

DOL Publishes Model COBRA Notices and Premium Assistance Guidance



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On April 7, 2021, the U.S. Department of Labor (DOL) posted model COBRA notices and issued FAQ guidance addressing the recently-enacted COBRA coverage subsidy.

The [FAQ guidance](#) specifies that individuals may be eligible for premium subsidies from April 1, 2021 to September 30, 2021, if they are eligible for and elect COBRA continuation coverage because of their own or a family member's reduction in hours or an involuntary termination from employment (other than by reason of the employee's gross misconduct). Similarly, individuals may be eligible for an additional election opportunity if their COBRA qualifying event occurred prior to April 1, 2021, but they are not currently enrolled in COBRA (either because the employee declined continuation coverage or dropped coverage prior to April 1).

The Internal Revenue Service and the U.S. Department of the Treasury have indicated that they are working on further guidance, which will likely address specific questions related to the application of the Medicare tax credit.

The Model Notices can be found here:

- [Model General Notice and COBRA Continuation Coverage Election Notice](#)
- [Model Notice in Connection with Extended Election Period](#)
- [Model Alternative Notice](#)
- [Model Notice of Expiration of Premium Assistance](#)

Additional Background Regarding the COBRA Program

The American Rescue Plan Act of 2021 (ARPA) became effective on **March 11, 2021** and implemented a COBRA relief program (the "COBRA Program") that contains mandatory changes for health plans that are subject to COBRA, Public Sector COBRA, or state continuation coverage programs (for simplicity, we will refer to these collectively as "COBRA"). These FAQs are intended to provide guidance to employers and plan administrators regarding implementation of these changes.

What is the COBRA Program?

The COBRA Program includes three features: (1) a premium subsidy; (2) an extended COBRA election opportunity; and (3) an alternative plan enrollment option. The first two features are mandatory; the third is optional.

The COBRA Program also contains mandatory notice requirements. Plan administrators are required to provide covered individuals notice of eligibility for the COBRA Program, as well as notice prior to the

termination of premium subsidies (either due to a loss of eligibility or expiration of the COBRA Program's coverage period).

Which individuals are covered under the COBRA Program?

The COBRA Program applies to covered individuals who: (1) become eligible for COBRA from April 1, 2021 through September 30, 2021; (2) are receiving COBRA coverage on April 1, 2021; or (3) would have been receiving COBRA coverage on April 1, 2021, but either did not elect or discontinued such coverage.

Which plans are covered by the COBRA Program?

The COBRA premium assistance provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by State or local governments subject to the continuation provisions under the Public Health Service Act. The premium assistance is also available for group health insurance continuation coverage required under state mini-COBRA laws.

What is required under the "premium subsidy" feature?

The COBRA Program provides a 100% continuation coverage premium subsidy to all "assistance eligible individuals" for a period of coverage beginning on April 1, 2021 and ending on September 30, 2021. The ARPA defines "assistance eligible individual" as, "any individual that is a qualified beneficiary who is eligible for . . . continuation coverage by reason of a qualifying event . . . and elects such coverage."

Which individuals are eligible for the premium subsidy?

The premium subsidy is available to all "Assistance Eligible Individuals." An Assistance Eligible Individual is a COBRA qualified beneficiary who meets the following requirements during the period from April 1, 2021 through September 30, 2021:

- Is eligible for COBRA continuation coverage by reason of a qualifying event that is a reduction in hours (such as 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) or an involuntary termination of employment (not including a voluntary termination); and
- Elects COBRA continuation coverage.

For purposes of the COBRA Program, a "qualified beneficiary" includes the employee and the employee's spouse and dependent child(ren), to the extent such persons were beneficiaries under the group health plan on the day before the qualifying event.

If the employee's termination of employment was for gross misconduct, the employee and any dependents would not qualify for COBRA continuation coverage or the premium assistance.

How long does the premium assistance last?

Premium assistance can last from April 1, 2021 through September 30, 2021. Coverage will end earlier if: (1) the employee becomes eligible for another group health plan or (2) the employee reaches the end of their maximum COBRA continuation period.

If an individual receiving a subsidy becomes eligible for other coverage as described in (1), the individual must notify the group health plan of such eligibility. Failure to provide notice can result in a penalty of \$250.00 or 110% of the premium assistance provided after the individual's eligibility for same terminated.

How is the premium subsidy funded?

The subsidy is not paid to eligible individuals; rather, the "person to whom premiums are payable" (generally the employer) pays the premium and is reimbursed through Medicare tax credits equal to the

entire premium paid, including the 2% administrative fee. If an employer's premium costs under the COBRA Program exceed its Medicare tax liability, the employer will receive a refund payment for the amount of such excess. It is unclear how subsidies will flow when Medicare tax credits are not applicable (e.g., premiums payable directly to insurer), but we expect that the forthcoming IRS guidance could address this issue.

What are the requirements of the extended election opportunity?

The COBRA Program also provides an extended election opportunity for individuals who would qualify as "assistance eligible individuals" on April 1, 2021, but either: (1) declined COBRA coverage at the time of their qualifying event; or (2) initially elected COBRA coverage but discontinued such coverage prior to April 1, 2021. Assistance eligible individuals are those who experienced a reduction in hours or involuntary termination (other than by reason of the employee's gross misconduct).

What are the deadlines for the extended election opportunity?

The plan administrator must provide these individuals notice of the opportunity to elect or re-elect continuation coverage to take advantage of the subsidy by **May 31, 2021**. The individual has until **July 30, 2021** to exercise the option. Importantly, election or re-election of continuation coverage will not extend the period of COBRA coverage beyond the maximum required if such coverage had been elected initially or not discontinued.

Does the COVID-19 extended deadline relief contained in [EBSA Disaster Relief Notice 2021-01](#) apply to this election deadline?

No. The extended deadline relief provided in Notice 2021-01 does not apply to the 60-day notice or election periods related to COBRA premium assistance under the ARPA.

Can individuals who exercise the extended election opportunity start their coverage on April 1, 2021?

Yes. Individuals can begin their coverage prospectively from the date of their election, or, if an individual has a qualifying event on or before April 1st, choose to start their coverage as of April 1st, even if the individual receives an election notice and makes such election at a later date. In either case, note that the premium assistance is only available for periods of coverage from April 1, 2021 through September 30, 2021.

If an employer or plan administrator chooses to allow alternative plan enrollment, what are the requirements?

The "plan enrollment option" can be implemented at the employer's discretion. This option permits assistance eligible individuals to enroll in another group health plan offered by the employer within 90 days of receiving notice of the opportunity to do so. The alternative coverage chosen: (1) must have a premium that does not exceed the premium for the coverage the individual was enrolled in at the time of the qualifying event; (2) must be offered to similarly situated active employees of the employer at the time the election is made; and (3) cannot provide excepted benefits only or be an FSA or a qualified small employer HRA.

Are there additional notice requirements for the COBRA Program?

Yes. Plans and issuers are required to notify qualified beneficiaries regarding premium assistance and other COBRA Program information as follows:

- A general notice of eligibility to all qualified beneficiaries who have a qualifying event that is a reduction in hours or an involuntary termination of employment from April 1, 2021 through September 30, 2021. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event.
- A notice of eligibility for the extended COBRA election period to any Assistance Eligible Individual who had a qualifying event before April 1, 2021.

- For individuals who are eligible for premium assistance, a notice of expiration of periods of premium assistance.

Failure to provide the required notices will be deemed a failure to satisfy COBRA notice requirements. Employers or multiemployer plans could be subject to an excise tax under the Internal Revenue Code for failing to satisfy the COBRA continuation coverage requirements. This tax could be as much as \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the taxpayer is in violation of the COBRA rules

What is required for the notices of eligibility and can I add to my existing forms?

For individuals who become eligible for continuation coverage between April 1, 2021 and September 30, 2021, the standard COBRA notice requirements will not be met unless the notice includes notification of the COBRA Program subsidy available for such coverage and the individual's option to enroll in different coverage (if the employer permits). The same notice must also be provided to all individuals eligible for the extended election opportunity no later than May 31, 2021.

The notice must include: (1) the forms necessary for establishing subsidy eligibility; (2) contact information for the plan administrator or other person handling implementation of the COBRA Program; (3) a description of the extended election period; (4) a description of the individual's right to the subsidy and any conditions on entitlement to same; (5) the obligation to provide notice of other available coverage and the penalty for failing to do same; and (6) a description of the option to enroll in alternative coverage(s), if offered by the employer.

The COBRA Program notice can be added to existing notice forms or provided as a standalone document.

How do I ensure compliance with the notice of eligibility requirement for individuals eligible for the extended election opportunity?

From an administrative perspective, this notice is probably the most difficult to implement. The general maximum COBRA eligibility period is 18 months, but it can be extended to as long as 36 months if certain conditions are met (e.g., disability or second qualifying event). To ensure compliance with the ARPA, employers may want to consider providing notice of the COBRA Program to any individual who became eligible for continuation coverage after April 1, 2018. As explained below, individuals who respond to the notice must establish their eligibility for the COBRA Program, which would require demonstrating eligibility for any coverage extension claimed by the individual.

What is required for the notice of expiration of subsidy eligibility?

The plan administrator must provide all assistance eligible individuals notice that: (1) the individual's premium subsidy eligibility will expire soon; (2) the date of such expiration; and (3) the individual may be eligible for unsubsidized coverage through COBRA or a group health plan.

This notice is not required for individuals who lose eligibility as a result of eligibility for other available coverage. For individuals entitled to notice, the notice must be given no more than 45 days and no less than 15 days before the applicable eligibility expiration date. So, by way of example, for individuals eligible for COBRA coverage through the end of the COBRA Program's coverage period, notice will need to be provided between August 16, 2021 and September 15, 2021.