

Just the FAQs: DOL Issues FAQ Guidance on COBRA Subsidy

By: John Kirk on April 7, 2021 on graydon.law

As discussed in our previous [post](#), Congress recently passed a 100% subsidy for certain individuals who enroll in COBRA continuation coverage. Today, the DOL issued [FAQs](#) to answer several of the questions raised by the new subsidy.

As a reminder, the subsidy provides that assistance eligible individuals are not required to pay their COBRA continuation coverage premiums for up to a 6-month period. The subsidy pays 100% of premiums, including the 2% administrative charge, for periods of health coverage on or after April 1, 2021 through September 30, 2021. Instead of the employee paying for the coverage, an employer or plan to whom COBRA premiums are payable is entitled to a tax credit for the amount of the premium assistance.

One of the most important questions answered by the new FAQs helped address how the subsidy interacts with the previous guidance providing extensions to elect COBRA or pay for COBRA coverage. In the FAQs, the DOL stated that that an individual has the choice of electing COBRA continuation coverage beginning April 1, 2021 or after (or beginning prospectively from the date of a qualifying event if the qualifying event is after April 1, 2021), OR electing COBRA continuation coverage starting from an earlier qualifying event if the individual is eligible to make that election, including under the extended time frames provided under the Joint Notice and EBSA Notice 2021-01.

The FAQs further clarified that the subsidy election period does not cut off an individual's pre-existing right to elect COBRA continuation coverage, including under the extended time frames provided under the Joint Notice and EBSA Notice 2021-01. However, even with any extended time frames, the premium assistance is only available for periods from April 1, 2021 through September 30, 2021.

In general, individuals have 60 days after the date that they initially receive their COBRA election notice to elect COBRA continuation coverage. Due to the COVID-19 National Emergency, that timeframe was extended. However, those previous extensions do not apply to the notices or elections related to the subsidy. Individuals must elect COBRA continuation coverage within 60 days of receipt of the relevant notice or forfeit their right to elect COBRA continuation coverage and the subsidy.

The FAQs also clarified that an individual is not eligible for the subsidy if they are eligible for other group health coverage. Other coverage includes eligibility for coverage through a new employer's plan, a spouse's plan, or Medicare. Individuals that have coverage through the Marketplace or Medicaid may be eligible for the subsidy. However, if such an individual enrolls in COBRA continuation coverage to obtain the subsidy they will no longer be eligible for a premium tax credit, advance payments of the premium tax credit, or the health insurance tax credit for health coverage during that period that may have been available through the Marketplace or Medicaid.

As the guidance mentions several times, the subsidy is only for coverage periods from April 1, 2021 through September 30, 2021. Individuals may not receive refunds for any premiums paid for periods prior April. If an individual has already paid their April premium in full, the party to whom the payment was made must issue a credit or refund to the individual.

In addition to the above guidance, the DOL also issued guidance on the required notices and provided model notices for use by employers. For more on those notices, check out our other [post](#).

The COBRA subsidy is complicated. If you have questions or would like help revising your forms, please contact a Graydon Benefits attorney.