

**U.S. Department of Labor (DOL) Releases FAQs and Model Notices for
COBRA Premium Assistance Under the American Rescue Plan Act of 2021**

By: Daniel Villaire | April 26, 2021

The DOL recently issued a set of FAQs and model notices to implement the ARP's COBRA premium assistance. The COBRA premium assistance, also referred to as the "COBRA subsidy," requires certain employers to pay 100% of the cost of COBRA continuation coverage for "assistance eligible individuals" (AEIs). Below is a summary of the ARP's new COBRA obligations and links to the model notices that must be sent to AEIs. Please note, employees who were separated from employment prior to the effective date of the COBRA subsidy are entitled to notice of the COBRA subsidy, as well as an additional opportunity to elect COBRA continuation coverage with premium assistance—even if they previously declined COBRA continuation coverage or elected and later dropped COBRA continuation coverage.

What is the COBRA subsidy?

The ARP requires employers who are subject to COBRA, and employers who are not subject to COBRA, but are subject to state continuation requirements ("covered employers"), to pay 100% of the cost for AEIs to continue COBRA coverage. Prior to the ARP, individuals eligible for COBRA continuation coverage were responsible for the premiums and administrative fees. The ARP shifts responsibility for premiums and fees to covered employers.

Are there tax credits for covered employers?

Covered employers are entitled to offset the cost of the COBRA subsidy by taking credits against quarterly Medicare taxes. If the COBRA subsidies paid by covered employers exceed tax liabilities, covered employers will be eligible for a tax refund. The US government is covering the cost of the COBRA subsidies through tax credits and refunds.

How long does this subsidy last?

The COBRA subsidy must be offered to AEIs during the period beginning April 1, 2021 through September 30, 2021. The COBRA subsidy ends if an AEI becomes eligible for another group health insurance plan/Medicare or reaches the maximum COBRA continuation coverage period (usually 18 months). Individuals receiving the COBRA premium assistance must notify their plans if they become eligible for coverage under another group health plan/Medicare.



Who is eligible for the COBRA subsidy, i.e., who are assistance eligible individuals (AEIs)?

AEIs are COBRA qualified beneficiaries who are eligible for COBRA continuation coverage during the subsidy period due to a reduction in hours or involuntary termination, other than for gross misconduct. AEIs include qualified beneficiaries who've both timely elected and received COBRA continuation coverage on or after April 1, 2021. AEIs also include qualified beneficiaries who, prior to April 1, 2021, (1) failed to elect COBRA continuation coverage or (2) timely elected but later dropped COBRA continuation coverage. ARP does not extend the COBRA continuation coverage period.

How do AEIs who've previously declined COBRA continuation coverage exercise COBRA subsidy benefits?

AEIs who failed to elect COBRA continuation coverage, or elected and later dropped COBRA continuation coverage, must be offered an additional COBRA election period. Individuals eligible for the additional COBRA election period must receive a notice of the extended COBRA election period (see notice requirements below). The notice must be provided by May 31, 2021. Individuals who are eligible for the additional COBRA election period have 60 days after the notice is provided to elect COBRA.

What notice must be provided and to whom?

Qualified beneficiaries must be notified of the COBRA subsidy and provided information about their rights under the ARP. The following notices are required:

- (1) A general notice of the COBRA subsidy to all qualified beneficiaries who have a qualifying event from April 1, 2021 through September 30, 2021. This notice may be provided separately or with the COBRA election notice. There is also an alternative notice for employers subject to state continuation requirements.
- (2) A notice of the extended COBRA election period to AEIs who had a qualifying event before April 1, 2021. This does not include those individuals whose maximum COBRA continuation coverage period, if COBRA had been elected or not discontinued, would have ended before April 1, 2021. This notice must be provided by May 31, 2021.
- (3) A notice of expiration of periods of the COBRA subsidy explaining that the subsidy for the individual will expire soon, the date of the expiration, and that the individual may be eligible for coverage without any subsidy through COBRA continuation coverage or coverage under a group health plan. This notice must be provided 15-45 days before the individual's COBRA subsidy expires.



The DOL's model notices can be found here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

The DOL's FAQ's can be found here: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>

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