

DOL Issues Guidance on COBRA Premium Assistance

By CAPLAW Staff
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On April 7, 2021, the Department of Labor (DOL) issued guidance in the form of a [Frequently Asked Questions resource](#) providing information regarding COBRA premium assistance established under the [American Rescue Plan Act of 2021](#) (ARP). Though the FAQ is directed towards employees, it addresses a number of COBRA premium assistance topics under the ARP that employers, including CAAs, may find useful, including individual eligibility requirements, the administration of premium assistance, employer reimbursement, new notice requirements for health plans and issuers, and other topics relevant to beneficiaries and employers alike.

CAAs are advised to work with their health plan or COBRA administrator and local counsel to determine their COBRA premium assistance options for covered employees between April 1 and September 30, 2021.

Eligibility for COBRA and COBRA Premium Assistance

COBRA allows covered employees and certain family members to elect to temporarily remain on the employer's group health insurance plan after a reduction of hours or involuntary termination (a qualifying event) that results in a loss of group health insurance coverage. Though covered employees typically must pay the full cost of their health insurance premiums (i.e., both the employer's and employee's share) to receive COBRA coverage, the ARP establishes a program of COBRA premium subsidies to pay the full cost of COBRA premiums for certain employees, from April 1, 2021, through September 30, 2021.

To be eligible for the COBRA premium subsidies, an individual employee must meet the following requirements during the period between April 1, 2021, and September 30, 2021:

1. The individual is eligible for COBRA coverage due to a loss of group health coverage because of one of the following qualifying events: (a) a voluntary or involuntary reduction in hours; or (b) an involuntary termination of employment; and
2. The individual elects COBRA coverage.

Examples of qualifying events include reduced hours due to change in a business's hours of operations, a change from full-time to part-time status, taking of a temporary leave of absence, and an individual's participation in a lawful labor strike, as long as the individual remains an employee at the time that hours are reduced.

Certain employees whose qualifying event occurred prior to April 1, 2021 may also be eligible for the COBRA premium subsidies. For example, if an employee did not elect COBRA coverage at the time of the qualifying event, the employee may have an additional opportunity to do so for the period between April 1 and September 30, 2021. However, this additional election opportunity does not extend the maximum COBRA continuation coverage period for that individual, which is typically 18 months.

Further, an individual may qualify for the premium subsidies even if they purchase individual health insurance coverage through the Health Insurance Marketplace after losing group health insurance coverage. However, an individual will *not* qualify for premium subsidies if they are eligible for other group health coverage (e.g., a spouse's group health plan, a new employer's plan, or Medicare). Employees will not qualify for COBRA coverage if their termination results from the employee's gross misconduct.

Employer Obligations to Notify Covered Employees and Pay Continuation Coverage Costs

For covered employees who have a qualifying event after April 1, 2021, employers are required to notify group health plans of an employee's qualifying event within 30 days after the event has occurred. Group health plans and issuers are then required to provide a notice regarding the new COBRA premium subsidies to all covered employees whose qualifying event occurs between April 1, 2021 and September 30, 2021. This notice may be provided with regularly required COBRA election notice, and must include forms necessary for enrollment, including forms indicating the covered employee is eligible for the COBRA premium assistance and is not eligible for another group health plan.

For covered employees who had a qualifying event before April 1, 2021, plans and issuers are required to give notice of the extended COBRA election period no later than May 31, 2021. These employees then have 60 days to elect COBRA, and can begin their coverage prospectively from the date of their election, or choose to start their COBRA coverage as of April 1, 2021. The COBRA premium subsidies are available only for the period of April 1, 2021 through September 30, 2021.

The COBRA premium subsidies are not paid to covered employees. Once eligibility has been established, the employer must pay the full amount of the employee's continuation coverage costs. The employer will then seek reimbursement for the COBRA premiums via a payroll tax credit. In separate guidance, the IRS has clarified that the tax credit may be claimed by deducting the amount of the credit for which the employer is eligible from the amount due on its Form 941 quarterly tax return. If the credit exceeds the amount of payroll taxes due, the credit is refundable when the employers submits its Form 941, or the employer can seek an advance of the credit.

State Mini-COBRA Laws

COBRA generally applies to employers with 20 or more employees. However, many states have a state continuation of coverage program for employees who are not covered by COBRA, often referred to as "mini-COBRA". While each state's mini-COBRA system is different, most function similarly to COBRA. The COBRA premium assistance under the ARP also applies to group health insurance required under mini-COBRA. CAAs should consult with a local employee benefits attorney with respect to any obligations they may have under state mini-COBRA programs.

Considerations for Head Start Employees

CAAs with Head Start programs are in a unique position with respect to the new COBRA premium subsidies, given that many Head Start teachers and employees are employed on a school-year basis. Some Head Start programs formally terminate their employees in the summer (or reduce hours to the point where health insurance is lost) and ask those employees to elect COBRA continuation coverage, while others continue to provide group health coverage, in accordance with [2 CFR § 200.431, Compensation - Fringe Benefits](#). The Office of Head Start has recognized that charging the cost of group health insurance to Head Start grants for year-round coverage is a necessary and reasonable cost under the Uniform Guidance.

Head Start programs that take the COBRA approach should continue to provide COBRA election notices to covered employees. This year, the notices should also include information about the COBRA premium assistance, which is included in [new model notices](#) available on DOL's website. If an employee notifies the CAA that they would like to elect COBRA continuation coverage, the agency will need to pay the employee's insurance premiums directly to the insurer and seek reimbursement via the payroll tax credit discussed above.

CAAs may charge COBRA continuation coverage costs to their Head Start grants in accordance with the Uniform Guidance, and agencies should seek reimbursement through the payroll tax credit described above. The funds received from the tax credit will need to be applied to the federal grant charged in accordance with [2 CFR § 200.406, Applicable Credits](#).

Note that for Head Start employers that offer year-round coverage, if a Head Start employees' summer reduction in hours does not result in a loss of group health coverage, the reduction does not constitute a qualifying event for COBRA purposes.

For more generalized information regarding COBRA coverage from the employer's perspective, please refer to this [DOL Employer's Guide](#) to Group Health Continuation Coverage under COBRA, as well as this COBRA [FAQ also published by the DOL](#).

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