

AMERICAN RESCUE PLAN ACT OF 2021 – EMPLOYERS MUST PAY COBRA PREMIUMS FROM APRIL THROUGH SEPTEMBER AND SEND NOTICE BY MAY 31, 2021.

April 27, 2021

In April, the Department of Labor issued guidance about the healthcare subsidy provisions of the American Rescue Plan Act of 2021 (ARPA), which was passed by Congress in March. Under ARPA, employers are required to cover 100% of healthcare premiums for Assistance Eligible Individuals under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) from Apr. 1, 2021 through Sept. 30, 2021. The premium payments made by employers are reimbursable through tax credits.

The following is a summary of key compliance information under ARPA's premium assistance program:

Who is eligible for COBRA premium assistance (“Assistance Eligible Individuals”)?

- The employee must have a COBRA qualifying event that is a reduction in hours or an involuntary termination of employment (however, employees terminated for gross misconduct generally do not qualify for COBRA or the subsidies); and
- The employee must have been eligible for COBRA assistance during the premium assistance period of Apr. 1, 2021 through Sept. 30, 2021 (generally speaking, the employee was COBRA eligible from 18 months prior to Apr. 1, or as of Oct. 1, 2019); and
- The employee elected COBRA continuation coverage within 60 days of receiving the ARPA-required notice; and
- The employee must NOT be eligible for Medicare or healthcare coverage under any other group health plan, such as a plan sponsored by a new employer or a spouse's employer.

What COBRA premium assistance is provided under ARPA?

- The premium assistance applies to periods of COBRA health coverage from Apr. 1, 2021 through Sept. 30, 2021.
- COBRA premiums paid by the employer under ARPA are reimbursable via tax credits.
- ARPA does not extend the period of COBRA continuation coverage beyond the original maximum period, which is generally 18 months from the employee's reduction in hours or involuntary termination.
 - Meaning that while ARPA provides an additional COBRA election period for eligible individuals who previously declined COBRA coverage since Oct. 1, 2019, the additional election period is still limited by the original maximum period (generally 18 months).

What notice is required?

- Employers or their group health plans are required to notify qualified beneficiaries regarding premium assistance and their rights under the ARPA **by May 31, 2021**.
- The Department of Labor has issued model notice forms:
 - [Model General Notice and COBRA Continuation Coverage Election Notice](#) – Use for qualified beneficiaries who have qualifying events occurring from Apr. 1, 2021 through Sept. 30, 2021.
 - [Model Notice in Connection with Extended Election Period](#) – Use for: (i) qualified beneficiaries currently enrolled in COBRA continuation coverage due to a reduction in hours or involuntary termination (Assistance Eligible Individuals); or (ii) individuals who would be Assistance Eligible Individuals if they had elected and/or maintained COBRA continuation coverage.
 - [Model Alternative Notice](#) – Use for coverage subject to state continuation requirements between Apr. 1, 2021 and Sept. 30, 2021.
 - [Model Notice of Expiration of Premium Assistance](#) – Send to Assistance Eligible Individuals 15-45 days before their premium assistance expires.
 - [Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021](#) – Send with General Notice and Notice in Connection with Extended Election Period.
- Failure by employers or their group health plans to provide the required notices may result in penalties up to **\$100 per qualified beneficiary** (but not more than \$200 per family) **for each day** they are in violation of COBRA for failing to send the requisite notice.

Who must receive notice?

- A general notice to all qualified beneficiaries who have a qualifying event that is a reduction in hours or an involuntary termination of employment from Apr. 1, 2021 through Sept. 30, 2021. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event.

- A notice of the extended COBRA election period to any Assistance Eligible Individual (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect) who had a qualifying event before Apr. 1, 2021.
- The notice requirement does not include those individuals whose maximum COBRA continuation coverage period, if COBRA had been elected or not discontinued, would have ended before Apr. 1, 2021 (generally, those with applicable qualifying events before Oct. 1, 2019).

When must notice be provided?

- Notice must be provided by May 31, 2021.

The Department of Labor has issued [FAQs](#) related to the COBRA premium assistance program under ARPA. For additional information about the program or for compliance advice, please contact [Alana Ackels](#).

Related Practices

Labor and Employment

Practice Area Contact

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