

American Rescue Plan Act of 2021: Next Steps and Operational Updates

Last week the Department of Labor issued COBRA subsidy guidance, including FAQs and various Model Notices, as well as forms for individuals to elect and certify their eligibility for subsidized COBRA coverage. While there were some noticeable questions that were not answered as part of the guidance, we did get some clarification on important aspects and next steps for the administration of the COBRA subsidies available under the American Rescue Plan Act (ARPA).

isolved Benefit Services has been working diligently in reviewing the guidance, as well as the DOL Model Notices and consulting with our compliance experts and programmers to include the information within the notices as well as program for the electronic ability for individuals to elect subsidy coverage and attest to subsidy eligibility. ARPA requires the notices be sent by May 31, 2021, and as such, we are still well within the timeframe to remain compliant, and clients can rest assured that we continue to work diligently to update our system and processes to ensure compliance.

Some Key Takeaways

Individual Attestation: Individuals who are identified by employers as potential Assistance Eligible Individuals (AEIs) will have to apply for subsidized coverage under ARPA and attest that they are not eligible for other group health coverage or Medicare to receive subsidized coverage. The DOL provided a "Request for Treatment as an Assistance Eligible Individual," form as a mechanism for individuals to do so that is required to accompany the election notices during the ARPA subsidy period. Individuals will have 60 days to complete and return or may be unable to receive the premium assistance. This form will be included in our ARPA notice, as well as collected by isolved Benefit Services to confirm subsidy treatment.

Eligibility Due to Reduction in Hours: The guidance clarified that individuals whose hours are reduced resulting in loss of coverage, but who was still employed, at the time hours were reduced is also a potential Assistance Eligible Individual, regardless of whether such reduction in hours was voluntary or involuntary. The guidance, did however, outline examples of reductions in hours that may qualify for subsidized coverage including, "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, or an individual's participation in a lawful labor strike, as long as the individual remains an employee at the time that hours are reduced."

***Note:** isolved Benefit Services updated the definition of Assistance Eligible Individuals within the AEI Identification Page in the COBRA platform to align with the clarification that COBRA eligibility due to reduction in hours need not be voluntary for an individual to qualify as an Assistance Eligible Individual.

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Definition of Involuntary Termination: The FAQs notably do not include examples of involuntary termination that may not be clear, such as when the employer and employee have a mutual agreement to end the employment relationship.

Interaction with Extended Deadline Relief/Outbreak Period Extensions: The FAQs clarify that the COVID-19 deadline extensions, which provide up to a one-year tolling period on deadline to elect COBRA, does not apply to the 60-day election window under the ARPA. In other words, subsidy-eligible individuals who fail to elect COBRA within 60 days of the date they receive the notice will not be eligible for a subsidy. (They may still qualify for COBRA under the DOL's Outbreak Period rules, but it will be at their own cost.)

State Mini-COBRA Coverage: The FAQs confirm that the subsidy also applies to any continuation coverage required under state mini-COBRA laws but also notes that ARPA does not change time periods to elect such coverage, nor create the special election period applicable to individuals who are potential Assistance Eligible Individuals who did not initially elect state level "mini-COBRA" coverage.

Further Guidance Coming for Employers to Claim Tax Credit or Refund: Employers will be able to claim the reimbursement for funding ARPA subsidies as a payroll tax credit through Form 941. This credit may also be advanced through Form 7200 (like advanced credits for wages for paid leave and employee retention), however, the DOL guidance issued did not address this process and we must wait for IRS guidance on this issue.

Next Steps:

As we continue to use the DOL and further agency guidance to accurately apply the new law into our COBRA notices and processes, we encourage you to visit our AEI Identification page at www.isolvedbenefitservices.com/login to identify and save potential AEIs. Once the new notice language as well as election and attestation requirements have been programmed and are ready for release, clients will need to preview and submit the list of potential AEIs within the AEI Identification page of the COBRA platform. isolved Benefit Services will use your identifications to generate and send the subsidy notice that is required to go out to all potential AEIs who are within their COBRA maximum coverage eligibility period (generally 18 months). Potential AEIs who elect will have 60 days from the date on the notice to apply for subsidized coverage under ARPA and attest that they are not eligible for other group health coverage or Medicare to receive subsidized coverage. Isolved Benefit Services will collect and store these attestations and process ARPA elections by reporting to our client and/or carriers based on the method of participant election chosen in the COBRA service agreement.

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