

COMPLIANCE OVERVIEW



COBRA Common Questions – Notification Requirements

The Consolidated Omnibus Budget Reconciliation Act (COBRA) allows individuals to continue their group health plan coverage in certain situations. Specifically, COBRA requires group health plans to offer continuation coverage to covered employees and dependents when coverage would otherwise be lost due to certain specific events, such as a termination of employment, a divorce or a dependent child's loss of eligibility under the terms of the plan.

COBRA sets rules for how and when continuation coverage must be offered and provided, how employees and their families may elect and pay for continuation coverage and when continuation coverage may be terminated. COBRA also requires employers, plan administrators and qualified beneficiaries to comply with certain notice requirements.

This Compliance Overview includes answers to commonly asked questions regarding COBRA's standard notification requirements, as well as new temporary notice requirements under the American Rescue Plan Act (ARPA) regarding premium subsidies.

LINKS AND RESOURCES

- The Department of Labor's (DOL) COBRA Continuation Coverage [webpage](#)
- [An Employer's Guide to Group Health Continuation Coverage Under COBRA](#) – DOL resource
- The DOL's COBRA Premium Subsidy [webpage](#) (includes model notices and FAQs)

Standard COBRA Notices

Plan administrators are required to provide the following COBRA notices:

- General (or Initial) Notice
- Election Notice
- Notice of Unavailability of COBRA Coverage
- Notice of Early Termination of COBRA Coverage

COBRA Subsidy Notices

The ARPA imposes new notice requirements on health plans:

- General or alternative notice to qualified beneficiaries who have a COBRA qualifying event from **April 1, 2021, through Sept. 30, 2021**.
- Notice of extended COBRA election to certain individuals who became entitled to elect COBRA **before April 1, 2021**.
- Notice of subsidy expiration.

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COMPLIANCE OVERVIEW



COBRA Notice Requirements

Under general rules, the plan administrator is typically required to provide qualified beneficiaries with the following notices:

- General (or Initial) Notice
- Election Notice
- Notice of Unavailability of COBRA Coverage
- Notice of Early Termination of COBRA Coverage

Qualified beneficiaries are also required to provide notice of a qualifying event. However, new COBRA notice requirements are imposed by the [American Rescue Plan Act](#) (ARPA), which was signed into law on March 11, 2021. The ARPA requires the full cost of COBRA premiums from **April 1, 2021, through Sept. 30, 2021**, to be subsidized for eligible employees (and their family members) who lost or lose group health insurance due to involuntary job loss or reduction in work hours. The ARPA's new notice requirements are outlined below.

COVID-19-Related Relief

Due to the COVID-19 pandemic, the federal government has [extended](#) the time to furnish regular COBRA notices and disclosures, if good faith efforts are made to provide them as soon as administratively practicable. Participants also have additional time to comply with deadlines to elect and pay for regular COBRA coverage, as well as notify the plan of a qualifying event. **Note that this relief does not apply to the notices or elections related to COBRA subsidies.** Therefore, plans and issuers must provide the COBRA subsidy notices according to the time frames specified in the ARPA, outlined below.

ARPA Requirements

What Are the ARPA's new notice requirements?

Plans and issuers are required to notify qualified beneficiaries about premium assistance and other information about their rights under the ARPA, as follows:

- A **General Notice** (or **Alternative Notice**) to all qualified beneficiaries who have experienced a qualifying event from April 1, 2021, through Sept. 30, 2021.
- A **Notice in Connection with the Extended Election Period**, to certain individuals who became entitled to elect COBRA continuation coverage before April 1, 2021.
- A **Notice of Subsidy Expiration**.

A **Summary of the ARPA's COBRA Premium Assistance Provisions** must be attached to the General Notice, the Alternative Notice and the Notice in Connection with the Extended Election Period.

What Is the Alternative Notice?

Group health plans that are subject to COBRA must provide a 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 Sept. 30, 2021. An alternative notice must be provided by **issuers** that offer group health insurance coverage subject to **state mini-COBRA**

COMPLIANCE OVERVIEW



laws. Like the General Notice, the Alternative Notice must be provided to all qualified beneficiaries, not just covered employees, who have experienced any qualifying event at any time from April 1, 2021, through Sept. 30, 2021. The DOL is charged with issuing regulations about providing the Alternative Notice.

Who must the Notice in Connection with the Extended Election Period be provided to?

The ARPA requires group health plans to provide a Notice in Connection with the Extended 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 became entitled to elect COBRA continuation coverage **before April 1, 2021**.

Assistance-eligible individuals under the ARPA are those who:

- Are a qualified beneficiary of the group health plan;
- Are eligible for COBRA because of the covered employee’s **involuntary** termination (unrelated to gross misconduct) or reduction in hours of employment; and
- Elect continuation coverage.

The Notice in Connection with the Extended Election Period **does not** need to be provided to individuals whose maximum coverage period would have ended before April 1, 2021 (e.g., those with qualifying events before Oct. 1, 2019).

Note: Official guidance on how the ARPA COBRA election extension applies to state continuation of coverage (mini-COBRA) programs is limited. However, the guidance that exists indicates that the election extension **does not apply** to state continuation coverage where an individual’s election period or coverage period under the state continuation program has expired.

What information must the notices include?

With the exception of the Notice of Subsidy Expiration, the notices must include the following information:

1. The forms necessary for establishing eligibility for premium assistance
2. The name, address and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with premium assistance
3. A description of the extended election period under the ARPA (if applicable to the individual)
4. A description of the obligation of qualified beneficiaries to notify the plan if they become eligible for another group health plan or Medicare, and the penalty for failure to do so
5. A prominently displayed description of the right to a subsidized premium and any conditions on entitlement to the subsidized premium
6. A description of the option of the right to enroll in different coverage (if the employer permits this option)

The Notice of Subsidy Expiration must explain:

- That the premium assistance will expire soon;
- The date of the expiration; and
- That the individual may be eligible for coverage without any premium assistance through COBRA continuation coverage or a group health plan.

COMPLIANCE OVERVIEW



What timing requirements apply?

Potential assistance-eligible individuals must elect COBRA **within 60 days** of receipt of the relevant notice. The COVID-19-related deadline relief **does not apply** to the notices or elections related to the ARPA's COBRA subsidies.

- The General Notice or Alternative Notice must be given to qualified beneficiaries that have qualifying events at any time from **April 1, 2021, through Sept. 30, 2021**. These may be provided separately or with the COBRA election notice following a qualifying event.
- The Notice in Connection with the Extended Election Period must be provided by **May 31, 2021**.
- The Notice of Subsidy Expiration must be provided **45 to 15 days** before the individual's subsidy expires.

Are model notices available?

Yes. The DOL has provided the following model notices to aid compliance with the ARPA's requirements:

- **Model General Notice and COBRA Continuation Coverage Election Notice:** [MS Word](#) | [PDF](#)
- **Model Notice in Connection with Extended Election Period:** [MS Word](#) | [PDF](#)
- **Model Alternative Notice:** [MS Word](#) | [PDF](#)
- **Model Notice of Expiration of Premium Assistance:** [MS Word](#) | [PDF](#)
- **Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021:** [MS Word](#) | [PDF](#)

Standard COBRA Notices

Unless specifically modified by the ARPA provisions above, the existing requirements for the manner and timing of COBRA notices continue to apply. The following FAQs illustrate the otherwise applicable requirements, but keep in mind that COVID-19-related relief may apply.

Under COBRA, when must the plan administrator provide qualified beneficiaries with the General Notice?

The plan administrator must provide qualified beneficiaries with the General Notice within 90 days after initial plan coverage begins. The General Notice must also be sent to any new dependents added to the plan after the employee's initial enrollment, within 90 days from the date coverage begins. For example, an employee currently covered under the health plan gets married. If the new spouse is added to the plan, the plan administrator must provide the new spouse with the General Notice within 90 days of the effective date of his or her coverage.

Where a covered individual experiences a qualifying event within 90 days of becoming covered under the plan, the Election Notice should be provided to the covered individual. The General Notice need not be provided.

How should the plan administrator deliver the COBRA General Notice?

The plan administrator may deliver a single notice addressed to a covered employee and the covered employee's spouse at their joint residence, provided the plan's latest information indicates that both reside at that address. Hand-delivery of the General Notice to the employee at the workplace is deemed to be adequate delivery to the employee, but does not constitute delivery to the spouse. The plan administrator is not required to provide the General Notice to dependent children covered under the plan who live with the covered employee.



Can the plan meet its obligation to provide the General Notice by incorporating it into the summary plan description (SPD)?

Yes. The General Notice can be incorporated into the SPD, provided that the SPD:

- Contains all of the information required to be included within the General Notice; and
- Is delivered in a manner that complies with the delivery rules applicable to COBRA notices.

However, the rules governing electronic delivery of COBRA notices are more stringent than those applicable to SPDs.

Under COBRA, when must the plan administrator provide qualified beneficiaries with the Election Notice?

The plan administrator must provide qualified beneficiaries with the Election Notice within **14 days** of receipt of the notice of a qualifying event. Where the employer is also the plan administrator and the qualifying event is one for which the employer is required to notify the plan administrator, the employer must provide the qualified beneficiary with the Election Notice **within 44 days** of the date of the qualifying event (or the date on which the qualified beneficiary loses coverage as a result of the qualifying event, if the employer uses the extended notice rule).

When must the plan administrator provide qualified beneficiaries with the Notice of Unavailability of COBRA Coverage?

In the event that the plan administrator receives a notice of a qualifying event from an individual not entitled to COBRA, the plan administrator must notify the individual of the reason why COBRA is not available. The plan administrator is required to notify the individual within the same time period as applicable to the Election Notice (that is, within **14 days** of receipt of notice).

Under COBRA, when must the plan administrator provide qualified beneficiaries with the Notice of Early Termination?

In the event coverage is terminated before the end of the maximum COBRA continuation period, the plan administrator must provide qualified beneficiaries with notice that coverage will terminate. The plan administrator must provide notice **as soon as practicable** following the decision to terminate. The notice must describe the date coverage will terminate, the reason for termination and any rights the qualified beneficiary may have under the plan or applicable law to elect alternative group or individual coverage.

For example, the plan administrator is required to notify the qualified beneficiary whose coverage terminates for failure to pay COBRA premiums in a timely manner. The plan administrator is not required to provide advance notice that the qualified beneficiary will lose coverage if payment isn't received by the end of the grace period.

Under COBRA, what notices must the employer provide to the plan administrator?

The plan administrator is the person designated as the health plan's administrator in the plan documents. If a plan document does not designate a different plan administrator, the employer sponsoring the plan is typically the plan administrator. If the plan administrator is not the employer, the employer is required to notify the plan administrator of the occurrence of the following qualifying events:

- Employee's death;
- Employee's termination of employment (other than by reason of gross misconduct);

COMPLIANCE OVERVIEW



- Employee's reduction in hours;
- Employee becoming entitled to Medicare; or
- Employer's filing for Chapter 11 bankruptcy.

Under COBRA, when must an employer provide the plan administrator with notice of a qualifying event?

If the employer is not the plan administrator, the employer is required to notify the plan administrator within 30 days of a qualifying event. However, if the employer uses the delayed notice rule, where the COBRA maximum coverage period begins on the date of the loss of coverage, the employer must notify the plan administrator within 30 days of a loss of coverage due to the qualifying event. A special rule applicable to multi-employer plans allows for a longer period of time within which the employer must provide the plan administrator with notice.

The employer's notice must provide sufficient information to enable the plan administrator to determine the following:

- Plan name;
- Covered employee;
- Type of qualifying event; and
- Date of the qualifying event (including date of loss of coverage).

Late Payments

Under COBRA, is the plan administrator required to notify qualified beneficiaries if their payment is late?

No. The plan administrator is not required to provide late payment notices to qualified beneficiaries. The plan administrator is only required to notify qualified beneficiaries that COBRA has been terminated for failure to make payment within the grace period.