

American Rescue Plan Act: New Guidance on COBRA Premium Assistance

The American Rescue Plan Act ("ARPA") became law in March of this year. One of the many relief provisions included in ARPA is a temporary subsidy of COBRA continuation premiums for certain individuals, summarized in our prior [alert](#), found here. On April 7, the Department of Labor's Employee Benefits Security Administration (the "EBSA") released model notices and FAQs (the "FAQs") clarifying certain aspects of the changes ARPA made with respect to COBRA continuation. While interpretive questions remain, prompt action by employers and other providers of health plan benefits is necessary.

COBRA Premium Assistance Overview

ARPA generally provides premium assistance ("ARPA Premium Assistance") for the full amount of the monthly COBRA premium (including state continuation coverage premiums, if applicable) to assistance eligible individuals for the period from April 1, 2021 through September 30, 2021.¹ Notices are required to be given to eligible individuals informing them of their option to elect COBRA continuation coverage (if they are newly eligible for COBRA or if they are not currently covered under COBRA but their maximum federal COBRA period has not expired) as well as the availability of ARPA Premium Assistance. The issuance of model notices will help employers and others meet those notice requirements within required timeframes. The FAQs appear to be designed to answer questions individuals may have with respect to eligibility for ARPA Premium Assistance, but they also provide useful information for plan sponsors. This alert will highlight some of the clarifications included in the FAQs.

Election Periods and Notices

The FAQs reiterate that, as required by ARPA, eligible individuals who experienced a COBRA qualifying event of a reduction in hours or an involuntary termination of employment prior to April 1, 2021, but who did not elect COBRA continuation coverage when it was offered prior to April 1, 2021, or who had elected COBRA continuation coverage but are no longer enrolled, may have an additional opportunity to elect COBRA continuation coverage. This additional opportunity to elect coverage applies to every eligible individual independently, and would also apply to family members who did not elect COBRA continuation coverage when first eligible, even if other family members did so elect.

Eligible individuals who became entitled to elect COBRA continuation coverage before April 1, 2021 must be provided a notice regarding the extended COBRA election opportunity (or the ARPA Premium Assistance election, if the individual is already covered under COBRA) within 60 days of the first day of the month beginning after the enactment of ARPA (so, by May 31, 2021). Therefore, each eligible individual who had a COBRA qualifying event generally after October 1, 2019 (or earlier to the extent certain second qualifying events under COBRA, or state continuation coverage extensions, apply) will need to be provided with a notice regarding ARPA Premium Assistance and, if applicable, an extended COBRA election opportunity. The new guidance indicates that only individuals who are to be treated as eligible individuals must be provided these notices. Accordingly, it does not appear to be necessary to provide a notice

¹ It appears ARPA Premium Assistance will apply to COBRA continuation for all group health plans subject to COBRA or state continuation coverage rules (including excepted benefit plans, for Affordable Care Act purposes), with the exception of health flexible spending accounts.

to individuals who have qualified for COBRA continuation coverage but who are not eligible for the ARPA Premium Assistance (because their qualifying event was not a loss of coverage due to a reduction in hours or involuntary termination of employment).

Eligible individuals who became entitled to elect COBRA continuation coverage during the period from April 1, 2021 to September 30, 2021 must be provided information regarding ARPA Premium Assistance together with their COBRA election notice that they would receive under the normal timing and other rules under COBRA following a qualifying event.

The EBSA has developed model notices for eligible individuals.

- There is a Model General Notice and COBRA Continuation Coverage Election Notice (for use by group health plans for qualified beneficiaries who have qualifying events during the period between April 1, 2021 and September 30, 2021 [MS Word](#) | [PDF](#));
- a Model Notice in Connection with Extended Election Period (for use by group health plans for qualified beneficiaries currently enrolled in COBRA continuation coverage, due to a reduction in hours or involuntary termination, as well as those who would currently be eligible for COBRA Premium Assistance if they had elected or maintained COBRA continuation coverage [MS Word](#) | [PDF](#));
- a Model Alternative Notice (for use by insured coverage subject to state continuation coverage requirements during the period between April 1, 2021 and September 30, 2021 [MS Word](#) | [PDF](#)); and
- a Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021 ([MS Word](#) | [PDF](#)) which must be included with each of these three notices. The summary includes a form under which individuals can apply for ARPA Premium Assistance by attesting that they are an assistance eligible individual.
- There is also a Model Notice of Expiration of Premium Assistance ([MS Word](#) | [PDF](#)). Under ARPA, eligible individuals must be provided this notice between 15 and 45 days before the expiration of ARPA Premium Assistance.

The model notices require a minor amount of personalization by the plan sponsor prior to use. It is also notable that the Model Notice in Connection with Extended Election Period may be used for individuals who are eligible for COBRA Premium Assistance and are currently enrolled in COBRA continuation coverage but have not yet elected ARPA Premium Assistance; however, this model notice includes election forms for COBRA continuation coverage which may be confusing to individuals who are already enrolled in COBRA continuation coverage. It may be desirable to further edit this model notice to remove the COBRA continuation coverage election forms when they are not necessary. (Use of the model notices is not required, but it appears that, when combined with the Summary of COBRA Premium Assistance, they include all information required under ARPA and would facilitate compliance.)

Individuals will have 60 days from the date of the notice to make their elections; however, this extended notice period will not increase their available period of COBRA continuation beyond its original maximum COBRA period. It appears that the individuals may choose between starting their coverage prospectively from the date of their election, or as of April 1, 2021 (if their qualifying event occurred prior to April 1, 2021) even if the election is made after April 1, 2021. The FAQs also clarify that the extension of time for making certain benefits related elections, including the initial COBRA election period, provided under the Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants and Beneficiaries Affected by the COVID-19 Outbreak (discussed in our prior alert found [here](#), the "Outbreak Period Delay"), does not apply to the 60 day notice or election periods relating to ARPA Premium

Assistance.² Therefore, although an individual may (as result of the Outbreak Period Delay) potentially be able to elect COBRA continuation coverage outside of the 60 day ARPA Premium Assistance election period (*i.e.*, the normal non-ARPA COBRA election which could be effective retroactive to the first date of the COBRA continuation coverage period), unless a separate ARPA Premium Assistance election is timely made, such individual may be precluded from receiving ARPA Premium Assistance.

The FAQs also specify that ARPA does not change the election periods for state mandated medical coverage continuation programs (sometimes called "mini-COBRA programs") – which we understand to mean that an individual whose maximum federal COBRA period has already expired and did not elect (or did not continue) the continuation coverage under a state mini-COBRA program need not be provided a new election opportunity for coverage effective as of April 1, 2021 under ARPA. ARPA Premium Assistance does, however, apply to otherwise eligible premiums required under State insurance law mandated medical coverage continuation programs to the extent an eligible individual is covered under a state mini-COBRA program during the period from April 1, 2021 to September 30, 2021.

Qualifying Events

An assistance eligible individual is a COBRA qualified beneficiary who is eligible for COBRA continuation by reason of a qualifying event that is a reduction in hours or an involuntary termination of employment (other than due to the individual's gross misconduct) and who elects such COBRA coverage. It is important to note that to be eligible for ARPA Premium Assistance, the qualifying event of a reduction of hours may be *voluntary*; however, the qualifying event of a termination of employment must be *involuntary*.³

Availability of Other Coverage

ARPA Premium Assistance will not be available to beneficiaries who are eligible for Medicare or for other group health coverage (other than coverage only providing excepted benefits, qualified small employer health reimbursement arrangements ("QSEHRA"), or health flexible spending arrangements ("Health FSAs"))⁴. Note that eligibility for such alternate coverage (such as a new employer's plan or a spouse's plan) or Medicare will disqualify a beneficiary from eligibility for ARPA Premium Assistance, regardless of whether such beneficiary actually enrolls in the available coverage. Individuals who are ineligible for ARPA premium assistance with respect to COBRA coverage may still be eligible for COBRA coverage itself, but they will be required to pay the associated premiums for that coverage.

Payments of Premiums

Plans and insurers should treat individuals who are eligible for ARPA Premium Assistance as having paid all applicable COBRA continuation premiums (including any administrative fees) from April 1, 2021 to September 30, 2021, and refrain from collecting any premiums from the individuals with respect to this period. The FAQs indicate that in the event an individual was eligible for ARPA Premium Assistance and paid for periods of COBRA continuation coverage during the period of eligibility (April 1, 2021 through September 30, 2021) the plan sponsor should offer a credit against future payments or, in certain unspecified circumstances (presumably when no additional premiums are due) a refund. The FAQs include a model form for use by individuals who have not received a notice of eligibility to request

² The FAQs specifically clarify that the ARPA Premium Assistance election period limitations do not cut off an individual's preexisting right to elect COBRA continuation coverage, including under the Outbreak Period Delay. However, the deadline to elect ARPA Premium Assistance is limited to the 60 day timeframe provided under the statute and is not impacted by the Outbreak Period Delay.

³ The FAQs do not provide guidelines for determining what constitutes an "involuntary termination," so this remains an area in which additional guidance would be helpful.

⁴ An individual receiving ARPA premium assistance with respect to COBRA Coverage who becomes eligible for group health care coverage (with the exception of the excluded forms of coverage) or Medicare is required to notify the plan in writing of such eligibility.

treatment as an ARPA Premium Assistance eligible individual. The EBSA also provides participants with contact information to use when seeking additional information from the DOL with respect to ARPA Premium Assistance.

The FAQs indicate that group health plans are permitted, but not required, to choose to allow qualified beneficiaries to enroll in coverage that is different from the coverage they had at the time of the COBRA qualifying event, and that such change will not disqualify an otherwise eligible individual from ARPA Premium Assistance, provided that (1) the COBRA premium charged for the alternate coverage is the same or lower than the original coverage, (2) the alternate coverage is offered to similarly situated active employees, and (3) the alternate coverage is not a QSEHRA, a Health FSA, or limited to only excepted benefits.⁵

Additional Guidance Needed

Although the FAQs and model notices provide some much-needed clarity with respect to ARPA Premium Assistance, questions remain. Upon review of the model notices, it appears that an individual's eligibility for ARPA Premium Assistance can be attested by the individual. However, more formalized guidance on this topic would be useful (including whether and under what circumstances an employer may rely on the individual's attestation). In addition, specific guidance on the steps for employers (or the person "to whom premiums are payable") to claim a tax-credit for subsidizing COBRA continuation coverage premiums has not yet been issued. As noted above, guidance as to what constitutes an "involuntary" termination would be helpful. We are hopeful that additional guidance will be issued, and that some of these open issues will be addressed.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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⁵ If a plan offers the opportunity to an eligible individual to change to a different lower cost coverage, the individual can make the election within 90 days following receipt of the notice from the plan.