



2021 American Rescue Plan Act COBRA Subsidy Deadlines for COBRA Actions under the CARES Act

This *Compliance Bulletin* provides a summary of:

- COBRA subsidy provisions enacted on March 11, 2021 under the American Rescue Plan Act (ARPA) which include a six-month 100% premium subsidy for eligible individuals
- Recent clarifications issued by the Internal Revenue Service (IRS) about extended deadlines for actions related to COBRA coverage under the CARES Act

COBRA Subsidies under ARPA

The information below provides an overview of how the subsidy works, including highlights of the steps required for implementation and information that can be shared with COBRA members now.

Subsidy Overview

Subsidy eligibility and amount

- Those eligible for the subsidy are called Assistance Eligible Individuals (**AEIs**). AEIs are employees and their covered family members who lose (or have already lost) their health coverage due to the employee's:
 - Involuntary termination of employment or reduction in hours; and who:
 - Are currently enrolled in COBRA or become eligible for COBRA on or after April 1, 2021, and before September 30, 2021 (the six-month COBRA subsidy period);
 - Became eligible for COBRA before April 1, 2021 and are still within their maximum 18 month COBRA period, even if the individual did not elect COBRA when it was initially offered or elected COBRA but discontinued it before April 1, 2021; and
 - Are not eligible for coverage under either another group health plan (GHP) (such as a spouse's, parent's or new employer's plan) or Medicare.
- The subsidy covers 100% of the AEI's COBRA premium during the COBRA subsidy period.

Penalty for accepting subsidy when ineligible due to other coverage

If a COBRA participant fails to provide notification of eligibility for other coverage, the penalties are:

- \$250 per instance, or
- The greater of \$250 or 110% of subsidy provided in cases of intentional failure to notify

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Duration of subsidy period

The subsidy is available:

- Beginning the **later of** April 1, 2021 or the first date of an individual's COBRA coverage period, and
- Ending the **earlier of** the last day of the individual's COBRA coverage period or September 30, 2021

Subsidy special election period

- AEs who have already elected COBRA are automatically eligible for the subsidy
- AEs who:
 - Have received their initial COBRA Election Notices but haven't elected COBRA, or
 - Have not yet received their initial COBRA Election Notices will have a special 60 day election period that begins when notification about the subsidy is provided

NOTE

Electing COBRA coverage for the purposes of receiving the subsidy also serves as an election for COBRA coverage following the end of the subsidy, if the individual's COBRA coverage period extends beyond the subsidy period. Activation of COBRA coverage following the subsidy period is subject to payment of the required premiums.

Source of subsidy funding

- Employers absorb the cost of the subsidized premiums and then recover the subsidy amounts from the IRS with filings against quarterly payroll taxes due for Medicare Health Insurance
- Employers would work with their tax advisors on these filings

Subsidy Implementation Highlights

Identification of potential Assistance Eligible Individuals

- Employers will need to identify employees whose COBRA eligibility was/is based on involuntary termination of employment or reduction in hours

Notices to potential Assistance Eligible Individuals- notices regarding the subsidy, election period and end of subsidy need to be issued to those:

- **Who have already elected COBRA** - description of eligibility for subsidy and penalties - no specific deadline to issue, but as soon as possible to affirm they are not eligible for other coverage
- **Who have already received COBRA Election Notices** but have not elected COBRA coverage - description of subsidy, election period and penalties - to be issued no later than May 30, 2021 (Model notices to be issued by DOL by April 10, 2021)

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- **Who become newly eligible for COBRA** - description of subsidy, election period and penalties - to be included with new Election Notices to be issued beginning no later than May 30, 2021 (rule does not indicate that model language will be issued)
- **Whose subsidy period is ending** - upcoming termination of subsidy - to be issued no more than 45 and no less than 15 days before the subsidy ends - (Model notices to be issued by DOL by April 29, 2021)

To HPI's COBRA Administration Clients

As additional guidance and model notices are issued from the IRS and DOL, HPI will reach out to you with detailed information regarding the steps and requirements for HPI to implement the subsidy provisions on your behalf, along with an FAQ.

Recovery of subsidy amounts funded by employers

- Employers work with tax advisors on quarterly filings of Medicare Health Insurance tax to recover subsidy amounts

What You Can Tell Employees Now

- Subsidies take effect April 1, 2021, but employers have until the end of May to implement them
- Potential Assistance Eligible Individuals will be sent notices and forms to complete which explain the terms and requirements of the subsidy
- For those eligible for the subsidy before their subsidy notice is issued, the subsidy will be applied retroactively and they will receive a refund of any premiums paid for coverage periods on or after April 1, 2021 within 60 days of submitting the required forms

Extended Deadlines for Standard (non-subsidy related) COBRA Actions

On February 26, 2021, the Department of Labor (DOL) issued Notice 2021-01, providing additional guidance about the coronavirus pandemic COBRA deadline relief issued on May 4, 2020, under the CARES Act. The applicable rules are summarized below.

Extended Deadline Recap

In brief, deadlines for taking actions with respect to electing and paying for COBRA were extended after the declaration of the COVID-related National Emergency by the President, which first took effect on March 1, 2020. The National Emergency remains in effect as of publication of this *Bulletin*, and will continue until it is declared over by the current President.

Under the deadline extension rules, if the original COBRA election or payment due date fell or falls on or after March 1, 2020, COBRA-eligible individuals have additional time during which to elect or pay for their COBRA coverage.

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The duration of the deadline extension depends on:

- The first day of the period for which the deadline has been extended (e.g., the first day of the usual election, initial payment and regular payment periods)
- The length of the “Outbreak Period”, which is defined by regulation as the length of National Emergency, plus 60 days (because the National Emergency is still in effect, the end of the Outbreak Period cannot yet be determined)

Length of Deadline Extensions

As Notice 2021-01 clarifies, under ERISA, the **maximum** period during which any standard COBRA action required or permitted to be completed (i.e., elections and payments for non-subsidized coverage) may be disregarded is one year. Thus, the deadline extensions must be evaluated under the both the CARES Act and the standard ERISA rule.

The chart below describes how these deadlines are applied depending on the action required.

Action Required	Deadline for taking action
1. Elect COBRA coverage (apart from subsidized coverage)	By the earlier of: a. One year plus 60 days from the beginning of the original election period b. 60 days after the end of the Outbreak Period
2. Make initial payment for COBRA coverage	By the earlier of: a. One year plus 45 days from the beginning of the initial payment period b. 45 days after the end of the Outbreak Period

If HPI provides COBRA administration services for your health plans, information about the extended election and payment deadlines for COBRA-eligible individuals is included in all COBRA Election Notices.

For individuals who have elected, but have not yet paid for COBRA coverage effective beginning the first day of their COBRA coverage period, and whose extended payment deadlines are approaching, HPI will provide notices indicating that COBRA coverage elected for any unsubsidized period will not take effect unless the payments are made by the applicable deadline.

HPI will soon be contacting our COBRA administration clients with additional subsidy implementation information. In the meantime, please contact the HPI Account Service Team with any questions you may have.

The information in this Compliance Bulletin is intended to provide a summary of our understanding of recent regulatory developments which may affect our clients' plans. It should not be construed as specific legal advice or legal opinion.