

COBRA Subsidies under the American Rescue Plan Act

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Disclaimer

The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.

Finally, this presentation is current as of June 17, 2021, and the information contained herein is subject to change.

COBRA Subsidies & Extended Election under ARPA

- Temporary 100% COBRA subsidies during the period of April 1, 2021 – September 30, 2021
- Individuals eligible for the COBRA subsidy who do not have an election as of April 1, 2021, may have an additional opportunity to elect COBRA coverage
- New ARPA COBRA requirements must work in coordination with the COVID-19 outbreak period deadline extensions



Which Group Health Plans Must Provide the COBRA subsidy?

Group health plans providing continuation coverage under Federal COBRA or state mini-COBRA laws



Major medical, dental, vision, HRA



Group health plans of large and small private employers or state and local government employers



Health FSA, QSEHRA, retiree-only



Church plans that are not subject to state continuation coverage mandates

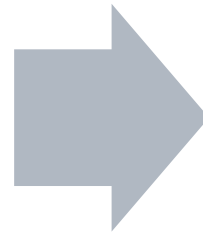
Who Qualifies for the COBRA subsidy?

Assistance Eligible Individual (AEI)

- Qualified Beneficiary as the result of a reduction in hours of a covered employee's employment or involuntary termination of a covered employee's employment (not including gross misconduct)
- Eligible for COBRA continuation coverage for some or all of the period beginning on April 1, 2021 – September 30, 2021
- Elects COBRA coverage
- Not eligible for other group health plan coverage (not including waiting period) or Medicare beginning on or after April 1, 2021

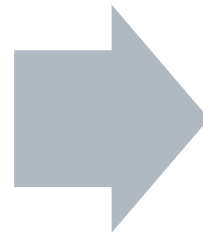
How Is the COBRA Subsidy Provided?

Plan subject to
Federal COBRA



Employer advances
premium & receives
payroll tax credit

Insured plan subject
solely to state
continuation



Insurer advances
premium & receives
payroll tax credit

How Long Does the COBRA Subsidy Last?

Subsidy available for periods of coverage beginning on or after April 1, 2021, and ending on September 30, 2021

Subsidy period can be shortened if the AEI reaches the end of an applicable maximum coverage period or gains eligibility for group health plan coverage or Medicare



18-month maximum COBRA coverage period can be extended due to disability determination, second qualifying event, or extension under State mini-COBRA laws

Who Must Be Offered the Extended Election Period?

- AEs who do not have a COBRA election in effect on April 1, 2021 (e.g., did not timely elect COBRA or discontinued COBRA) and are still within their maximum coverage period.
 - Don't forget about spouse and dependent children where the employee elected self-only coverage – they get a second election opportunity
 - Don't forget an AEI may have a second election opportunity to elect COBRA continuation coverage with respect to a group health plan the AEI initially waived
- This extended election period begins April 1, 2021, and ends 60 days after the AEI is provided required notice of the extended election period (May 31st deadline).
- AEs can choose for coverage to begin (1) April 1, 2021, (2) prospectively from the date of election, or (3) retroactively to the date coverage stopped.




How do the ARPA COBRA provisions apply to state continuation coverage laws?

COBRA subsidy applies, but extended election period does not apply (absent separate state law requirement).



If AEI previously declined to enroll in state continuation coverage, the AEI does not get a second chance to enroll with premium assistance under ARPA.



ARPA COBRA subsidies are available to AEIs who already elected and paid for state continuation coverage or, who are newly eligible during the ARPA COBRA subsidy period.

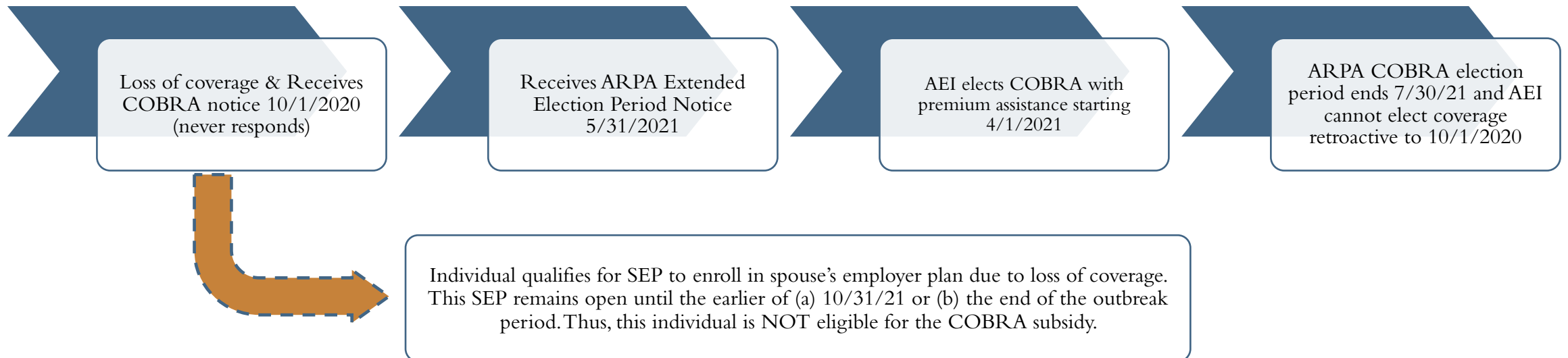


What are the notice requirements?

- **ARPA General Notice and COBRA Election Notice:** Used for QBs who have qualifying events occurring from April 1, 2021 – September 30, 2021.
- **COBRA Notice in Connection with Extended Election Periods :** Used for QBs currently enrolled in COBRA due to reduction in hours or involuntary termination (i.e., AEs), as well as those who would currently be AEs if they had elected or maintained COBRA coverage. May 31st deadline to provide this notice.
- **Alternative Notice:** Used by insured coverage subject to state “mini-COBRA” continuation coverage requirements between April 1, 2021 – September 30, 2021.
- **Notice of Expiration of Premium Assistance:** Used to inform AEs receiving subsidies of the expiration date. Must be provided 15-45 days prior to the subsidy expiration.

How do you reconcile the COVID-19 outbreak period deadline extensions with the ARPA?

- COVID-19 outbreak period deadline extensions include, among others, the 60-day deadline to elect COBRA and the 30- or 60-day HIPAA special enrollment deadlines. These deadlines are extended until the earlier of (A) one year or (B) the end of the outbreak period (March 1, 2020 – 60 days after the announced end of the COVID-19 national emergency).





What happens if an employer fails to comply?

- Excise taxes of \$100 per day per qualified beneficiary (or \$200 per day per family) under the Code.
- Statutory penalties of \$110 per day may be recovered under ERISA.
- Litigation exposure for lawsuits to recover COBRA coverage.

Where can I get more information?

- **Model Notices (Slide 10):**
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy-for-employers-and-advisers>
- **DOL FAQs About COBRA Premium Assistance:**
<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>
- ***IRS Notice 2021-31:**
<https://www.irs.gov/pub/irs-drop/n-21-31.pdf>



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