



Employee Benefits Security Administration

Publication of Model Notices for Health Care Continuation Coverage Provided Pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and Other Health Care Continuation Coverage, as Required by the American Rescue Plan Act of 2021, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of the Availability of the Model Health Care Continuation Coverage Notices Required by the American Rescue Plan Act of 2021.

SUMMARY: On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP). Section 9501(a)(5)(D) and (6)(D) of ARP directs the Department of Labor (Department) to develop model notices for use by group health plans and other entities that, pursuant to the ARP, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. This document announces the availability of the model notices.

DATES: [Insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: David Sydlik, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693-8335. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) created the health care continuation coverage provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code (Code), and title XXII of the Public Health Service Act (PHS Act). These provisions are commonly referred to as the COBRA continuation provisions, and the continuation coverage that they mandate is commonly referred

to as COBRA continuation coverage. Under the ARP, premium assistance is available to certain individuals who are eligible for COBRA continuation coverage due to a qualifying event that is a reduction in hours or an involuntary termination. If an individual qualifies for the premium assistance, the individual need not pay any of the COBRA premium otherwise due to the plan. This premium assistance is available for COBRA continuation coverage for periods of coverage from April 1, 2021 through September 30, 2021. Group health plans subject to the COBRA continuation provisions are subject to the ARP's premium assistance provisions, notice requirements, and an additional election period. Federal COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. However, participants and beneficiaries of group health plans sponsored by employers with fewer than 20 employees may be eligible for the premium assistance under state laws that provide comparable coverage, often referred to as "mini-Cobra," with an alternative notice required under the ARP for these plans not subject to federal COBRA laws.¹

The ARP requires group health plans to provide four notices: 1) a "General Notice," 2) an "Alternative Notice," 3) a "Notice in Connection with Extended Election Periods," and 4) a "Notice of Expiration of Period of Premium Assistance." Under ARP section 9501(a)(5)(B), the General Notice, the Alternative Notice, and the Notice in Connection with Extended Election Periods must include:

- a prominent description of the availability of the premium assistance, including any conditions on the entitlement;

¹ Under COBRA, group health plans must provide covered employees and their families with certain notices explaining their COBRA rights. A group health plan must provide covered employees and qualified beneficiaries with a notice which describes their right to COBRA continuation coverage and how to make an election (election notice). The ARP provides that COBRA election notices already provided for qualifying events occurring during this time period but which did not include information on the availability of the premium assistance are not complete. As such, the end of the 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. Moreover, although under COBRA a timely election generally requires a plan to make coverage available retroactively to the date of the loss of coverage, the ARP allows an individual to elect COBRA continuation coverage with premium assistance for a period beginning on or after April 1, 2021.

- a form to request treatment as an “Assistance Eligible Individual”²;
- the name, address, and telephone number of the plan administrator (and any other person with relevant information about the premium assistance);
- a description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan and the penalty for failing to meet this obligation; and
- (if applicable) a description of the opportunity to switch coverage options.

The Notice in Connection with Extended Election Periods must also include a description of the extended election period. The ARP also requires group health plans to provide a Notice of Expiration of Period of Premium Assistance to individuals whose premium assistance is coming to an end (whether due to the expiration of their COBRA continuation coverage or the expiration of the period of premium assistance), which must explain that the premium assistance for such individual will expire soon; include a prominent identification of the date of such expiration; and explain that such individual may be eligible for coverage without any premium assistance through— (I) COBRA continuation coverage; or (II) coverage under a group health plan. This notice must be provided within the period that is 45 days before the date of such expiration and ending on the day that is 15 days before the date of such expiration. The Departments of Labor and the Treasury share jurisdiction for enforcement of the COBRA continuation provisions. The Department of Labor is committed to ensuring that individuals receive the benefits to which they are entitled to under ARP. Failure to satisfy the COBRA continuation coverage requirements, including the failure to provide these required notices, may subject a plan to an excise tax under Internal Revenue Code section 4980B. This tax could be as much as \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the taxpayer is in violation of

² In general, an “Assistance Eligible Individual” is, with respect to coverage beginning April 1, 2021 and ending September 30, 2021, an individual who is eligible for COBRA continuation coverage as a result of a reduction in hours or an involuntary termination of employment; and who elects COBRA coverage (when first offered or during the additional election period).

the COBRA rules.

Finally, the ARP provides that premium assistance is not available for months of coverage beginning on or after the date the individual becomes eligible for coverage under a group health plan (other than excepted benefits, a health flexible spending account (FSA), or a qualified small employer health reimbursement arrangement (QSEHRA)) or the individual becomes eligible for Medicare. Additionally, the ARP provides that the health coverage tax credit may not be claimed for months of COBRA continuation coverage with premium assistance.³ The ARP requires assistance eligible individuals receiving the premium assistance to notify their plan if they become eligible for coverage under another group health plan (not including excepted benefits, a QSEHRA, or a health FSA), or if they become eligible for Medicare, and failure to do so can result in a tax penalty. Such notice must be provided to the group health plan in such time and manner as specified by the Department of Labor. The Department has provided a model “Participant Notification” form in the Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021, to be provided with the ARP General Notice, a Notice in Connection with Extended Election Periods, and the Alternative Notice.

II. Description of the Model Notice Disclosures

a. In General

In an effort to ensure that participants and beneficiaries receive all of the information required under the ARP while minimizing the burden imposed on group health plans and issuers, the Department created several model documents. These model documents include an ARP General Notice, a Notice in Connection with Extended Election Periods, an Alternative Notice, and a Notice of Expiration of Period of Premium Assistance. These documents are discussed further below. In addition to these model documents, the Department also developed a

³ A former employee will not be eligible for a premium tax credit, or advance payments of the premium tax credit, for Marketplace coverage for months the individual is enrolled in COBRA continuation coverage with premium assistance. Treas. Reg. sec. 1.36B-2(c)(3)(v). Additionally, a current employee who is offered COBRA continuation coverage with premium assistance by the employee’s employer may not be eligible for a premium tax credit, or advance payments of the premium tax credit, for Marketplace coverage.

Summary of ARP requirements to include the following supplemental disclosures, which should be included with the ARP General Notice, the Alternative Notice, and the Notice in Connection with Extended Election Periods:

- i. A summary of the ARP's premium assistance provisions.
- ii. A form to request the premium assistance under the ARP.
- iii. A form for an individual to use to satisfy the ARP's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage (other than coverage consisting of only excepted benefits, coverage under a health FSA, or coverage under a QSEHRA) or that the individual is eligible for Medicare.

Each model notice is designed for a particular group of qualified beneficiaries. When provided in combination with these supplemental disclosures, these model documents contain all of the information needed to satisfy the content requirements for the ARP's notice provisions.

b. ARP General Notice

Group health plans subject to the COBRA continuation provisions must provide a general notice including the required disclosures under ARP section 9501(a)(5)(B) (ARP General Notice) to all qualified beneficiaries, not just covered employees, who have experienced any COBRA qualifying event at any time from April 1, 2021 through September 30, 2021.

The ARP General Notice includes information related to the premium assistance, and other rights and obligations under the ARP, as well as all of the information required in an election notice required pursuant to the Department of Labor's final COBRA notice regulations under 29 CFR 2590.606-4(b). This notice also provides additional information on the Health Insurance Marketplace^{®4}, Medicaid, and interaction with Medicare. Providing the ARP General Notice (with the supplemental disclosure summarizing the ARP requirements discussed above)

⁴ Health Insurance Marketplace[®] is a registered service mark of the U.S. Department of Health & Human Services.

to individuals who have experienced a qualifying event from April 1, 2021 through September 30, 2021 will satisfy the Department of Labor’s existing requirements for the content of this COBRA election notice as well as those required by ARP.⁵

c. Notice in Connection with Extended Election Periods

Section 9501(a)(5)(C) of the ARP requires group health plans to provide a Notice in Connection with Extended Election Periods that includes the required disclosures under ARP section 9501(a)(5)(B) 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 became entitled to elect COBRA continuation coverage before April 1, 2021. This notice must be provided by May 31, 2021, which is 60 days after the first day of the first month after the ARP was enacted.

d. Notice of Expiration of Period of Premium Assistance

Section 9501(a)(6) of the ARP requires a notice of expiration of period of premium assistance. This notice must include a written notice, in clear and understandable language, that the premium assistance for such individual will expire soon and the prominent identification of the date of such expiration; and that such individual may be eligible for coverage without any premium assistance through—(I) COBRA continuation coverage; or (II) coverage under a group health plan. This notice is not required to be provided if eligibility for the premium assistance ends because the individual has become eligible for another group health plan (excluding excepted benefits, a

⁵ In general, qualified beneficiaries have 60 days to respond to a COBRA election notice. Due to the COVID-19 National Emergency, the Department of Labor, the Department of the Treasury, and the Internal Revenue Service issued a Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak (“Joint Notice”). 85 FR 26351 (May 4, 2020). This notice provided relief for certain actions related to employee benefit plans required or permitted under Title I of ERISA and the Code, including the 60-day initial election period for COBRA continuation coverage and the date for making COBRA premium payments. The Department of Labor’s Employee Benefits Security Administration (EBSA) provided further guidance on this relief in EBSA Disaster Relief Notice 2021-01, which is available at <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>. These extended deadlines do not apply, however, to notices and elections, including the 60-day ARP election period, related to COBRA continuation coverage with premium assistance available to Assistance Eligible Individuals as provided under the ARP.

QSEHRA, or a health FSA), or if the individual has become eligible for Medicare. This notice is not required to, but may note that the individual and any covered dependents may be eligible for a special enrollment period to enroll in individual market health insurance coverage offered through a Health Insurance Marketplace[®]. This notice must be provided 15-45 days before the date of expiration of premium assistance.

e. Alternative Notice

While COBRA provides continuation coverage requirements for group health plans under federal law, these requirements do not apply to every plan. For example, group health plans maintained by an employer that employed fewer than 20 employees in the previous calendar year are not subject to federal COBRA.⁶ However, many states have laws similar to COBRA, including those that apply to health insurers of employers with less than 20 employees (mini-COBRA). The Alternative Notice is required to be sent by issuers that offer group health insurance coverage subject to such continuation coverage requirements imposed by state law. The Alternative Notice must include the information described above and be provided to all qualified beneficiaries, not just covered employees, who have experienced a qualifying event at any time from April 1, 2021 through September 30, 2021, regardless of the type of qualifying event. The Department of Labor, in consultation with the Departments of the Treasury and Health and Human Services, is required to consult with administrators of the group health plan and other stakeholders, to provide rules requiring the provision of such notice and a model notice. The Department has engaged in such consultations through meetings with administrators of group health plans and other stakeholders prior to the issuance of this notice and the model notices.

Continuation coverage requirements vary among states. Thus, the Department crafted a single version of this notice that should be modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement may also

⁶ 26 CFR 54.4980B-2.

use the model Alternative Notice.

III. For Additional Information

For additional information about ARP's COBRA premium assistance provisions, contact the Department's Employee Benefits Security Administration's Benefits Advisors at askebsa.dol.gov or 1- 866-444-3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA web page <https://www.dol.gov/cobra-subsidy> that will contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Regulations and Interpretations, Attention: PRA Clearance Officer, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number 1210-XXXX.

The public reporting burden for this collection of information is shown in the following table.

V. Models

Model notices are available in modifiable, electronic form on its website:

<https://www.dol.gov/cobra-subsidy>.

VI. Statutory Authority

Authority: 29 U.S.C. 1027, 1059, 1135, 1161-1169, 1191c; Pub. L. 117-2 (2021) sec. 9501; and Secretary of Labor's Order No. 1-2003, 68 FR 5374 (Feb. 3, 2003).

Notice Type	Estimated Average Time
General Notice	Minimal additional burden as already covered under OMB Control Number 1210-0123.
Notice in Connection with Extended Election Periods	1 minute per response
Alternative Notice	2 minutes per response
Notice of Expiration of Premium Assistance	1 minute per response

Signed at Washington, DC this 7th day of April, 2021.

Ali Khawar,
Acting Assistant Secretary,
Employee Benefits Security Administration.