

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



PARKER | SMITH | FEEK

# ARP COBRA Subsidy

---

**American Rescue Plan Act COBRA Subsidy**

May 2021

# Table of Contents

<b>OVERVIEW .....</b>	<b>3</b>
<b>ASSISTANCE ELIGIBLE INDIVIDUALS.....</b>	<b>4</b>
<b>OFFERING THE SUBSIDY .....</b>	<b>8</b>
<b>THE NOTICES .....</b>	<b>11</b>
<b>PAYROLL TAX CREDIT .....</b>	<b>14</b>
<b>COORDINATION WITH COBRA ADMINISTRATOR.....</b>	<b>16</b>

While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept any liability whatsoever for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it. This publication is distributed on the understanding that the publisher is not engaged in rendering legal, accounting or other professional advice or services. Readers should always and without exception seek professional advice before entering into any commitments.

## Overview

To help clients better navigate the complexities of the COBRA subsidy under the American Rescue Plan Act (ARP), Benefit Comply has put together the following Guide. The Guide has been updated to reflect the IRS guidance issued in [IRS Notice 2021-31](#).

Congress passed the \$1.9 trillion COVID relief bill on March 11, 2021. The bill includes a federal subsidy that will cover 100% of the cost of COBRA continuation coverage for up to 6 months for individuals who have had an involuntary termination of employment or reduction in hours who have federal or state continuation of coverage rights. The assistance eligible individuals (AEIs) will pay nothing for COBRA coverage. The employer or carrier will pay the full premium or cover qualified beneficiaries at no cost on a self-insured plan, then recover the premiums through a payroll tax credit. There are also significant new notice requirements.

## Assistance Eligible Individuals

“Assistance Eligible Individuals” or AEIs must be given the opportunity to participate in COBRA continuation coverage at no cost from April 1, 2021 – September 30, 2021, so long as they are not eligible for other group health plan coverage or Medicare. The following are examples of AEIs:

- Individuals who are offered federal COBRA or state continuation due to an involuntary termination of employment or reduction in hours that occurs April – September 2021;
- Individuals who were offered federal COBRA or state continuation due to an involuntary termination of employment or reduction in hours and who are currently COBRA participants (elected continuation coverage and are making monthly premium payments); and
- Individuals who were offered federal COBRA due to an involuntary termination of employment or reduction in hours, chose not to elect COBRA, or elected and then dropped COBRA coverage, but are still within their maximum COBRA coverage period during the subsidy period. This 2<sup>nd</sup> chance election is not required for group health plans subject to only state continuation (and not subject to federal COBRA).

Employees/ former employees, spouses, and dependents can all be AEIs. Only those who were covered by the employer’s plan the day before their COBRA qualifying event can be AEIs. In other words, the subsidy does not give an opportunity to enroll new dependents who were not enrolled in the employer’s group health plan before the involuntary termination of employment or reduction of hours.

There is no requirement that the involuntary termination of employment or reduction of hours be related to COVID-19 for an individual to qualify for the subsidy. Further, while termination of employment must be involuntary to make a qualified beneficiary an AEI, the same does not apply to a reduction in hours. In other words, any voluntary reduction of hours as a COBRA qualifying event, would make an individual an AEI.

The subsidy is not available to qualified beneficiaries whose loss of coverage was due to voluntary termination of employment, divorce, death, or loss of dependent status. In other words, if an individual's original COBRA qualifying event (i.e., the reason they lost eligibility for active coverage) is anything other than the employee's involuntary termination of employment or reduction of hours, they are not eligible for the subsidy.

### Involuntary Termination

The language of the ARP statute did not contain a definition of involuntary termination. However, the IRS provides a definition along with examples in IRS Notice 2021-31. For purposes of the ARP COBRA subsidy, an involuntary termination is “a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.”

The following are examples of involuntary termination provided under the guidance. The examples seem to indicate that involuntary terminations should be interpreted broadly:

- Layoffs and reductions in force;
- Failure to renew a contract (unless it was known at all times that it would not be renewed);

- Termination for cause;
- Employer's action to end employment when the employee cannot work due to illness or disability;
- Employee resignation as the result of employer-initiated change in work location;
- Employee resignation as the result of employer-initiated negative change in employment relationship;
- Employee resignation due to participation in a window program that meets the requirements of Treas. Reg. § 31.3121(v)(2)-1(b)(4)(v); and
- Employee resignation due to an involuntary material reduction in hours.

The guidance also clarifies that an employee resignation due to general concerns about workplace safety due to the health condition of the employee or a family member of the employee would not be considered an involuntary termination, unless it is due to the employer's action (or inaction), which resulted in a material negative change in the employment relationship analogous to a constructive discharge. Similarly, an individual whose qualifying event is an employee-initiated termination of employment because a child is unable to attend school or because another childcare facility is closed due to the COVID-19 National Emergency, is not a potential AEI.

### Gross Misconduct

If the involuntary termination of employment was for gross misconduct, the individual is not a COBRA qualified beneficiary. In other words, termination of employment due to gross misconduct is not a COBRA qualifying event. Therefore, an employee terminated due to gross misconduct would not be eligible for COBRA or the COBRA subsidy.

There have been many court cases involving COBRA and gross misconduct, but courts have not agreed on a common standard to apply in gross misconduct cases. Certain federal courts have looked to the unemployment insurance laws of the state in which the court sits because these laws often deny unemployment benefits to employees terminated for "gross misconduct," "misconduct" or "willful misconduct." This approach, however, has not led to a uniform definition of gross misconduct because state unemployment law concepts vary according to the state in which the federal court deciding a COBRA case sits.

Plans should seek legal advice before they deny COBRA coverage due to employee gross misconduct. If a Court decides that the employer should have offered COBRA, this can lead not only to an award of retroactive COBRA coverage but also to imposition of penalties of up to \$110 per day. To clarify, while there is an exception to offering COBRA in general due to gross misconduct, there is no exception for the subsidy specifically. Therefore, if an employer determines that an individual was terminated for gross misconduct, they will not offer COBRA to that individual at all. There is no option to simply forego an offer of the subsidy, as this would be considered termination for cause if it does not rise to the level of gross misconduct.

### **Subsidy Timing**

Individuals who are still within their maximum COBRA coverage period during the subsidy timeframe (April 1, 2021 – September 30, 2021) can be AEIs. That means that any individual who experienced an involuntary termination of employment or reduction of hours and who is still within their maximum coverage period during the subsidy period could be an AEI (if they timely elect coverage), whether their COBRA qualifying event occurred before or during the subsidy timeframe. There are three instances where an individual would lose eligibility for the subsidy and would no longer be considered an AEI:

1. The individual reaches the end of their maximum COBRA coverage period;
2. The individual becomes eligible for an employer-sponsored group medical plan or Medicare; and
3. The individual reaches the end of the subsidy timeframe (September 30, 2021), assuming Congress does not extend the subsidy timeframe.

In many cases, an individual's maximum coverage period will extend for a total of 18-months following their COBRA qualifying event. However, federal COBRA does provide for longer maximum coverage periods in certain cases. For example, spouses and dependents who have a 2<sup>nd</sup> qualifying event after electing COBRA can extend their maximum coverage period to 36 months when their original COBRA qualifying event was a reduction in hours or termination of employment. In addition, a disability determination can extend the maximum coverage period to 29 months. In these circumstances, the individual must be offered free COBRA only they are current COBRA participants and still within their maximum coverage period due to an extension. The extended time frame does not apply to those who waived COBRA originally or elected COBRA and then subsequently let the coverage lapse.

For group health plans subject to state continuation, the maximum coverage period varies greatly from state to state. In some cases, the maximum coverage period lasts only a couple months, and in other cases (e.g., CA, NY), the maximum coverage period is 36 months. It is also important to understand that some plans may be subject to federal COBRA and state continuation, which can result in the requirement to provide continuation coverage beyond 18-months for a termination or reduction in hours. In these circumstances, the individual must be offered free COBRA if they are currently enrolled in continuation coverage and still within their maximum coverage period due to state continuation.

### **Disqualifying Coverage**

If a qualified beneficiary is eligible for Medicare or an employer-sponsored group medical plan, they are not eligible for the COBRA subsidy. Enrollment in Medicare or an employer-sponsored group medical plan is not required; eligibility alone is enough for loss of AEI status. A qualified beneficiary may become eligible for an employer-sponsored group medical plan through a new employer, resulting in loss of subsidy eligibility. Additionally, eligibility for employer-sponsored group medical plans offered through a spouse's or parent's employer would also result in loss of subsidy eligibility, as would an employer-sponsored stand-alone retirement plan.

Eligibility for an employer-sponsored medical plan that provides only excepted benefits, a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA), or a Health FSA on its own does not result in loss of subsidy eligibility. Eligibility for a traditional HRA plan results in subsidy ineligibility, unless the HRA qualifies as a Health FSA. In addition, a qualified beneficiary can be eligible for Medicaid and the COBRA subsidy at the same time. Finally, if an individual is eligible for or enrolled in an individual plan (whether purchased through a state or federal exchange or not) they can still be eligible for the COBRA subsidy. In fact, qualified beneficiaries may decide it is more cost effective to drop their individual coverage to enroll in COBRA and take advantage of the subsidy.

A qualified beneficiary who became eligible for, or even enrolled in, other group health plan coverage prior to April 1, 2021 but who lost eligibility for such coverage is still eligible for the COBRA subsidy as of April 1, 2021. An individual must have the ability to enroll in other coverage on or after April 1, 2021 to be ineligible for the COBRA subsidy. In other words, if an individual has a HIPAA special enrollment right to enroll in

other employer sponsored coverage, or if the other coverage is currently offering open enrollment, the individual will not be eligible for the COBRA subsidy. When determining whether an individual can enroll in employer sponsored coverage due to a HIPAA special enrollment right, the IRS has clarified that the ability to enroll due to an extended enrollment period due to the “Outbreak Period”, will result in subsidy ineligibility. This means that an individual may have up to one-year from their original HIPAA special enrollment deadline to enroll in employer sponsored coverage, and the individual would be ineligible for the COBRA subsidy during this time. For additional information on the “Outbreak Period”, see the discussion below.

Significantly, an offer of employment on its own is not enough to result in loss of subsidy eligibility. For example, if an employer involuntarily terminates an employee and then later offers the former employee a benefit eligible position, the employee will only lose subsidy eligibility if they accept the employment offer and become eligible for the employer’s group medical plan. In this example, if the former employee does not accept the employment offer, they will not lose subsidy eligibility due to the employment offer alone.

Qualified beneficiaries who elect the COBRA subsidy and subsequently become eligible for other group medical plan coverage or Medicare are required to alert the employer or carrier through which they are receiving the COBRA subsidy if they lose eligibility for the subsidy due to becoming eligible for an employer-sponsored medical plan or Medicare. If a qualified beneficiary fails to notify the plan, they will be subject to a fine of \$250. In addition, the fine can be increased to include repayment of the premium if the failure to notify was intentional. The penalty may be forgiven entirely if the employee’s notice failure was due to reasonable cause.

## Offering the Subsidy

### Plans Subject to the Subsidy

All plans subject to COBRA are subject to the requirement to offer the COBRA subsidy, other than health FSAs. Therefore, medical, dental, vision, HRA, EAP (employee assistance plans), and onsite clinics are all examples of plans that could be subject to the COBRA subsidy. In addition, if retirees are permitted to remain enrolled on the same benefit plan as active employees, this coverage also qualifies for the COBRA subsidy. However, a stand-alone retiree plan is not eligible for the COBRA subsidy. Employers should be aware that some state continuation regulations apply only to certain benefits. If a plan is only subject to state continuation, the plan is only required to offer the subsidy for the benefits that are subject to state continuation.

Employers are only required to offer the COBRA subsidy for coverage that was in place when the reduction in hours or involuntary termination of employment occurred. If the coverage that was in place before is no longer available, the employer should offer the coverage that is most similar to the coverage that was in place when the reduction in hours or involuntary termination of employment cause the loss of coverage. However, union employees covered by a multiemployer plan will be notified and provided coverage by the union plan. In other words, the employer is not responsible for providing the subsidy or notifying AEIs of its availability in the case of union employees covered by a multiemployer plan.

### Enrollment in Alternative Coverage

Employers can choose to permit AEIs to enroll in coverage that is different from the coverage they had at the time of their COBRA qualifying event, and still claim the employer tax credit for providing the subsidy. Plans are not required to offer AEIs the option to enroll in alternative coverage.

To claim the tax credit for providing the subsidy for alternative coverage, the following must be true:

- ✓ The premium for the alternative coverage cannot be more expensive than the coverage the AEI was enrolled in the day before their qualifying event;
- ✓ The alternative coverage is also offered to similarly situated active participants;
- ✓ The alternative coverage is not an excepted benefit, QSEHRA, or health FSA; and
- ✓ The election is made within 90 days of being notified of the option

The model notices released by the Department of Labor (discussed below) include information regarding the option to offer alternative coverage. If a plan chooses not to permit enrollment in alternative coverage, the model notices should be updated to remove this language as it could be confusing to AEIs.

### Covered Qualified Beneficiaries

Individuals who are already enrolled in COBRA and who are still within their maximum coverage period during the subsidy period will not be required to pay the monthly premium if they meet the eligibility requirements. In fact, the statute makes clear that if such an individual submits payment for a month during the subsidy period, the plan is required to return the amount to the AEI.



## **Second Chance to Enroll**

Individuals who did not elect COBRA, or who elected and subsequently dropped, must be given a second chance to enroll and take advantage of the subsidy as long as they are still within their maximum coverage period (measured from the original qualifying event date). For an individual to take advantage of their second chance at enrollment, coverage must be elected within 60 days of being notified of the COBRA subsidy. Coverage under the second chance to enroll is not retroactive to the original qualifying event date, instead it may begin as early as April 1, 2021. Therefore, AEs may have a gap in coverage.

In addition, AEs may request enrollment under their second chance to enroll to begin on a date later than April 1, 2021. If the date requested is still within the subsidy period (before 9/30/21), and within the AE's maximum coverage period, the employer must honor this request. The IRS made clear in guidance that this is required so that AEs are not put in a position to have to pay back premium tax credits obtained through the exchange due to receiving subsidized COBRA coverage for the same months.

Individuals who were involuntarily terminated or experienced a reduction of hours and who would still be within their maximum coverage period if they had elected COBRA, would be eligible for a second chance at enrollment. Therefore, group health plans subject to federal COBRA, will generally have to look back 18 months (i.e., to qualifying events that triggered a loss of coverage in October 2019 or later) because an employee's reduction in hours or involuntary termination of coverage will typically trigger an 18-month maximum coverage period for employees and their family members who were enrolled when the qualifying event occurred.

Recent IRS guidance has clarified that while it is possible for an individual who is still within their maximum coverage period due to a federal COBRA extension (they are still enrolled in COBRA past 18-months) to take advantage of the COBRA subsidy, they do not need to be offered a second chance at enrollment if they are no longer enrolled but would still be within their maximum coverage period solely because of an extension.

The guidance also clarified that group health plans that are subject to state continuation, but not federal COBRA, are not required to offer the second chance at enrollment. Individuals are eligible to receive the COBRA subsidy for months they are eligible for state continuation beyond the 18-months required by federal COBRA, however they do not have to be eligible for a second chance at enrollment when their coverage would be provided solely based on state continuation.

Therefore, small employers who are not subject to federal COBRA are not required to offer individuals a second chance at enrollment. In addition, large employer plans that are subject to state continuation that provide for longer maximum coverage periods than federal COBRA are not required to provide a second chance at enrollment past the 18-months required under federal COBRA. Although the second chance at enrollment is not required to be offered in cases where an individual is eligible for continuation only due to state continuation requirements, if a carrier permits an employer to offer this second chance, the carrier can still receive the tax credit from the federal government for providing this coverage.

## **Interaction with the Outbreak Period**

After a National Emergency was declared as of March 1, 2020, regulatory agencies jointly issued a final rule in April of 2020 extending several specific notice and disclosure deadlines applicable under HIPAA, COBRA, and ERISA. The rule effectively extended the time participants were given for things like COBRA elections, COBRA payments, HIPAA special enrollments, and ERISA claims filing and appeals.

For the period beginning March 1, 2020, until 60 days after the National Emergency is over, all group health plans, disability plans, other employee welfare benefit plans, and employee pension plans must disregard this time period (the “Outbreak Period”) when administering plans with respect to notices, disclosures, and other deadlines covered by the rule. As of publication of this guide, the National Emergency is still in effect.

Therefore, it may be possible for an individual to be an AEI and to take advantage of the ability to retroactively enroll in COBRA to their qualifying event date due to the outbreak period. If an individual decides to retroactively enroll in COBRA due to the Outbreak Period, monthly premiums must be paid back to when the individual first triggered the qualifying event and corresponding loss of coverage. Individuals who timely elect the COBRA subsidy must exercise their extended COBRA election rights for retroactive coverage back to the original qualifying event date on or before the end of the 60-day election window or otherwise waive their right to retroactively elect COBRA to months prior to April 2021.

## The Notices

ARP requires employers to update existing COBRA election notices with new language describing the subsidy. There is also a new special notice that employers must send to any individuals who experienced a COBRA event due to an involuntary termination or reduction in hours and who are still within their maximum coverage period. This notice informs these individuals of their right for a second chance at electing COBRA coverage. The special notice must be sent to AEIs no later than May 31, 2021. Finally, a notice must be sent to anyone receiving the premium assistance informing them when the subsidy is about to end. This notice must be sent between 15 – 45 days prior to the expiration of the subsidy. For plans subject to federal COBRA, the employer is responsible for sending out the required notices. For plans subject to state continuation, the employer should coordinate with the carrier to understand whether the carrier will send out the notices or if the employer needs to do so.

### DOL Model Notices and Website

The Department of Labor (DOL) has released model notices and a COBRA subsidy information website. The model notices can be found at the website. The website will also be a central location that the DOL uses to inform individuals of their potential right to take advantage of the subsidy, and to assist employers with fulfilling their compliance obligations.

<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

### Model Notices

The DOL makes it clear that employers are not required to use these exact notices, but it is expected that most employers' administrators will use language from the model notices, or a version of the model notices, as they attempt to communicate COBRA subsidy election opportunities and requirements to AEIs.

- *Model Election Notice with Updated Subsidy Language:*
- *Model Notice in Connection with Extended Election Period*
- *Model Alternative Notice (for use when a plan is not subject to federal COBRA)*
- *Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021 (includes AEI certification of eligibility forms)*
- *Notice of Expiration of Premium Assistance*

### Summary of COBRA Premium Assistance Provisions

The ARP statute did not require attestation by qualified beneficiaries to affirm AEI status (for example that they are not eligible for Medicare or an employer-sponsored group medical plan). However, the notice instructions state that the employer should include the "Summary of COBRA Premium Assistance Provisions" with the election notices. This document includes an attestation form that AEIs should use to request enrollment. Inclusion of this document does not appear to be required, but rather strongly recommended to confirm status as an AEI, ensure carrier coverage, and provide proof of eligibility for the payroll tax credit. Plans are permitted to require a potential AEI to return the attestation before providing the COBRA subsidy. The attestation portion can be found on pages 2-4 of the document.

## Notice Recipients

There are 3 different groups of individuals who may require a notice:

1. New Qualified Beneficiaries (now – September 2021): The normal COBRA election notice should be replaced with the “Model General Notice and COBRA Continuation Coverage Election Notice” along with the “Summary of COBRA Premium Assistance Provisions.”
2. Existing Qualified Beneficiaries (triggered a continuation right prior to April 2021): The “Model Notice in Connection with Extended Election Period” along with the “Summary of COBRA Premium Assistance Provisions” should be sent no later than May 31, 2021.
3. AEs who elect the COBRA subsidy: The “Model Notice of Expiration of Premium Assistance” must be sent 15-45 days prior to the subsidy ending due to the end of the maximum coverage period or reaching September 30, 2021.

## Notice Requirements

If the plan decides not to utilize the model notices, the statute specifies what should be contained in the COBRA notices to satisfy the requirements. The requirements are quite extensive and specific, and therefore most plans will decide to utilize the model notices.

### Required Content for the Amended COBRA Election Notice

- Forms necessary for electing COBRA and the premium assistance;
- Name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance;
- Description of the extended election period for those who experienced an involuntary termination of employment or reduction in hours prior to Apr. 1, 2021 and are still in their maximum coverage period;
- Description of the obligation of the QB to notify the plan of eligibility for group health plan coverage or Medicare and the penalty for failure to notify;
- Description, displayed in a prominent manner, of the QB’s right to a subsidized premium and any conditions on entitlement to the subsidized premium; and
- Description of the option of the qualified beneficiary to enroll in different coverage if the employer permits it.

### Required Content for Subsidy Ending Notice

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

## **Distribution**

The same distribution rules apply to the updated notice requirements as to COBRA notices in general. In other words, the employer is permitted to use hand delivery, mail, or electronic delivery (if the DOL safe harbor for electronic distribution is met). However, mail is recommended to ensure receipt by covered spouses.

## **Notice Failures**

Failure to comply with the new notice requirements is treated the same as other COBRA notice failures. When notices are not provided in accordance with COBRA continuation requirements, there is a potential penalty risk of up to \$110 per day per affected individual, as well as risk of claims of a breach of fiduciary duty regarding COBRA administration. This could be discovered as the result of a complaint by the qualified beneficiary, or during an audit.

Beyond penalties, the more serious and immediate risk is that if coverage is reinstated retroactively, the carrier (or stop-loss carrier) might refuse to cover claims because they are not required to do so. This potentially leaves the employer on the hook for medical claims incurred for those who should have been offered COBRA (along with accompanying legal expenses if legal action is taken).

## Payroll Tax Credit

The employer, or in some circumstances the carrier, is required to provide continuation coverage at no cost to AEIs and will recover the lost premiums through a tax credit. Significantly, the term “premium” includes, with respect to COBRA continuation coverage, any administrative fee. Therefore, the administrative fee can be included in the tax credit claimed. If the employer no longer offers the same plan option, the employer may offer the coverage most similar to the previous coverage, or a cheaper option, and still claim a tax credit for the full amount. The tax credit would not be available for any option that is a richer, more expensive plan option.

If an employer voluntarily offers a COBRA subsidy to qualified beneficiaries outside of the ARP COBRA subsidy requirement (for example under a severance agreement), they are not permitted to include the amount of that voluntary subsidy in what they request as a tax credit. In other words, if the employer has a written agreement with a qualified beneficiary to reduce the COBRA premium required of a qualified beneficiary, the employer may only request as a tax credit what the qualified beneficiary would be required to pay if it were not for the ARP COBRA subsidy. It should also be noted that self-insured employers are not permitted to recover claims incurred because of providing the subsidy. Instead, self-insured employers are limited to claiming the COBRA premium as a tax credit.

### Recovering Lost Premiums

For group health plans subject to federal COBRA, the employer is responsible for notifying AEIs, providing the coverage at no cost, and requesting a refund for the COBRA premiums not paid against the employer’s Medicare portion of the payroll taxes. For group health plans not subject to federal COBRA, but subject to state continuation, the carrier should take responsibility for providing the coverage and requesting a payroll tax credit. Government entities are also eligible for the payroll tax credit.

Employers will take a credit against the Medicare portion of their payroll taxes. A credit equal to missed COBRA payments are taken for each deposit, then the total credits are reported on the employer’s quarterly (941) or annual (943 or 944) payroll tax report. In anticipation of receiving the credit to which it is entitled, the employer may (1) reduce the deposits of federal employment taxes, including withheld taxes, that it would otherwise be required to deposit, up to the amount of the anticipated credit, and (2) request an advance of the amount of the anticipated credit that exceeds the federal employment tax deposits available for reduction by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

## Documentation

Since the employer will be taking credits against taxes due, it will be necessary to maintain records of eligibility for the tax credits in case the plan is audited by the IRS. The language of the ARP statute did not contain a list of required items for documentation purposes. However, the text of the ARP statute reads similar to the COBRA subsidy that was in place in 2009 under the American Recovery and Reinvestment Act (ARRA). The 2009 ARRA COBRA Subsidy IRS documentation requirements are as follows:

- For insured plans, a copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier;
- For self-insured plans, proof of the premium amount and proof of the coverage provided to AEIs;
- Attestation of involuntary termination including the date of the involuntary termination;
- Proof of each AEI's election of COBRA coverage;
- A record of the Social Security numbers (SSNs) of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals;
- Other documents necessary to verify the correct amount of reimbursement

To comply with documentation requirements, and to prove that the individuals who received the subsidy were eligible, the employer should provide the "Summary of COBRA Premium Assistance Provisions," and either the "Model General Notice and COBRA Continuation Coverage Election Notice" or the "Model Notice in Connection with Extended Election Period" (see above for additional details).

## Coordination with COBRA Administrator

It is possible the COBRA administrator will assist with much of what is required from an administrative perspective. However, the degree to which the COBRA administrator will be involved can vary. Therefore, the employer should communicate with the COBRA administrator to determine whether any administrative gaps exist. For that reason, the employer should determine the answer to each of the following questions:

- Will the administrator make sure an updated election notice is distributed to those individuals who trigger a continuation right following an involuntary termination of employment or reduction in hours April 1 - September 30, 2021?
- Does the administrator have accurate records to determine which individuals experienced an involuntary termination of employment or reduction in hours and are still in their maximum coverage period and are therefore eligible for the subsidy?
- Will the administrator prepare and distribute the required notice to such individuals letting them know about the subsidy option?
- Will the administrator help prepare and distribute notices within 15-45 days prior to the subsidized coverage terminating for those who elect it?