



# IRS Notice 2021-58: COBRA Election Period and Premium Grace Period

On October 6, 2021, the IRS released [Notice 2021-58](#), which clarifies the application of COBRA election period and premium grace period timeframe extensions due to the COVID-19 pandemic.

As first outlined in a May 4, 2020, Joint Notice issued by the Department of Labor, Department of the Treasury and the Internal Revenue Service (the “Joint Notice”), the Departments extended certain deadlines under HIPAA, COBRA and ERISA effective March 1, 2020 due to the COVID-19 pandemic. The COBRA timelines subject to this extension include the 60-day election period window, the deadlines for making COBRA premium payments, the date for individuals to notify the plan of a qualifying event or disability determination, and the date for providing a COBRA election notice.

EBSA’s Disaster Relief Notice 2021-01 clarified that, under the Joint Notice, the affected timelines were to be “paused” by disregarding the applicable deadline until the earlier of 1) one year from the date on which the individual was first eligible for the relief, or 2) the end of the Outbreak Period (60 days after the announced end of the National Emergency). At the end of the disregarded period, the applicable timelines are to resume.

Notice 2021-58 “clarifies that the disregarded period for an individual to elect COBRA continuation coverage and the disregarded period for the individual to make initial and subsequent COBRA premium payments generally run concurrently.” Accordingly, “individuals who delay electing COBRA may not have more than one year of total disregarded time for the COBRA election and initial COBRA payment.”

Notice 2021-58 provides the following guidelines to help illustrate how the extension impacts COBRA premium payments during the Outbreak Period:

- If an individual elected COBRA continuation coverage outside of the initial 60-day COBRA election timeframe (as allowed under the Joint Notice), that individual generally will have one year and 105 days after the date the COBRA notice was provided to make the initial COBRA premium payment.
- If an individual elected COBRA continuation coverage within the initial 60-day COBRA election timeframe, that individual will have one year and 45 days after the date of the COBRA election to make the initial COBRA premium payment.
- For subsequent COBRA premium payments, the maximum time available to a qualified beneficiary to make the payment during the Outbreak Period is one year from the date the premium payment would have been due in the absence of the relief provided under the Joint Notice.



To account for individuals who may have relied on the initial premium deadline extension to start on the date of the COBRA election (rather than run concurrently), the notice provides a limited exception to the above-mentioned rule. The exception provides that “no individual [can] be required to make the initial premium payment before November 1, 2021, even if November 1, 2021 is more than one year and 105 days after the date the election notice was received, provided that the individual makes the initial premium payment within one year and 45 days after the date of the election.” We have selected several examples below to illustrate these clarifications. For more examples, please review [Notice 2021-58](#).

**Example 1. COBRA election made more than 60 days after receipt of COBRA election notice under the Emergency Relief Notices.**

**(i) Facts.** Individual A participates in Employer X’s group health plan. On August 1, 2020, Individual A has a qualifying event and receives a COBRA election notice. Individual A elects COBRA continuation coverage on February 1, 2021, retroactive to August 1, 2020. When must Individual A make the initial COBRA premium payment and subsequent monthly COBRA premium payments?

**(ii) Conclusion.** Individual A has until November 14, 2021 to make the initial COBRA premium payment (one year and 105 days after August 1, 2020), because Individual A did not elect COBRA continuation coverage under the Emergency Relief Notices within 60 days after receipt of the election notice. The initial COBRA premium payment would include monthly premium payments for August 2020 through October 2020. The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months that Individual A is eligible for COBRA continuation coverage.

**Example 4. Failure to make COBRA premium payments under the Emergency Relief Notices.**

**(i) Facts.** [Individual A participates in Employer X’s group health plan. On August 1, 2020, Individual A has a qualifying event and receives a COBRA election notice. Individual A elects COBRA continuation coverage on February 1, 2021, retroactive to August 1, 2020.] In addition, Individual A timely makes the initial COBRA premium payment covering the months of August 2020 through October 2020, as well as the payment for the November 2020 monthly premium. Individual A does not make a payment for the December 2020 monthly premium as of December 31, 2021. For how many months does Individual A have COBRA continuation coverage?

**(ii) Conclusion.** Individual A is entitled to COBRA continuation coverage for the months of August 2020 through November 2020, but Individual A is not entitled to COBRA continuation coverage for any month after November 2020 because Individual A did not pay the December 2020 premium by the end of the applicable grace period. Benefits and services provided by the group health plan (for example, doctor’s visits or filled prescriptions) that occurred on or before November 30, 2020, would be covered under the terms of the plan. The plan would not be obligated to cover benefits or services for Individual A that were incurred after November 30, 2020.





### Example 5. Applying the transition relief for COBRA premium payments due before November 1, 2021.

(i) **Facts.** [Individual A participates in Employer X's group health plan.] On April 1, 2020, Individual A has a qualifying event. Individual A receives the COBRA election notice on April 1, 2020 and elects COBRA continuation coverage on October 1, 2020, retroactive to April 1, 2020. As of July 15, 2021, Individual A has not made the initial premium payment. When must Individual A make the initial premium payment for COBRA continuation coverage retroactive to April 1, 2020 under the Emergency Relief Notices?

(ii) **Conclusion.** Under the transition relief provided in this notice, Individual A has until November 1, 2021 to make the initial premium payment, even though November 1, 2021 is more than one year and 105 days after April 1, 2020. Although the disregarded periods for the COBRA election and the initial premium payment run concurrently, under the transition relief provided in this notice, an individual will not be required to make the initial premium payment before November 1, 2021, as long as the individual makes the initial premium payment within one year and 45 days after the date of election. November 1, 2021 is less than one year and 45 days after October 1, 2020. Therefore, Individual A remains eligible to make the initial premium payment by November 1, 2021. The initial COBRA premium payment would include the monthly premium payments for April 2020 through October 2020. The November 2020 COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months Individual A is eligible for COBRA continuation coverage.

### Example 7. Deadline for retroactive COBRA continuation coverage under the Emergency Relief Notices for a potential Assistance Eligible Individual under the ARP (American Rescue Plan).

(i) **Facts.** Individual A works for Employer X and participates in Employer X's group health plan. On August 1, 2020, Individual A has a qualifying event that is an involuntary termination of employment, and, therefore, is a potential Assistance Eligible Individual under the ARP. Individual A receives a COBRA election notice on August 1, 2020, but, as of September 1, 2021, has not yet elected COBRA continuation coverage. Individual A also receives the notice of the ARP extended election period on May 31, 2021, but does not elect COBRA continuation coverage with premium assistance under the ARP. When is the last date for Individual A to elect COBRA continuation coverage retroactive to August 1, 2020 under the Emergency Relief Notices?

(ii) **Conclusion.** Individual A has until September 30, 2021 (one year and 60 days after August 1, 2020) to elect COBRA continuation coverage retroactive to August 1, 2020 under the Emergency Relief Notices. Provided Individual A elects COBRA continuation coverage by September 30, 2021, Individual A would have until November 14, 2021 to make the initial COBRA premium payment (one year and 105 days after August 1, 2020). The initial COBRA premium payment would include monthly premium payments for August 2020 through October 2020. The November 2020 premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months Individual A is eligible for COBRA continuation coverage.



### Example 10. COBRA premium payment after the end of the period of COBRA premium assistance by an Assistance Eligible Individual under the ARP and application of the Emergency Relief Notices.

(i) **Facts.** [On November 1, 2020, Individual C has a qualifying event that is an involuntary termination of employment, and, therefore, is a potential Assistance Eligible Individual under the ARP. Individual C receives the COBRA election notice on the same date. On April 30, 2021, Individual C receives the notice of the ARP extended election period. On May 31, 2021, Individual C elects both retroactive COBRA continuation coverage beginning on November 1, 2020, and COBRA continuation coverage with premium assistance for the first period of coverage beginning on or after April 1, 2021.] Individual C makes the initial COBRA premium payment by February 14, 2022, fails to make the premium payment for the February 2021 period of coverage by March 3, 2022, and fails to make the premium payment for the March 2021 period of coverage by March 31, 2022. Individual C then makes a COBRA premium payment on May 1, 2022. For which months does Individual C have COBRA continuation coverage?

(ii) **Conclusion.** Individual C has retroactive COBRA continuation coverage for November 2020, December 2020, and January 2021 because Individual C made a timely initial COBRA premium payment under the Emergency Relief Notices. Individual C does not have coverage for the months of February or March 2021 because Individual C did not make timely COBRA premium payments by March 3, 2022 (one year and 30 days after February 1, 2021) or March 31, 2022 (one year and 30 days after March 1, 2021). Individual C has COBRA continuation coverage with COBRA premium assistance for the periods of coverage from April 1, 2021 through September 30, 2021 because Individual C is an Assistance Eligible Individual and made a timely election under the ARP. Individual C also has COBRA continuation coverage for October 2021 (because Individual C made a premium payment on May 1, 2022) unless Individual C indicates that the May 1, 2022 premium payment was intended to pay premiums for a period during which Individual C was eligible for COBRA premium assistance. If the premium payment was not erroneously paid for coverage during a premium assistance period, the COBRA premium payment made on May 1, 2022 must be credited to the period following the ARP COBRA period because that COBRA premium payment is timely under the Emergency Relief Notices (the payment on May 1, 2022 is made within one year and 30 days after October 1, 2021). Individual C may continue to pay for COBRA continuation coverage for the period after October 2021 until Individual C has paid for the last of the months that Individual C is eligible for COBRA continuation coverage.



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