ARP General Notice and Election Notice](#). This notice is intended to be provided to all qualified beneficiaries experiencing a qualifying event between April 1, 2021, and September 30, 2021. It incorporates both a description of the subsidy and the contents of a standard election notice. The Summary of the COBRA Premium Assistance Provisions and Request for Treatment as an Assistance Eligible Individual form is intended to be provided with this notice.
- (4) [Alternative Notice of ARP Continuation Coverage Election Notice](#). This notice is a model notice designed to be used with individuals that may qualify for the subsidy under a state continuation or "mini COBRA" law.
- (5) [Notice of Expiration of Premium Assistance](#). This is the notice that should be sent 15 to 45 days before the subsidy expires. The notice itself makes clear that it is intended to be sent 15 to 45 days before: (1) the end of the subsidy period (i.e., September 30, 2021) for individuals whose COBRA eligibility extends beyond that date; or, if sooner (2) before COBRA coverage expires (i.e. if an individual's COBRA eligibility ends during the subsidy period).

Plan sponsors are not legally required to use the DOL's model notices. However, this is a generally accepted best practice, particularly in light of recent class action litigation related to COBRA notices.

MZQ Consulting will continue to monitor for regulatory developments, and guidance related to the COBRA subsidy and bring more information to you if and when it becomes available.

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