

## IRS Guidance Sheds Light on COBRA Premium Payment Deadlines in the Time of COVID-19

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On October 6, 2021, the IRS released [Notice 2021-58](#) (the “Notice”), which provides yet another round of guidance on the application of extended deadlines for COBRA elections and payments due to COVID-19. This guidance expands upon the Departments of Labor and Treasury’s (the “Departments”) earlier Joint Notification of Extensions of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak and EBSA Disaster Relief Notice 2021-01 (the “Emergency Relief Notices”). See our previous alerts [here](#) and [here](#). The Notice also attempts to clarify the interaction between the extended deadlines and the temporary 100% COBRA premium subsidies under the American Rescue Plan Act of 2021 (“ARPA”) that were available from April 1, 2021 through September 30, 2021. See our previous alerts [here](#), [here](#), and [here](#).

The earlier Emergency Relief Notices provided that certain legal deadlines would be temporarily tolled, beginning on March 1, 2020, including the 60-day deadline to elect COBRA coverage election period and the 45-day (for the initial payment) and 30-day (for subsequent payments) deadlines to make COBRA premium payments. Specifically, the timeframes for electing COBRA or making COBRA premium payments are tolled until the earlier of: (1) 1 year from the date the deadline would have begun running for the individual or (2) 60 days after the end of the COVID-19 National Emergency. (The National Emergency is still ongoing, so this Alert will focus on the 1-year prong.)

Since the Departments issued the Emergency Relief Notices, there have been many questions about how the tolled deadlines for making COBRA premium payments interact with the tolled deadlines for electing COBRA and how this tolling interacts with the ARPA subsidy. For example, it was not clear whether

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the deadline to make the initial COBRA premium payment was delayed for another 1 year when the individual delayed electing COBRA for 1 year – potentially giving the individual over 2 years from the qualifying event to make the initial COBRA premium payment.

## COBRA Premium Deadlines

The Notice clarifies that the deadline tolling for an individual to elect COBRA coverage and for the individual to make COBRA premium payments generally run concurrently.

For the initial payment:

- If the COBRA election is made within regular 60-day deadline – the individual has 1 year and 45 days after *the date of the election* to make the payment (this reflects the 1-year suspension of the 45-day payment grace period).
- If the COBRA election is made after regular 60-day deadline – the individual has 1 year and 105 days after *the date the COBRA notice was provided* (this reflects the 1-year suspension of both the 60-day election period plus 45-day payment grace period (105 days total)).
- Transition relief – Notwithstanding the above rules, the Notice provides that in no event will an initial COBRA payment be due before November 1, 2021, as long as the individual makes the initial COBRA premium payment within 1 year and 45 days after the date he/she made the COBRA election.

The subsequent payments would then be due 1 year plus 30 days from their original due date (see below).

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**GROOM INSIGHT:** The transition relief is targeted at certain individuals who elected COBRA outside of the regular 60-day deadline and whose initial premium deadline has already passed under the rule set forth above, based on the premise that prior to the issuance of this guidance, they may have thought the 1-year tolling period began on their election date. Remember, for individuals who made their COBRA election after the 60-day deadline – the measurement of the general 1 year and 105-day initial payment deadline is based on the date the COBRA notice was provided, but the measurement of whether the 1 year and 45 day transition relief applies is based on the date that the individual elects COBRA.

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For the subsequent payments:

- The individual has 1 year and 30 days from the date the payment originally would have been due (this reflects the 1-year suspension of the 30-day payment grace period).

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**GROOM INSIGHT:** The Notice highlights that individuals who delay electing COBRA coverage may not have more than 1 year of total disregarded time for the COBRA election and initial COBRA premium payment. For example, an individual may not delay electing COBRA coverage for 6 months and then add another 1 year to make the initial COBRA premium payment. This should be welcome news to employers, which were concerned about the ability to collect premium payments so far into the future. Still, the guidance is not ideal in that the extended payment deadline is more than a year after the related month of COBRA coverage must be provided, as described in the examples below.

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## Examples

The Notice includes 10 detailed examples that flesh out the IRS' interpretation of these rules with respect to various scenarios. We have included several of the examples below to illustrate the new guidance.

- COBRA election within 60 days of election notice
    - On October 1, 2020, Alice has a qualifying event and receives a COBRA election notice.
    - She elects COBRA on October 15, 2020 retroactive to October 1, 2020.
    - Alice has until November 29, 2021 to make the initial COBRA payment (1 year and 45 days after the October 15, 2020 election).
    - The initial COBRA premium payment must include only the payment for October 2020.
    - The November 2020 payment is due by December 1, 2021 (1 year and 30 days after the regular November 1, 2020 due date).
      - This rule applies to each subsequent monthly payment.
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**GROOM INSIGHT:** This means that if Alice remains covered under COBRA, her October 2021 premium payment will not be due until October 31, 2022 (assuming the COVID-19 National Emergency does not end earlier), even though her COBRA coverage will end on March 30, 2022 (assuming she stays enrolled for the entire 18-month period). Even though this is a shorter collection period than some employers thought was required under the prior guidance, they may still find it is difficult to collect COBRA premiums so many months after COBRA coverage has ended.

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- COBRA election after 60 days of election notice
  - On August 1, 2020, Bob has a qualifying event and receives a COBRA election notice.
  - He has until September 30, 2021 (1 year and 60 days after the election notice date) to elect COBRA.

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- He elects COBRA on February 1, 2021, retroactive to August 1, 2020.
- The initial COBRA payment is due by November 14, 2021 (1 year and 105 days after the August 1, 2020 COBRA notice date).
- The initial COBRA premium payment must include payments for August 2020 through October 2020.
- The November 2020 payment is due by December 1, 2021 (1 year and 30 days after regular November 1, 2020 due date).
  - This rule applies to each subsequent monthly payment.

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**GROOM INSIGHT:** If Bob does not make the December 2020 monthly premium payment by December 31, 2021, he will only be entitled to COBRA coverage for August 2020 – November 2020, and not for any months after November 2020 because he did not timely pay the December 2020 payment.

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- Transition Relief
  - On April 1, 2020, Claire has a qualifying event and receives a COBRA election notice.
  - She elects COBRA on October 1, 2020, retroactive to April 1, 2020.
  - Under the transition relief, she has until November 1, 2021 to make the initial premium payment. Even though November 1, 2021 is more than 1 year and 105 days after the April 1, 2020 COBRA notice date, November 1, 2021 is less than 1 year and 45 days after the October 1, 2020 election date.
  - The initial COBRA payment must include the monthly premium payments for April 2020 through October 2020.
  - The November 2020 payment is due by December 1, 2021 (1 year and 30 days after the regular November 1, 2020 due date).
    - This rule applies to each subsequent monthly payment.

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**GROOM INSIGHT:** Under the general rule, Claire would have 1 year plus 105 days to make her initial premium (which would be July 15, 2021), but due to the transition rule, her initial premium cannot be due before November 1, 2021. If she had instead elected COBRA on May 1, 2020 and makes her initial payment on October 15, 2021, her initial payment is not timely. She is not eligible for the transition relief because October 15, 2021 is more than 1 year and 45 days after the May 1, 2020 election date. Rather, her initial payment deadline was July 15, 2021 (1 year and 105 days from the COBRA notice date).

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## Interaction With ARPA Subsidies

The Notice reiterates that the deadline extensions do not apply to the ARPA deadlines for electing COBRA coverage. Therefore, employers and plans are permitted to deny subsidized COBRA coverage for qualified beneficiaries who failed to return the required ARPA subsidy forms within the required 60-day period. The deadline extensions continue to apply, however, with respect to COBRA premium payments for coverage periods beginning after September 30, 2021 (when the subsidy ends). And, remember, the IRS' earlier ARPA guidance permitted an employer to require that an individual who elected subsidized COBRA coverage to also make an election at that time regarding the retroactive period of COBRA coverage for which the individual had not yet elected due to the deadline extensions above.

### Examples

(assume the individual is eligible for the ARPA subsidy)

- Election deadline for retroactive COBRA
  - On August 1, 2020, Doug has a qualifying event and receives a COBRA election notice.
  - He does not elect COBRA.
  - On May 31, 2021, he receives the ARPA notice, but still does not elect COBRA.
  - He has until September 30, 2021 (1 year and 60 days after the August 1, 2020 COBRA notice date) to elect COBRA retroactive to August 1, 2020.
  - If he elects COBRA by September 30, 2021, he has until November 14, 2021 to make the initial COBRA payment (1 year and 105 days after the August 1, 2020 COBRA notice date).
  - The initial payment must include payments for August 2020 through October 2020.
  - The November 2020 premium payment is due by December 1, 2021 (1 year and 30 days after the regular November 1, 2020 due date).
    - This rule applies to each subsequent monthly payment.

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**GROOM INSIGHT:** If he had instead elected subsidized COBRA coverage beginning on April 1, 2021 and did not elect the retroactive COBRA coverage at that time, he no longer has the right to elect retroactive COBRA coverage for periods prior to April 1, 2021.

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- Payment deadline for retroactive COBRA
  - On November 1, 2020, Elaine has a qualifying event and receives a COBRA election notice.
  - She does not elect COBRA.
  - On April 30, 2021, she receives the ARPA notice.

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- On May 31, 2021, she elects both retroactive COBRA beginning on November 1, 2020 and subsidized COBRA beginning on April 1, 2021.
- She has until February 14, 2022 to make the initial COBRA payment (1 year and 105 days after the November 1, 2020 COBRA notice date).
- The initial payment must include payments for November 2020 through January 2021.
- The February 2021 payment is due by March 3, 2022 (1 year and 30 days after the regular February 1, 2021 due date).
- The March 2021 premium payment is due by March 31, 2022 (1 year and 30 days after the regular March 1, 2021 due date).
  - This rule applies to each subsequent monthly payment.
- Payment deadline for COBRA coverage periods beginning after the end of subsidized COBRA coverage
  - On November 1, 2020, Fred has a qualifying event and receives a COBRA election notice.
  - He does not elect COBRA.
  - On April 30, 2021, he receives the ARPA notice.
  - On May 31, 2021, he elects both retroactive COBRA beginning on November 1, 2020 and subsidized COBRA beginning on April 1, 2021.
  - He makes the initial COBRA premium payment by February 14, 2022 (for November 2020 through January 2021). So, Fred has retroactive COBRA coverage for those months.
  - He makes his subsequent payment on May 1, 2022.
    - This is past the deadline for February 2021 and March 2021 (which were due by March 3, 2022 and March 31, 2022 respectively). So, Fred does not have COBRA coverage for those months.
  - Fred has subsidized COBRA coverage for the months of April 2021 – September 2021 because he made a timely election under ARPA.
  - Fred's May 1, 2022 payment must be credited to October 2021, the first month following the end of the subsidized COBRA period. The May 1, 2022 payment is timely for October 2021 coverage (because May 1, 2022 is within 1 year and 30 days after the regular October 1, 2021 due date).
  - He may continue to pay for COBRA for the months after October 2021 as described in the examples above.

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**GROOM INSIGHT:** While Notice 2021-58 provides direction to plans regarding how the timing rules for COBRA elections and COBRA premium due dates apply in light of the Emergency Relief Notices, it does not address any potential notification requirements to

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affected COBRA beneficiaries. (The COBRA notice requirements are generally under the jurisdiction of the Department of Labor, not IRS.) COBRA administrators may want to take note that earlier this year in Disaster Relief Notice 2021-01, EBSA stated that “where the plan administrator or other responsible plan fiduciary knows, or should reasonably know, that the end of the relief period [under the Emergency Relief Notices] is exposing a participant or beneficiary to a risk of losing protections, benefits, or rights under the plan, the administrator or other fiduciary should consider affirmatively sending a notice regarding the end of the relief period.” This statement does not create an affirmative obligation for plans to notify COBRA beneficiaries of these premium payment deadlines, but some COBRA administrators may want to consider doing so, particularly if any prior communications regarding COBRA did not provide accurate information.

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