



# Mini-COBRA Quick Facts

April 23, 2021

As part of the American Rescue Plan Act of 2021 (ARPA), employers now have some work to do as it pertains to COBRA and the new subsidies under the ARPA. ARPA created a COBRA subsidy from April 1 of 2021 to September 30 of 2021, paid by the employer or carrier, for 100% of the COBRA premium for Assistance Eligible Individuals (AEIs). While large employers tend to engage with a vendor for their COBRA administration, small employers under 20 employees tend to go it alone.

Employers with over 20 employees must provide the applicable notice and summary to Assistance Eligible Individuals (AEIs) no later than May 31, 2021, and AEIs have 60 days upon receipt to attest they are an AEI and submit the election forms. Most large employers are working with their COBRA vendors to facilitate this process. For small employers subject to state continuation or “mini-COBRA”, it is important to know it is not the same timeframes for employers under 20. Read on for the Why, Who, How & When of state continuation.

## Why, Who, How & When

**Who?** Many states have a continuation of coverage mandate referred to as mini-COBRA for employers with fewer than 20 employees. The mandates can vary widely by each State, so it is imperative to know your state’s mini-COBRA mandate and applicable requirements. Please review your state’s requirements.

- On April 7, 2021, DOL released FAQs, with question #6 addressing State continuation:

**Q6:** Does the ARP change any State program requirements or time periods for election of continuation of coverage?

**Answer:** No. The ARP does not change any requirement of a State continuation coverage program. The ARP only allows AEIs who elect continuation coverage under State insurance law to receive the premium assistance from April 1, 2021 through September 30, 2021. It also allows AEIs to switch to other coverage offered to similarly situated active employees IF the plan allows it, provided that the new coverage is no more expensive than the prior coverage.

**Why is this important?** When do employers have to do this? ARPA does not change state continuation requirements or time frames for election of continuation coverage so it will be state specific on the requirements and timing. Some tips for small employers:

1. Determine your states requirements as they may be different from ARPA such as a state continuation of coverage eligibility is only due to involuntarily termination so a reduction in hours for this state would not be eligible under that state’s mini-COBRA
  2. Determine if your state has issued guidance to allow for a second election period. If not, they would not have a “second election” right.
  3. Determine if your state has a mandate to provide notice of election ending. If it does not, then the ARPA Notice of Expiration of Premium Subsidy does not apply to that state.
- It is clear within the regulations that regarding mini-COBRA, that the health insurance company has the responsibility to continue coverage for an “assistance eligible individual” (AEI) and to tax the subsidy credit to cover the insurance premium. As stated in the regulations:

“(a) IN GENERAL.—The person to whom premiums are payable for continuation coverage under section 9501(a)(1) of the American Rescue Plan Act of 2021 shall be allowed as a credit against the tax imposed by section 3111(b), or so much of the

taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for each calendar quarter an amount equal to the premiums not paid by assistance eligible individuals for such coverage by reason of such section 9501(a)(1) with respect to such calendar quarter.

“(b) PERSON TO WHOM PREMIUMS ARE PAYABLE. For purposes of subsection (a), except as otherwise provided by the Secretary, the person to whom premiums are payable under such continuation coverage shall be treated as being—

“(1) in the case of any group health plan which is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), the plan,

“(2) in the case of any group health plan not described in paragraph (1)—

“(A) which is subject to the COBRA continuation provisions contained in—

“(i) the Internal Revenue Code of 1986,

“(ii) the Employee Retirement Income Security Act of 1974, or

“(iii) the Public Health Service Act, or

“(B) under which some or all of the coverage is not provided by insurance, the employer maintaining the plan, and

**“(3) in the case of any group health plan not described in paragraph (1) or (2), the insurer providing the coverage under the group health plan.**

**responsible for the subsidy and tax credit.**

**How?** The insurance carrier may send out the required notice, however they may also advise the employer that the notice requirements are the employer’s responsibility and to simply send the completed form to the insurance carrier upon receipt, review, and approval.

Model Alternative Notice of ARP Continuation Election Notice – for use by insured coverage subject to state continuation requirements. The Model Alternative Notice can be found on the Department of Labor website: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

**The additional notices required by ARPA for plans subject to federal COBRA only apply to federal COBRA plans, however** additional guidance, clarifications, or FAQs may be released on this issue.