

CLIENT ALERT: Department of Labor Issues Guidance On COBRA Premium Subsidies

As noted in MBJ's Client Alerts on [March 23](#) and [March 31](#), the American Rescue Plan Act of 2021 ("ARPA") includes, among other provisions, a full COBRA subsidy for "Assistance Eligible Individuals" for the period April 1 through September 30, 2021. ARPA directs those responsible for COBRA administration to notify individuals of their eligibility for (and any expiration of) COBRA premium assistance, and also had directed the U.S. Department of Labor ("DOL") to issue model notices for administrators to use in fulfilling these obligations. On April 7, 2021, the [DOL issued the following model notices](#):

- Model notice for qualified beneficiaries who have or have had a qualifying event occur between April 1 and September 30, 2021. This notice can be provided separately, or at the same time as the COBRA election notice that follows a COBRA qualifying event.
- Model notice for qualified beneficiaries who either already enrolled in COBRA as of April 1, or who are not already enrolled in COBRA but who would have been eligible for the subsidy if they had elected/maintained COBRA. This notice must be provided to eligible individuals on or before May 31, 2021.
- Model alternative notice for insured coverage subject to state continuation requirements from April 1 through September 30, 2021.
- Summary of the ARPA's COBRA premium subsidy assistance provisions, for enclosure with the appropriate COBRA notice(s) above and which includes:
 - A form for qualified beneficiaries to use in requesting to be treated as an Assistance Eligible Individual, which asks the requesting individual to affirmatively state that they are not eligible for other coverage and that the qualifying event was an involuntary termination or a reduction in hours; and
 - A form for those receiving COBRA premium subsidy assistance to use in fulfilling their obligation to notify the plan upon becoming eligible for alternative coverage.
- Model notice of expiration of premium assistance. This notice must be provided 15-45 days before the individual's premium assistance will expire.

In addition to the model notices, the DOL also issued a ["FAQ" document](#) concerning the COBRA provisions of APRA. While a number of questions regarding the availability of the subsidy – such as the definition of a "voluntary" termination – await further guidance from the IRS, the FAQs (along with the above-referenced ARPA COBRA provisions summary) address the following:

- Assistance Eligible Individuals appear to be expected to affirmatively apply for the COBRA premium subsidy by filling out and returning enrollment forms that the plan/issuer encloses in the relevant notice of eligibility. As discussed above, these forms are appended to the DOL's [summary of ARPA's COBRA premium subsidy assistance provisions](#), which the plan/issuer should enclose and provide with the relevant eligibility notice.
- Unlike a termination from employment, a reduction of hours need not be involuntary for the

covered individual to be eligible for the subsidy. For instance, an individual who becomes eligible for COBRA due to a temporary leave of absence or part-time schedule may still be eligible for the COBRA subsidy, even if the individual voluntarily chose to take the leave of absence or reduce their schedule.

- Assistance Eligible Individuals must elect COBRA continuation coverage within 60 days of receipt of the relevant notice, or forfeit their right to receive the subsidy premium. This 60-day deadline, however, does not cut off an individual's right to elect COBRA generally (*i.e.*, without the subsidy) pursuant to any applicable COVID-19-related election period extensions.
- Individuals who fail to notify the plan in writing upon becoming eligible for other group coverage, including a new employer's plan, a spouse's existing plan, or Medicare, are subject to a \$250 penalty or, for fraudulent failure to notify, up to 110% of the premium assistance provided after termination of the eligibility.
- To the extent individuals continue paying their COBRA continuation costs after April 1 despite the availability of the subsidy, they should contact the plan administrator to "discuss a credit against future payments (or a refund in certain circumstances)."

Employers should take steps now to ensure that COBRA notices are updated accordingly and/or that the above-referenced notices are timely issued, and should consult with their MBJ attorney and their plan administrators with any questions regarding the subsidy's availability.

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