



The American Rescue Plan Act (ARPA)

COBRA & State Continuation Subsidy Guide

This document is meant to provide employers with a guide on how to respond to the new COBRA and State Continuation (mini-COBRA) requirements under ARPA.

The information contained herein is for informational purposes only and does not constitute financial, accounting, actuarial or legal advice as to any particular matter. The reader should consult with a legal or other professional advisor before commencing a course of action. Acting upon information herein does not create an attorney-client relationship.

| Exude, Inc.

service@exudeinc.com | (215) 875-8730

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At a Glance

In order for an employee to be eligible for a premium subsidy:

- To be eligible for the ARPA subsidy, the Assistance Eligible Individual (AEI) must experience an involuntary termination of employment or reduction in hours. Voluntary terminations are not eligible for the subsidy. The reduction of hours does not have to be involuntary (e.g., reduced hours due to change in a business's hours of operations, a change from full-time to part-time status, taking of a temporary leave of absence, or an individual's participation in a lawful labor strike, as long as the individual remains an employee at the time that hours are reduced).
- The AEI must still be eligible for COBRA coverage during the period from April 1, 2021 through September 30, 2021. Qualified beneficiaries may be eligible for the subsidy if they are eligible for and elect COBRA coverage because of their own or a family member's reduction in hours or an involuntary termination from employment.
- The AEI must also be someone who is or could have been on Federal COBRA for the time period beginning April 1, 2021, OR if the AEI is eligible for State Continuation they must be currently enrolled on State Continuation/mini-COBRA.
 - COBRA coverage does not have to be continuous for those eligible for Federal COBRA. COBRA eligible individuals who originally waived or lapsed coverage are eligible for a second chance to elect COBRA prospectively for an April 1 effective date, for whatever remains of the 18 months from their original qualifying event date. Additionally, those who originally waived coverage may make a retroactive election back to their qualifying event date if they are still in their outbreak period. However, the carrier will have to agree to this, which is unlikely.
 - The second chance option does not apply to State Continuation/mini-COBRA. Only those currently enrolled on State Continuation/Mini-COBRA are eligible for the subsidy.
- NY and NJ AEIs must still be in their original 18-month COBRA/State Continuation/mini-COBRA coverage period.
- Note: For PA and DE, the mini-COBRA eligibility period is only nine (9) months; therefore, all AEIs must be in their original nine-month mini-COBRA coverage period and must be currently enrolled.
- The qualified beneficiary is not eligible to receive the subsidy if they are eligible for coverage under Medicare or another employer-sponsored plan (that provides other than excepted benefits).

At a Glance

Who is responsible for the subsidized premium payment?

**This information is subject to change upon further guidance expected from the DOL and IRS*

- Self-Insured COBRA Eligible Plans: Plan Sponsors (employers) are entitled to claim the ARPA COBRA subsidy as a Medicare Payroll tax credit on the Quarterly 941 Form.*
- Fully-Insured COBRA Eligible Plans: The employer is entitled to claim the ARPA COBRA subsidy as a Medicare Payroll tax credit on the Quarterly 941 Form.*
- Fully-Insured State Continuation Eligible Plans: The Insurance Carrier is entitled to claim the Tax Credit.*
- Multi-employer (Union-sponsored) health plans: The Multiemployer (union) plan is entitled to claim the Tax Credit.*

Note: Currently, there is no DOL guidance regarding Severance Packages, where the employer pays some or all of the COBRA premium, and whether or not the employer is entitled to claim the Subsidy Tax credit.

Can employees enroll in a different plan?

- Employers are allowed the optional provision of permitting employees to move to different coverage that is the same or a less expensive plan. This is not a mandatory provision, and the carrier must agree to permit the change.

Subsidies apply to:

- The subsidies apply to all plans subject to Federal COBRA. This includes both fully and self-insured medical, dental, vision, and HRA plans. The subsidy also applies in states that offer state continuation.

Keep in mind that state continuation does not apply to self-insured plans, or dental and vision. Therefore, the premium subsidy generally does not apply to self-insured plans, or dental and vision plans that are subject to state continuation.

Employee Retention Tax Credit Comment:

- Employers cannot claim the Employee Retention Tax Credit (ERTC) for the same amounts they are also requesting reimbursement for under the COBRA ARPA Subsidy. Essentially, there is no “double dipping.”

Important reminders:

- The subsidy applies only to the original 18 months of extended coverage.

For PA and DE, the mini-COBRA eligibility period is only nine (9) months; therefore, the subsidy period only applies to the original nine months of extended coverage.

Currently, there is no DOL guidance regarding how the subsidy applies to states like NY that extend Federal COBRA coverage by adding 18 additional months of NY mini-COBRA, for a total of 36 months for all Federal COBRA and NY mini-COBRA events.

COBRA Subsidy Notification Process

What Employers Must Do:

| | | | |
|-----------------|--|-----------------|---|
| <p>1</p> | <p>Reach out to your COBRA vendor, if applicable, as they will be able to provide you with much of the needed information. Employers will still have a role in determining who should receive a notice as the vendor will not have access to who was on COBRA as the result of an involuntary termination or reduction in hours as compared to the rest of the COBRA members.</p> <p>It is suggested that employers review their payroll records and other employment data for the relevant information as well.</p> | <p>5</p> | <p>Further identify which COBRA or State Continuation/mini-COBRA AEIs would normally have their coverage end during April 2020 or before September 30, 2021. These individuals would not receive the full six (6) months of subsidy but will instead receive a subsidy until the end of their COBRA/State Continuation/mini-COBRA coverage period.</p> |
| <p>2</p> | <p>For NY and NJ, review all terminations and reduction in hours causing a loss of coverage between November 1, 2019 and the current date. This will help you begin to identify Assistance Eligible Individuals (AEIs).</p> <p>For PA and DE, the mini-COBRA eligibility period is only nine months, therefore review all terminations and reduction in hours causing a loss of coverage between August 1, 2020 and the current date.</p> | <p>6</p> | <p>Update your current COBRA/State Continuation/mini-COBRA notices and severance package information (if applicable) to include the new subsidy eligibility notices for any newly eligible COBRA/State Continuation/mini-COBRA individuals. The DOL has posted the new ARPA COBRA subsidy eligibility notices along with FAQs on the DOL website: dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy</p> |
| <p>3</p> | <p>Identify who was eligible for COBRA or is currently enrolled on State Continuation/mini-COBRA based on an involuntary termination for reasons other than gross misconduct, or a reduction in hours (reduction of hours can be for any reason). The subsidy does not apply to voluntary terminations.</p> | <p>7</p> | <p>Send the new subsidy eligibility and special enrollment notice to the AEIs identified above who would normally be in their COBRA coverage period or are enrolled on State Continuation/mini-COBRA according to the instructions in the next section (see Notices).</p> |
| <p>4</p> | <p>Identify which COBRA eligible individuals are still on COBRA or in cases where the individual waived or lapsed their coverage and would otherwise still be in their COBRA coverage period. These AEIs are eligible for the subsidy, regardless of whether they are currently on COBRA, had previously waived COBRA, or had a lapse in coverage. The new right to elect COBRA coverage begins April 1 and ends 60 days after the notice has been received.</p> <p>Note: State Continuation/mini-COBRA AEIs must be currently enrolled on continuation to be eligible for the subsidy. They do not get a second chance/new right to elect coverage.</p> | <p>8</p> | <p>Send the “Model Notice of Expiration of Premium Assistance” no sooner than 45 days, but no later than 15 days, before the subsidy is to expire notifying the AEI that their subsidy is ending. The template for the expiration of subsidy notice is expected to be published by the DOL by April 25th.</p> <p>The DOL has posted the Model Notice of Expiration of Premium Assistance Template on the DOL website: dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy</p> |

Notices (1)

| Notice | Purpose | Who Sends | Deadline |
|---|---|-----------------|-------------------------------------|
| <p>Summary of the COBRA Premium Assistance Provisions</p> | <p>A one-page summary of the subsidy along with a Request for Treatment as an Assistance Eligible Individual form: this summary and form are intended to be included with the election notices. This document includes the Request for Treatment as an Assistance Eligible Individual form.</p> <p>This notice also includes the form for AEIs to inform the employer that they are no longer eligible for the subsidy because they have other group coverage or Medicare.</p> | <p>Employer</p> | <p>Must be sent by May 31, 2021</p> |
| <p>Request for Treatment as an Assistance Eligible Individual form</p> | <p>Used to apply for ARPA subsidized coverage: this document is included as part of the Summary of the COBRA Premium Assistance Provisions.</p> <p>This notice also includes the form for AEIs to inform the employer that they are no longer eligible for the subsidy because they have other group coverage or Medicare.</p> | <p>Employer</p> | <p>Must be sent by May 31, 2021</p> |
| <p>Notice in Connection with Extended Election Period</p> | <p>This notice is designed to be sent to any qualified beneficiaries currently enrolled in COBRA continuation coverage, due to a reduction in hours or involuntary termination (AEIs), as well as those who would currently be Assistance Eligible Individuals if they had initially elected and/or maintained COBRA continuation coverage, and now have a new opportunity to elect COBRA and take advantage of the subsidy. The Summary of the COBRA Premium Assistance Provisions and Request for Treatment as an Assistance Eligible Individual form are intended to be provided with this notice.</p> <p>This provision applies to Federal COBRA only. Please note, the deadline to elect coverage is 60 days, but the deadline to make a new plan selection is 90 days (subject to employer and carrier approval).</p> | <p>Employer</p> | <p>Must be sent by May 31, 2021</p> |

Notices (2)

| Notice | Purpose | Who Sends | Deadline |
|---|--|-----------------|--|
| <p>ARP General Notice & Election Notice</p> | <p>This notice is intended to be provided to all qualified beneficiaries experiencing a qualifying event between April 1, 2021 and September 30, 2021. It incorporates both a description of the subsidy and the contents of a standard election notice. The Summary of the COBRA Premium Assistance Provisions and Request for Treatment as an Assistance Eligible Individual form are intended to be provided with this notice.</p> | <p>Employer</p> | <p>Must be sent by May 31, 2021</p> |
| <p>Alternative Notice of ARP Continuation Coverage Election Notice</p> | <p>This notice is a model notice designed to be used with individuals that may qualify for the subsidy under a state continuation or mini-COBRA law.</p> <p>It is suggested that this notice be attached to the regular Continuation Coverage notice the employer or administrator generally sends to the qualified beneficiary.</p> | <p>Employer</p> | <p>Must be sent by May 31, 2021</p> |
| <p>Notice of Expiration of Premium Assistance</p> | <p>This notice is used to alert AEIs that their subsidy is ending. The notice itself indicates that it is intended to be sent no later than 15 days and no sooner than 45 days before: (1) the end of the subsidy period (i.e., September 30, 2021) for individuals whose COBRA eligibility extends beyond that date; or, if sooner (2) before COBRA coverage expires (i.e., if an individual's COBRA eligibility ends during the subsidy period).</p> | <p>Employer</p> | <p>Must be sent no sooner than 45 days before but no later than 15 days before the subsidy expires</p> |

ARPA COBRA Subsidy Notice and Election Instructions

Coverage Experience **#1**

Coverage Experience **#2**

| | If the individual is currently on Federal COBRA: | If the individual is currently on state continuation: |
|--|---|--|
| Subsidy Relevance | The individual will receive a subsidy beginning April 1, 2021, and ending the earlier of their normal Federal COBRA or September 30, 2021. | The individual will receive a subsidy beginning April 1, 2021 and ending the earlier of their normal state continuation period or September 30, 2021. |
| Employer Notice Requirement* | The employer or TPA should provide a Summary of Premium Assistance, Request for Treatment as an Assistance Eligible Individual form, Notice in Connection with Extended Election Period, and later, the Notice of Expiration of Subsidy before the end of the subsidy period. | The employer or TPA should provide a Summary of Premium Assistance, Request for Treatment as an Assistance Eligible Individual form, Alternative Notice of ARP Continuation Coverage Election Notice, and later, the Notice of Expiration of Subsidy before the end of the subsidy period. |
| AEI Will Receive | Request for Treatment as an Assistance Eligible Individual form Employer must send a completed copy back to the individual approving or denying the request. | Request for Treatment as an Assistance Eligible Individual form. Employer must send a completed copy back to the individual approving or denying the request. |
| | Carrier Enrollment Form: used if making changes to your current plan (if employer chooses to allow and subject to carrier approval). | Carrier Enrollment Form: used if making changes to your current plan (if employer chooses to allow and subject to carrier approval). |
| Forms Required to Apply for Subsidy | Request for Treatment as an Assistance Eligible Individual form. | Request for Treatment as an Assistance Eligible Individual form. |
| | Carrier Enrollment Form: used if making changes to your current plan (subject to carrier approval). | |

ARPA COBRA Subsidy Notice and Election Instructions

Coverage Experience #3

Coverage Experience #4

| | If the individual waived Federal COBRA but would otherwise still be in their normal Federal COBRA coverage period (not state continuation): | If the individual had a lapse of coverage but would otherwise still be in their normal Federal COBRA coverage period (not state continuation): |
|--|--|--|
| Subsidy Relevance | <p>The individual has the right to elect prospective Federal COBRA coverage with a subsidy beginning April 1, 2021 and ending the earlier of September 30, 2021 or their normal Federal COBRA end date.</p> <p>Second chance option: In addition, the individual may have an opportunity to elect coverage retrospectively back to their original qualifying event date. However, this is subject to carrier approval.</p> | <p>The individual has the right to elect prospective Federal COBRA coverage with a subsidy beginning April 1, 2021, and ending the earlier of September 30, 2021, or their normal Federal COBRA end date.</p> <p>Second chance option: In addition, the individual may have an opportunity to elect coverage retrospectively back to their original qualifying event date. However, this is subject to carrier approval.</p> |
| Employer Notice Requirement* | <p>The employer or TPA must provide a Summary of Premium Assistance, Request for Treatment as an Assistance Eligible Individual form, and Notice in Connection with Extended Election Period. The special enrollment period ends 60 days after the notice is received.</p> <p>The employer or TPA must also provide a notice of expiration of subsidy before the end of the subsidy period.</p> | <p>The employer or TPA must provide a Summary of Premium Assistance, Request for Treatment as an Assistance Eligible Individual form, and Notice in Connection with Extended Election Period. The special enrollment period ends 60 days after the notice is received.</p> <p>The employer or TPA must also provide a notice of expiration of subsidy before the end of the subsidy period.</p> |
| AEI Will Receive | <p>Request for Treatment as an Assistance Eligible Individual form</p> <p>Employer must send a completed copy back to the individual approving or denying the request.</p> | <p>Request for Treatment as an Assistance Eligible Individual form</p> <p>Employer must send a completed copy back to the individual approving or denying the request.</p> |
| | <p>Notice in Connection with Extended Election Period</p> | <p>Notice in Connection with Extended Election Period</p> |
| | <p>Carrier Enrollment Form: used if making changes to your current plan (subject to carrier approval).</p> | <p>Carrier Enrollment Form: used if making changes to your current plan (subject to carrier approval).</p> |
| Forms Required to Apply for Subsidy | <p>Request for Treatment as an Assistance Eligible Individual form</p> <p>Notice in Connection with Extended Election Period</p> <p>Carrier Enrollment Form (subject to carrier approval)</p> | <p>Request for Treatment as an Assistance Eligible Individual form</p> <p>Notice in Connection with Extended Election Period</p> <p>Carrier Enrollment Form</p> |

ARPA COBRA Subsidy Notice and Election Instructions

Coverage Experience **#5**

Coverage Experience **#6**

| | If the individual becomes eligible for Federal COBRA on or after April 1, 2021 (not state continuation): | If the individual becomes eligible for state continuation on or after April 1, 2021 (not Federal COBRA): |
|--|--|---|
| Subsidy Relevance | The individual may receive up to a maximum of six (6) months of “premium free” (COBRA subsidy) coverage between April 1, 2021 and September 30, 2021, after which they are responsible for normal Federal COBRA payments until their COBRA coverage ends. | The individual may receive up to a maximum of six (6) months of coverage between April 1, 2021 and September 30, 2021, after which they are responsible for normal state continuation payments until their State Continuation coverage ends. |
| Employer Notice Requirement* | <p>The employer or TPA must provide a Summary of Premium Assistance, Request for Treatment as an Assistance Eligible Individual form, and ARP General Notice and Election Notice.</p> <p>The employer or TPA must also provide a notice of expiration of subsidy before the end of the subsidy period.</p> | The employer or TPA must provide a Summary of Premium Assistance, Request for Treatment as an Assistance Eligible Individual form, and Alternative Notice of ARP Continuation Coverage Election Notice. It is suggested that the Alternative Notice of ARP Continuation form be attached to the Continuation Notice the employer generally sends. The employer or TPA must also provide a notice of expiration of subsidy before the end of the subsidy period. |
| AEI Will Receive | ARP General Notice & Election Notice | Alternative Notice of ARP Continuation Coverage Election Notice |
| | Request for Treatment as an Assistance Eligible Individual form Employer must send a completed copy back to the individual approving or denying the request. | Request for Treatment as an Assistance Eligible Individual form. Employer must send a completed copy back to the individual approving or denying the request. |
| | Carrier Enrollment Form: used to newly enroll onto COBRA and/or making changes to your current plan (if the employer permits and subject to carrier approval). | Carrier Enrollment Form |
| Forms Required to Apply for Subsidy | Request for Treatment as an Assistance Eligible Individual form | Alternative Notice of ARP Continuation Coverage Election Notice |
| | ARP General Notice & Election Notice | Request for Treatment as an Assistance Eligible Individual form |
| | Carrier Enrollment Form | Carrier Enrollment Form |

ARPA COBRA Subsidy Notice and Election Instructions

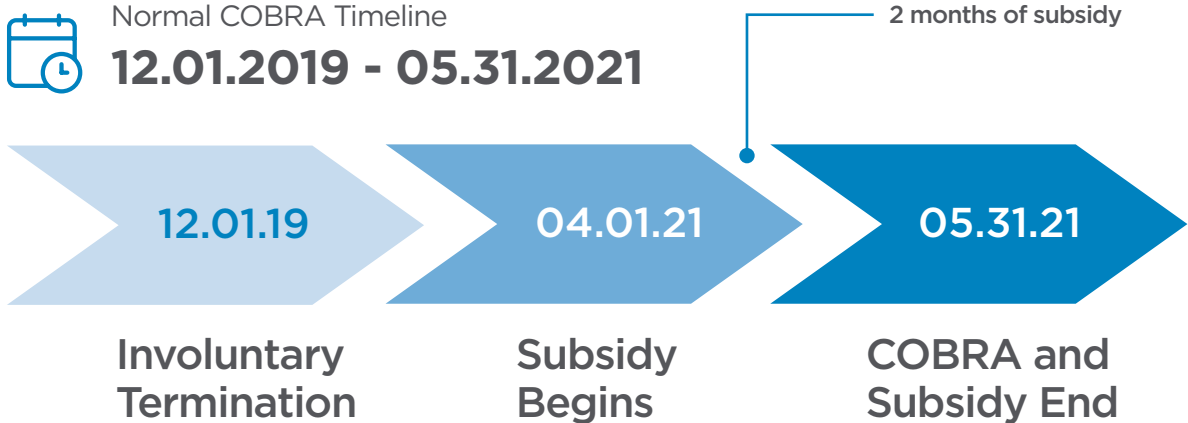
Coverage Experience **#7**

| | If the individual is eligible for coverage on another group health plan or Medicare: |
|-------------------------------------|--|
| Subsidy Relevance | <p>The individual is not eligible for the ARPA COBRA subsidy.</p> <p>The individual is required to attest to eligibility for other group coverage or Medicare on the Request for Treatment as an Assistance Eligible Individual form.</p> |
| Employer Notice Requirement* | <p>No notice is required as the individual is not eligible.</p> <p>Individuals receiving the subsidy must notify the plan/employer if they become eligible or face tax penalty by returning a completed copy of the Request for Treatment as an Assistance Eligible Individual form, attesting to the fact that they are no longer eligible for the subsidy.</p> |
| AEI Will Receive | <p>No documents are required.</p> |

**The notice requirement can be satisfied by the Employer/Plan Sponsor or TPA.*

ARPA applies to the Plan (the Employer), not to insurance carriers. Therefore, provisions such as the second chance retro election for those who previously did not elect Federal COBRA are subject to carrier approval.

Example Partial Subsidy



| Scenario | |
|---|--|
| <ul style="list-style-type: none"> • Mary lost her job and her coverage on December 1, 2019. • Her 18 months of COBRA would run from December 1, 2019 through May 31, 2021. • The subsidy begins April 1, 2021. Mary would only be able to receive two months' worth of the COBRA subsidy (April and May 2021) because she would not be eligible for COBRA after May 31, 2021. | <ul style="list-style-type: none"> • It is important to note that the ARPA subsidy does not require COBRA coverage to be continuous and provides qualified beneficiaries with a second chance to prospectively elect coverage if they have previously waived. However, this only applies to federal COBRA, not state continuation/mini-COBRA. • An employee may also be able to retroactively elect coverage going back to their Qualifying Event date if they are still in his outbreak period. However, this is subject to carrier approval. |

Example Elections & Subsidies

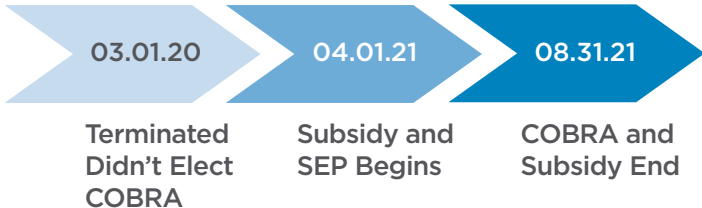
Note: This applies to Federal COBRA, not State Continuation. While State Continuation participants are eligible for the subsidy in certain circumstances, they do not have a second chance to elect coverage if they originally waived or lapsed coverage.

The Qualified Beneficiary will have a 60-day election period from the date of the notice to make an election for whatever COBRA would have been left from their original Qualifying Event date under the following three scenarios.

1. John was terminated and lost coverage March 2020 and never elected COBRA.

John has 60 days from the date he received the notice to prospectively elect the COBRA subsidy effective April 1, 2021 for the five (5) months (April 2021 through August 2021) he has left from his initial QE date (March 2020). He does not have to pay for COBRA from March 2020 through March 2021.

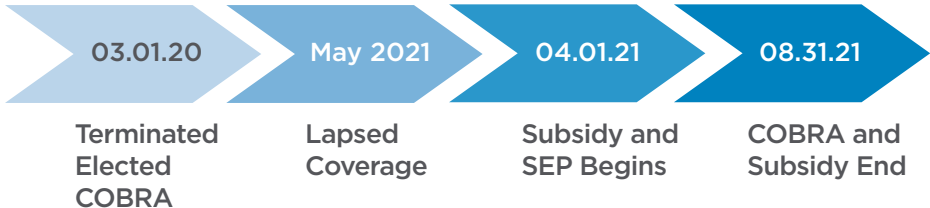
An employee may also be able to retroactively elect coverage going back to their Qualifying Event date if they are still in their outbreak period. However, this is subject to carrier approval.



 Normal COBRA Timeline **03.01.2020 - 08.31.2021**

2. John was termed and lost coverage March 2020. He elected COBRA, but he only paid for March and April 2020 and then dropped COBRA.

John has 60 days to prospectively elect COBRA with the subsidy effective April 1, 2021 for the five (5) months he has left (April 2021 through August 2021) from his initial QE date (March 2020). He does not have to pay for COBRA from May 2020 through March 2021.



 Normal COBRA Timeline **03.01.2020 - 08.31.2021**

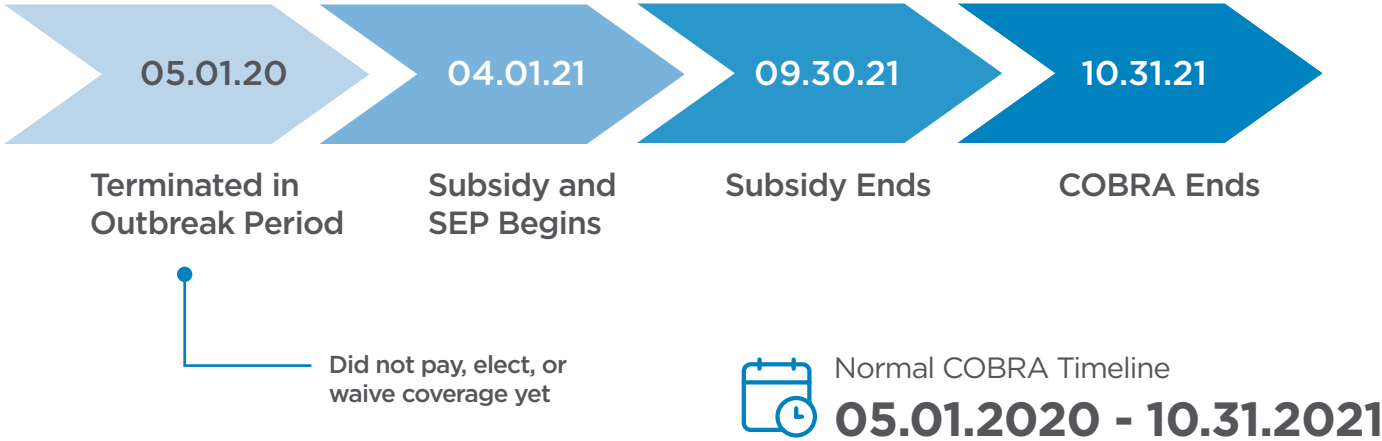
Example Elections & Subsidies

Note: This applies to Federal COBRA, not State Continuation. While State Continuation participants are eligible for the subsidy in certain circumstances, they do not have a second chance to elect coverage if they originally waived or lapsed coverage.

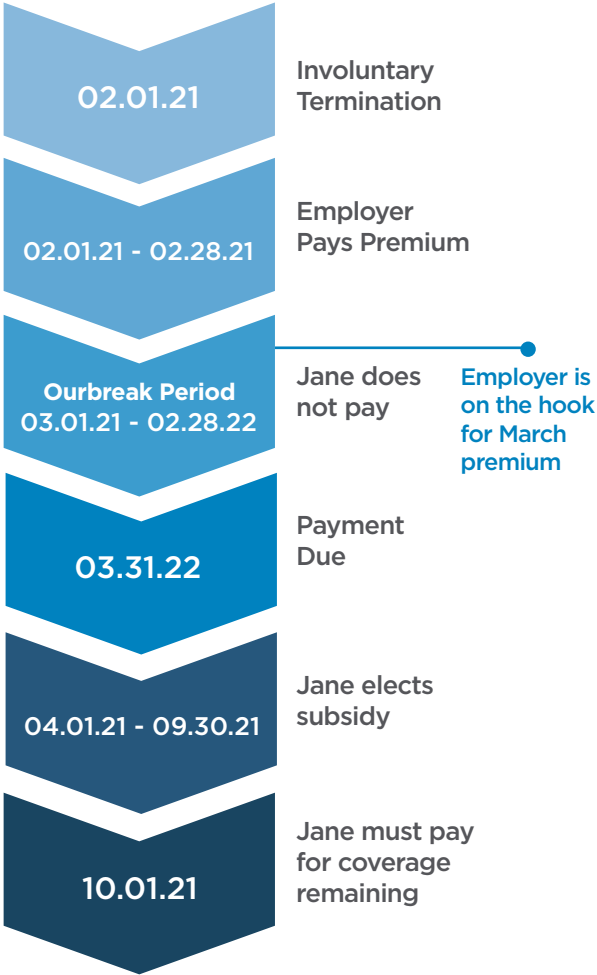
The Qualified Beneficiary will have a 60-day election period from the date of the notice to make an election for whatever COBRA would have been left from their original Qualifying Event date under the following three scenarios.

3. COBRA Subsidy for an individual in their “outbreak period” who has not paid. (For the purposes of this example the end of the “outbreak period” has not been announced. This example is based on the information we have to date and is subject to change upon further guidance from the DOL and IRS.)

The individual can enroll in coverage effective April 1, 2021 under the SEP and elect coverage prospectively, but they may also elect coverage during the outbreak period if they have not yet ended their outbreak period extension.



Example Outbreak Period & Subsidies



04.27.21

Scenario

- Jane experiences an involuntary termination February 1, 2021 and is entitled to 18 months of COBRA from February 1, 2021 through July 31, 2022.

Note: this does not apply to state continuation, only Federal COBRA.

- The employer pays 1st month of COBRA premium for February 1, 2021 as part of a severance agreement.
- Jane does not pay March 1, 2021 premium.

- Under the extended COBRA deadlines during the outbreak period, the March 1, 2021 payment would be due one year from the date the payment would have been due if there had been no “outbreak period.”

- For example, payment of March 1, 2021 premium (including the 30-day grace period) is due March 31, 2021 if there had been no “outbreak period.” Add one year for the “outbreak period” deadline extension (permitted by DOL Notice 2020-01). The March 1, 2021 payment is actually due March 31, 2022.

- The employer is responsible for the March premium because the COBRA participant is in their “outbreak period.”

- Jane elects the COBRA subsidy for six (6) months, from April 1, 2021 through September 30, 2021.

- On October 1, 2021, Jane becomes responsible for the months of COBRA remaining from the original qualifying event date. Therefore, Jane would be responsible for 10 months of remaining COBRA, October 2021 through July 2022.

- In this case, Jane can be terminated August 1, 2022 because 18 months of COBRA has come to an end.

- As long as the “outbreak period” remains in effect, the COBRA participant has one year plus the 30-day grace period to pay each month of the remaining months of COBRA premiums (e.g., October 2021 premium is due October 31, 2022; December 2021 premium is due December 31, 2022).

- Unfortunately, according to the guidance to date regarding “outbreak periods,” the employer may try to collect the outstanding premiums from the COBRA participant but is unlikely to be successful leaving the employer responsible for the premiums during the outbreak period.