

Model COBRA Notices, FAQs Help Employers with ARPA Requirements

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The U.S. Department of Labor (DOL) recently provided employers some support in meeting the new COBRA premium assistance provisions of the [American Rescue Plan Act](#) (ARPA). The ARPA provides a 100% premium subsidy that is available from April 1, 2021 through September 30, 2021, to assistance eligible individuals (AEIs) who are eligible for and elect COBRA coverage. The [FAQs](#) and [model COBRA notices](#) will help employers with the daunting task of notifying individuals who have or could have elected COBRA.

The model COBRA notices provide templates to help employers satisfy the ARPA's new notice requirements. The new FAQs clarify how the ARPA COBRA premium subsidy relief will work, including:

- Application of "Outbreak Period" Rules
- Application of State Mini-COBRA Laws
- Eligibility Clarifications
- Eligible Plans
- Extended Election Period, and
- Administrative Fees.

The ARPA subsidy period has already begun, and notice deadlines are fast approaching, so it's important that employers and plan sponsors work closely with their relevant administrators to determine AEIs.

More specifically, it's important to make sure that the AEI determination process is properly taking into account voluntary versus involuntary terminations of employment, as well as whether any state mini-COBRA laws may apply to the group health plans which may have longer continuation coverage periods than federal COBRA.

Once these AEIs have been identified, ensure that they receive the appropriate model notice required under the ARPA.

It should be noted that these model COBRA notices may still require some tailoring before distribution. For example, the general notice refers to an AEI's ability to switch to another coverage option, which may be confusing to AEIs whose employers do not allow that option.

It's also important to keep an accurate record of which AEIs are electing and utilizing the ARPA in order to accurately complete the quarterly payroll tax filings to obtain the full IRS refund for the COBRA subsidies that your organization has paid.

Further complicating this situation is confusion around the deadlines to provide these COBRA notices.

Back in April 2020, the DOL and IRS issued joint guidance providing deadline extensions. These extensions had the effect of "pausing" certain benefit plan compliance deadlines for plan participants during the president-declared "COVID-19 National Emergency Period," including employees' deadline for electing COBRA coverage (a deadline which is normally 60 days). However, the most recent guidance clarified that those Outbreak Period rules do not extend the 60-day window for elections of COBRA that are not elections solely for purposes of obtaining the ARPA COBRA subsidy.



Unfortunately, there are many other open questions that were not answered by the new FAQs. For example, the new FAQs never clarified what the definition of “involuntary” is under the ARPA statute for purposes of determining involuntary terminations of employment. There may be additional guidance on this, but at this time employers should make a good faith determination as to whether the termination is voluntary or not, and then document the reasons for that decision considering all of the facts and circumstances. Additionally, employers and plan sponsors should exercise caution before denying COBRA (or the ARPA

subsidy) on the basis of a determination of “gross misconduct,” since that is a very difficult-to-obtain standard and has only been found to apply in egregious cases of workplace misconduct.

Meeting these new COBRA notice requirements could be a lot of administrative legwork and recordkeeping, so work closely with your benefits and HR partners to ensure they are appropriately handled.

For full details, please see our April 8 Compliance Alert on the [Compliance Resource Page](#). ■

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