A Health Reimbursement Arrangement (HRA) is a self-insured group health plan sponsored and maintained by the employer and subject to COBRA. However, because HRAs offer “minimum essential coverage” according to the Affordable Care Act (ACA), participants enrolled in an HRA are ineligible to enroll in subsidized coverage through the Health Insurance Marketplace (aka Exchange).

Regulators realized that even though HRA participants don’t actually “enroll” in an HRA, in order to be eligible for subsidized coverage through the Marketplace, they would have to create the means for eligible HRA participants to decline HRA coverage. By doing so, the election choices available to Qualified Beneficiaries (QBs) under COBRA must change, as well.

The HRA Opt-out and the Marketplace
IRS Notice 2013-54 provides HRA participants with an annual or permanent opt-out provision. Eligible participants can choose to decline HRA coverage, whether the employer is funding a traditional HRA or offering a Post-Employment Benefit (PEB) spend-down account.

• Participants can opt-out of an HRA integrated with the group health plan at the start of the HRA plan year for the entire plan year. The choice to opt-out of the HRA is available each year the HRA is offered. In order to enroll in subsidized Marketplace coverage, the participant must also opt-out of the group health plan.

• Participants opt-out of a PEB HRA once, when the PEB HRA is first offered or at any time the PEB HRA is active, since the PEB HRA has no plan year. There is no option to opt back in. The “minimum essential coverage” provided by the HRA no longer applies, so those opting-out of the PEB HRA are now eligible to purchase subsidized coverage through the Marketplace.

HRA opt-out for QBs and participants
Affordable Care Act gives COBRA QBs and HRA participants new options.
The HRA Opt-out and COBRA

If an employer provided an HRA integrated with the group health plan, to continue coverage under COBRA, QBs had to take the HRA with the group health plan. The choices were to take and pay for both or decline both plans.

It is the consensus of benefit practitioners that when QBs are electing COBRA, a QB can opt-out of electing the HRA and elect the group health plan by itself, since this is the choice offered to eligible employees.

In the case where an employer offers an HRA integrated with the group health plan for active employees and a PEB HRA for retirees, for example, if the QB opts-out of the integrated HRA, the QB can be offered the PEB HRA. Since most PEB HRAs allow for reimbursement of all section 213 expenses, including premiums, the QB could then use the PEB HRA to pay for their COBRA premiums or other individual coverage.