

EXPLANATION OF THE NEW COBRA PREMIUM ASSISTANCE FOR EMPLOYERS

The American Rescue Plan Act of 2021 (“Act”) signed by President Biden on March 11, 2021, provides new COBRA premium assistance provisions and special enrollment rights that will require employers to take action quickly.

What premium assistance is provided?

Eligible individuals are entitled to a 100% premium assistance for the cost of COBRA or state continuation coverage for up to six months (ending September 30, 2021) for individuals who qualify for COBRA coverage beginning on April 1, 2021. This includes the 2% administrative fee.

Who is considered eligible for this premium assistance?

Any individual who is a COBRA qualified beneficiary who is eligible for COBRA due to a reduction in hours or an involuntary termination of employment and who elects COBRA or state continuation coverage will be eligible for the premium assistance.

Would COBRA coverage for an employee’s spouse and/or other dependents be eligible for premium assistance?

Yes. The premium assistance applies not only to the employee who lost coverage due to a reduction in hours or an involuntary termination (other than for gross misconduct), but also to any other qualified beneficiaries who were covered through the employee and lost coverage as a result of the employee’s reduction in hours or an involuntary termination of employment (e.g., spouse, children).

For what period does the premium assistance apply?

It applies for COBRA or state continuation coverage during the period from April 1, 2021 through September 30, 2021.

To what coverages does premium assistance apply?

It applies to all group health plan coverage (e.g., medical, dental, vision, employee assistance program), except for health care flexible spending account coverage. Many state continuation rules may limit application to just medical coverage.

How will the employer be paid for providing the premium assistance?

For employers who maintain group health plans, the premium assistance will be delivered through the employer paying COBRA premiums to the insurance carrier (or covering the cost of providing COBRA coverage under a self-insured plan) and then taking a payroll tax credit to recoup the cost of covering COBRA premiums or costs. Employers will treat the subsidy as a credit against the employer’s share of Medicare tax under Internal Revenue Code Section 3111(b).

If the credit exceeds the taxes owed for a quarter, the excess will be refundable.

In any case where it is not the employer or a multiemployer plan, the insurer as the person to whom premiums are payable.

Does the employer have to provide an additional election opportunity to those eligible individuals who either did not elect COBRA or state continuation coverage or discontinued COBRA or state continuation coverage?

Yes. An additional COBRA or state continuation election opportunity must be provided for any eligible individuals who either do not elect federal COBRA or state continuation coverage, but would have been eligible for premium assistance, or who had elected federal COBRA or state continuation coverage previously, but discontinued COBRA or state continuation coverage before April 1, 2021. Employers are required to provide notices to these eligible individuals, as provided below.

This special enrollment right must only be offered to those who are eligible for COBRA or state continuation due to a reduction in hours or an involuntary termination of employment

Please note that individuals who discontinued COBRA or state continuation coverage do not have to be assistance eligible in order to take advantage of this extended election period.

Eligible individuals may elect COBRA or state continuation coverage during the period beginning on April 1, 2021 and ending 60 days after the date on which they are provided notice by the employer/plan administrator as required. This elected COBRA or state continuation coverage elected begins on or after April 1, 2021 and does not extend beyond the maximum period of COBRA or state continuation coverage that would have been required if the individual had elected COBRA at the time of the original event (or had not discontinued coverage that was elected at that time).

When can the premium assistance be terminated?

An individual ceases to be an eligible for premium assistance for months of coverage that begin on or after the earlier of:

- The first date the individual is eligible for coverage under Medicare or any other group health plan (other than coverage that is only “excepted benefits,” coverage under a health flexible spending account, or coverage under a qualified small employer health reimbursement arrangement), or
- The date following the expiration of the normal maximum COBRA period, which generally would be 18 months from the qualifying event. State continuation periods will vary.

For an individual who did not originally elect COBRA or state continuation or who originally elected but then discontinued COBRA or state continuation coverage, this period is measured from what would have been the beginning of the COBRA or state continuation coverage period if the individual had elected when originally eligible or had not discontinued COBRA (in other words measured by reference to a reduction in hours or an involuntary termination of employment that caused the loss of coverage).

Can an employer give an eligible individual the option to change coverages?

Yes. An employer can allow an assistance eligible individual who is enrolled in coverage under the employer plan to change to a different coverage option offered under the plan. The election to change coverage options must be made by the individual no later than 90 days after the date of notice of the right to change options is provided to the individual. The premium for the new coverage option must not exceed the premium for the coverage in which the individual was enrolled at the time of the reduction in hours or involuntary termination of employment, and the new coverage option must be coverage that is offered to similarly situated active employees at the time the election to change is made, and cannot be coverage that provides only “excepted benefits,” a flexible spending account, or a qualified small employer health reimbursement arrangement.

What are the new required notice requirements?

The following new notice requirements are imposed on employers/plan administrators and on individuals:

Additional Required Information for COBRA Election Notices. COBRA election notices provided to individuals who become eligible to elect COBRA coverage during the period between April 1, 2021 and September 30, 2021 must include additional information regarding the premium assistance. This additional information can be incorporated into the normal election notice or can be provided by including a separate document with the normal election notice.

The notice must include all of the following additional information:

- The forms necessary for establishing premium assistance;
- The name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with premium assistance;
- A description of the extended election period;
- A description of the individual’s obligation to provide notice if the individual becomes eligible for other group health coverage or Medicare, and of the penalty for failure to provide such notice (see below);
- A description “displayed in a prominent manner” of the individual’s right to a subsidized premium and any conditions on entitlement to the subsidized premium; and
- If the employer has chosen to offer the optional plan coverage option change, a description of that option.

Notice of Extended Election Period. For individuals who became entitled to elect COBRA before April 1, 2021, the plan administrator must provide notice to the individual no later than May

31, 2021 (60 days after April 1, 2021). The notice must satisfy the requirements described above. This notice must be sent to individuals who are eligible for premium assistance, individuals who would be assistance eligible if they had a COBRA or state continuation election in effect on April 1, 2021, and individuals who had elected COBRA or state continuation previously but discontinued COBRA before April 1, 2021 (whether or not assistance eligible).

Notice of Expiration of Premium Assistance. Between 45 days and 15 days before the premium assistance period ends for an individual (not including premium assistance that ends because the individual becomes eligible for other group health plan coverage or Medicare), the plan administrator must provide written notice to the individual in “clear and understandable” language that premium assistance for the individual will “expire soon” and include prominent identification of the date of such expiration and that the individual may be eligible for continued COBRA without premium assistance or coverage under a group health plan.

Notice by Individual. As noted above, an individual ceases to be eligible for premium assistance for months of COBRA or state continuation coverage that begin on or after the date the person is eligible for Medicare or coverage under any other group health plan (other than coverage that is only “excepted benefits,” coverage under a health flexible spending account, or coverage under a qualified small employer health reimbursement arrangement). An assistance eligible individual must notify the group health plan of such eligibility “in such time and manner as may be specified by the Secretary of Labor.” A new provision has been added to the Internal Revenue Code to impose a \$250 penalty on an individual who fails to provide such notice, except where the failure was due to reasonable cause and not willful neglect. The penalty may be increased where the failure to provide notice was fraudulent. In that case, the penalty is the greater of \$250 or 110% of the premium assistance provided to the individual after the individual’s eligibility ended due to the other coverage.

What forms in this forms package must be provided to eligible individuals to elect coverage? and the COBRA or state continuation Premium Assistance?

The following forms must be provided to an eligible individual to elect COBRA coverage and the COBRA Premium Assistance:

-Notice of Availability of COBRA or State Continuation Premium Assistance for COBRA or State Continuation Participants – This form provides a summary of COBRA or state continuation Premium Assistance and the special enrollment rights.

-COBRA Special Enrollment Election Notice - This form explains the procedures for electing COBRA coverage and receiving COBRA Premium Assistance.

-COBRA Premium Assistance Special Enrollment Election Form - The eligible individual uses this form to elect COBRA coverage and/or claim the Premium Assistance.

-Form for Switching COBRA Coverage Benefit Options - This form is only provided to an eligible individual if the employer provides the eligible individual with the option of changing his or her coverage options.

- Notice of Eligibility for Other Group Insurance Coverage or Medicare Form - This form is provided to eligible individual when he or she elects COBRA or state continuation coverage. The eligible individual must be instructed that he or she must return this form when he or she becomes eligible for other group coverage or Medicare.

The following forms must be provided to an eligible individual to elect state continuation coverage:

-Notice of Availability of COBRA or state continuation Premium Assistance for COBRA or State Continuation Participants – This form provides a summary of COBRA or state continuation Premium Assistance and the special enrollment rights state continuation Coverage.

- Alternative Premium Assistance Election Notice - This form explains the procedures for electing state continuation coverage and/or receiving Premium Assistance.

-Continuation Coverage Election Form -- Notice of Eligibility for Other Group Insurance Coverage or Medicare Form -This form is provided to eligible individual when he or she elects state continuation coverage. The eligible individual must be instructed that he or she must return this form when he or she becomes eligible for other coverage.

-Form for Switching Continuation Coverage Benefit Options - This form is only provided to an eligible individual if the employer provides the eligible individual with the option to switch continuation coverages.

- Notice of Eligibility for Other Group Insurance Coverage or Medicare Form -This form is provided to eligible individual when he or she elects COBRA or state continuation coverage. The eligible individual must be instructed that he or she must return this form when he or she becomes eligible for other group coverage or Medicare.

What other forms are in this forms package?

-Discussion of What is Gross Misconduct under COBRA - This form is not provided to eligible individual. It summaries the rules for determining if a former employee has engaged in gross misconduct and can be denied COBRA coverage.

-New Periods to make Elections for Benefits or Coverage - This form should be provided to all participants of your ERISA plans . It explains which deadlines have delayed or suspended.