

## Blog Post

# New COBRA Obligations for Employers Included in Biden's \$1.9 Trillion Stimulus

March 16, 2021

By [Beth Alcalde](#) and [Amber N. Roberts](#)

For employers with group health plans, COBRA obligations under President Biden's premiere \$1.9 trillion stimulus legislation, the American Rescue Plan Act of 2021 (the Rescue Plan) are an early priority. The Rescue Plan was signed by the President on March 11, 2021. Below is an overview of the Rescue Plan's COBRA relief, which provides a 6-month, 100 percent premium subsidy for eligible employees who lose group health insurance as a result of either an involuntary termination or a reduction in hours.

## The ARPA COBRA Subsidy

The Rescue Plan includes a 100 percent COBRA premium subsidy that will apply for a coverage period running from April 1, 2021, through September 30, 2021 (the Subsidy Term). This means that eligible qualified beneficiaries could receive up to 6 months of subsidized coverage, although the period may be shorter if the qualified beneficiary's COBRA continuation coverage period ends or if the person becomes eligible for any other group health plan coverage, including Medicare (regardless of whether the person declines that new coverage).

## Eligibility

Under the Rescue Plan, the subsidy applies to "assistance eligible individuals." Such individuals are those who, during the Subsidy Term, are eligible for COBRA

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continuation coverage because of a qualifying event that was either an involuntary termination of employment or a reduction in hours. The subsidy appears to be available to all assistance eligible individuals who (1) become eligible during the Subsidy Term, (2) are currently enrolled in COBRA coverage and will remain enrolled during some or all of the Subsidy Term, (3) failed to elect COBRA coverage (but who would otherwise be in their COBRA continuation window during the Subsidy Term if they had elected coverage), or (4) elected COBRA but subsequently dropped coverage (but who would otherwise be in their COBRA continuation window during the Subsidy Term if they had not discontinued coverage). Assistance eligible individuals in the latter two categories are also entitled to a special enrollment period described below.

### **Special Election Period**

Effective as of April 1, 2021, assistance eligible individuals who do not have a COBRA election in effect or who originally elected COBRA but discontinued COBRA coverage (as described in categories 3 and 4 in the previous paragraph) will have a special opportunity to elect coverage. These individuals may make a special election within 60 days of their receipt of a required notice informing them of their eligibility (as described below).

### **Employers May Permit Group Health Plan Enrollment Changes**

COBRA rules generally provide that qualified beneficiaries are only permitted to elect to continue coverage that had been in effect on the day prior to their qualifying event. The Rescue Plan would give the option – but not the requirement – for employers to be more generous on this point. Specifically, the Rescue Plan includes a “plan enrollment option” that would permit plans to allow qualified beneficiaries to elect different coverage as long as it is equal to or less than the value of their current group health plan coverage. If their plan permits, assistance eligible individuals may elect

different coverage no later than 90 days after receiving notice of the enrollment.

### **Notice Requirements**

As noted earlier, the Rescue Plan creates several new notice requirements. First, employers and plans must provide a general notice of subsidy availability to all assistance eligible individuals. This general notice should also include a statement regarding the option to make a plan enrollment change (if the plan permits this). Individuals who are eligible for the special 60-day election period must receive a notice about the special election period by May 31, 2021. Employers and plans must also provide a subsidy expiration notice within 45 to 15 days prior to the expiration of a subsidy. The Rescue Plan requires that the notices include specific content but provides that employers may either modify existing notices, add inserts to existing material or rely on the applicable model notices that will be issued by the DOL within 30 days of enactment.

### **COBRA Participant Obligation: Ongoing Communication with Former Employer**

Notably, the Rescue Plan requires assistance eligible individuals to notify their COBRA group health plan administrator if they become eligible for separate coverage. Failure to do so could result in a \$250 penalty per failure, and the penalty could be higher for an intentional or fraudulent failure to notify the plan. We expect that the DOL will provide additional guidance detailing communication obligations and specific penalty criteria for assistance eligible individuals.

### **Employer Payroll Tax Credit**

Assistance eligible individuals will not pay the COBRA premium. Instead, employers and insurers will pay the premium and will receive a refundable Medicare payroll tax credit. The quarterly credit may also be advanced, in accordance with forms and instructions to be released by the DOL. We expect additional guidance regarding the mechanics tied to premium payment and the credit.

## Other COBRA Details in the COVID-19 Landscape

This section of our blog will provide a few other COBRA background facts and COVID-related reminders, should you be seeking more general COBRA information.

Nothing in this section relates to the Rescue Plan and related stimulus developments.

Remember that under COBRA, covered employers with at least 20 employees and a group health plan must offer eligible employees and their dependents (“qualified beneficiaries”) the option of continuing their coverage under the employer’s group health plan, in the case of certain qualifying events. COBRA continuation coverage may last for up to 18 months (and can be extended for up to 36 months in certain circumstances) and qualified beneficiaries are typically responsible for paying the full cost of COBRA premiums.

As is the case with many programs, even before last week’s developments, COBRA has been significantly impacted as a result of recent regulatory guidance aimed at providing COVID-19 relief:

- In April 2020, the Department of Treasury (Treasury) and the Department of Labor (DOL) issued joint guidance suspended certain benefit plan-related deadlines, including key COBRA deadlines. Under the joint guidance, certain plan sponsor and qualified beneficiary COBRA deadlines were put on hold during the “Outbreak Period” (which was defined as the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency due to COVID-19 or such other date announced in a future notification). For more information, please refer to Akerman’s [Practice Update](#) discussing the joint guidance.
- As noted in an Akerman [HR Defense blog post](#) on the topic, in May 2020 the DOL also released new model COBRA notices to provide an updated roadmap for group health plan administrators to remain compliant with COBRA’s unforgiving notice requirements.
- Most recently, just as the DOL and Treasury’s one-year statutory authority to suspend COBRA deadlines

expired, the DOL issued EBSA Disaster Relief Notice 2021-01, confirming that deadlines that were suspended pursuant to the April 2020 guidance will only be disregarded until the earlier of: (1) one year from the date they were “first eligible for relief” (a concept further discussed in more detail in a recent HR Defense blog post); or (2) 60 days after the announced end of the National Emergency (that is, the end of the Outbreak Period, which has not yet occurred).

## Going Forward – Employer Plan Sponsor Next Steps

So, what does it all mean? Employers should work with their COBRA administrators immediately to line up the premium payment mechanism to be used for coverage between April 1 and September 30, 2021, for certain COBRA participants. Additionally, while awaiting the release of model notices in the coming weeks, employers and their outside COBRA vendors can begin various tasks now, including (a) identifying known existing COBRA qualified beneficiaries who may fall into the category of receiving this subsidy and/or new special enrollment right, (b) confirming that their HR systems have a clear code of “involuntary terminations” that aligns with this COBRA subsidy requirement, (c) educating HR professionals about how to address questions from recently terminated and soon-to-be-terminated employees about the costs of COBRA coverage, and (d) deciding whether to voluntarily allow COBRA qualified beneficiaries to elect a different health plan option than the one that the beneficiary had been enrolled in prior to their qualifying event.

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Blog Post

# ARPA COBRA Premium Subsidy – Time for Employer Plans to Update COBRA Notices

April 22, 2021

1:00 AM UTC

By [Beth Alcalde](#) and [Amber N. Roberts](#)

Employers should be busy preparing tailored COBRA continuation coverage notices for certain individuals, addressing complicated election and altered COBRA premium topics that took effect only in recent weeks. Below, we offer practical summaries and specific timing suggestions for the anxiously awaited model notices that have now been released. Notices will soon reach Americans who could receive up to six months of free COBRA coverage after having lost their active employee coverage within a certain time frame due to either an involuntary termination of employment or a reduction in hours.

As background, recall our [prior blog post](#), describing those new COBRA subsidy requirements as provided by the American Rescue Plan Act of 2021 (ARPA), the latest in a string of COVID-19-related governmental financial assistance. Model notices had been expressly contemplated under ARPA at the time of its passage. As promised, the U.S. Department of Labor (DOL) then issued model notices and additional guidance. It is that latest DOL guidance that is summarized below and found in full [here](#).

Although use of the model election notices is not mandatory, the DOL considers appropriate use of the model election notices to be good faith compliance with the election notice content requirements of COBRA

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under ARPA. In this blog post, we will discuss the notices in more detail and outline notable considerations for employers and plan administrators.

*Model Notice in Connection with Extended Election Period – Due by May 31, 2021*

This notice is to be used for individuals who had already lost active coverage prior to passage of ARPA. For most employers, this notice will be distributed in greater numbers than all the other notices described in this post and will be directed to the population that employers have recently identified as “assistance eligible individuals.” Specifically, the notice describes the subsidy that is available to these assistance eligible individuals who experience a qualifying event that is either a reduction in hours or an involuntary termination of employment (except where the termination on account of gross misconduct). Under ARPA, assistance eligible individuals who experienced their qualifying event before April 1, 2021, but either did not elect COBRA when it was first offered or elected COBRA but later dropped it, are eligible for an additional COBRA election period, as long as the individual’s applicable continuation period has not ended. **The notice of an extended election period must be provided to assistance eligible individuals by May 31, 2021.** The model notice states that individuals must elect COBRA and the subsidy within 60 days of receipt of the notice.

*Model General Notice and COBRA Continuation Coverage Election Notice – As Soon As Practicable, Following a Qualifying Event (the standard 44-day deadline under COBRA will apply)*

The DOL provided a revised general notice that describes the COBRA premium subsidy and includes an election notice for qualified beneficiaries. The notice is designed to be distributed to all qualified beneficiaries who have qualifying events occurring from April 1, 2021 through September 30, 2021. Remember, this notice includes information related to the premium subsidy, and other rights and obligations under ARPA, as well as all of the

information required in an election notice required pursuant to the DOL's final COBRA notice regulations.

*Model Alternative Notice – As Soon As Practicable, Following a Qualifying Event*

This notice is just for use with state “mini-COBRA” situations. Specifically, the ARPA COBRA subsidy must also be made available to assistance eligible individuals covered by insured plans that are subject to state continuation requirements. The DOL has issued a model notice specific to these insured plans.

*Model Notice of Expiration of Premium Assistance – To Be Distributed between August 15-September 15, 2021, or Earlier upon an Early Expiration Date*

Employers and plans must also provide a subsidy expiration notice within 45 to 15 days prior to the expiration of a subsidy. The expiration notice must be provided where premium subsidy assistance will end as a result of the expiration of the individual's (1) subsidy period or (2) COBRA continuation period. Plan sponsors and administrators should carefully track upcoming expiration periods for participants with continuation periods that will expire before the end of the ARPA subsidy term, while subsequently preparing for a “mass mailing” of expiration notices for participants with subsidies that will end effective September 30, 2021. We note that an expiration notice is not required where an individual's COBRA subsidy ends because they have become eligible for alternative health coverage.

### Additional Points to Consider

- The DOL also released a “*Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021.*” The summary must be distributed with the Model General Notice and the Model Extended Election Period Notice.
- The extensions under the Joint Notice and EBSA Disaster Relief Notice 2021-01, which we discuss in a prior [blog](#) do not apply to the notices or the election periods related to COBRA premium assistance

available under ARPA. In other words, the deadlines we list are “real” deadlines, not subject to further delays.

- The DOL FAQs emphasize that individuals may be eligible for premium assistance if they experience a qualifying event that is either an involuntary termination or “because of their own or a family member’s reduction in hours.” This means that a qualifying event could be either a voluntary reduction in hours or an involuntary reduction in hours. In contrast, a termination would have to be involuntary to be eligible.
- Assistance eligible individuals cannot be required to pay any COBRA administration fee that would otherwise be charged.
- The COBRA premium subsidy is available for continuation coverage under Federal COBRA (which generally applies to all group health plans maintained by private-sector employers with 20 or more employees, or by state or local governments), as well as for group health insurance coverage under comparable state continuation coverage (“mini-COBRA”) laws.

The IRS is expected to release additional guidance describing premium subsidy mechanics, including how to apply for reimbursement payroll tax credits and to how to receive advance credits. Stay vigilant for guidance as it becomes available. In the meantime, if you have questions about your obligations as an employer under COBRA, please contact your Akerman attorney.

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