



## IRS Issues Notice 2021-58 Regarding COBRA Premium Payment Deadlines

On October 6, 2021, the IRS issued Notice 2021-58, which clarifies emergency COBRA extensions enacted due to the COVID pandemic. Notice 2021-58 explains the application of the one-year extension to COBRA continuation coverage premium payments, election, and interaction with the subsidy available under the American Rescue Plan Act (“ARPA”).

### Looking Back

Last year, the Departments of Labor and Treasury issued a Joint Notice requiring a one-year extension for certain events, including the election and payment of COBRA continuation coverage. Following the Joint Notice, the Department of Labor issued two emergency relief notices (2020-01 and 2021-01) to clarify the application of the one-year extension.

The Joint Notice required plan administrators to disregard the 60-day period to elect COBRA, the 45-day initial payment period, and the 30-day subsequent payment period. The emergency relief notices further explained the one-year disregarded period is expressly limited to one year from the date the individual action would be required or permitted and may not exceed the one-year period. Following the issuance of the guidance, plan administrators have inquired about the application of the one-year period to an election and the initial and subsequent payments.

### New Details

Notice 2021-58 clarifies that the deadline to elect COBRA and to make the initial COBRA premium payment run concurrently. Individuals who elected coverage within the initial 60-day period have one year and 45 days after the date of the COBRA election to make the initial COBRA premium payment.

Individuals who elected COBRA continuation coverage outside the initial 60-day COBRA election period will have one year and 105 days after the date the COBRA notice was provided to make the initial COBRA premium payment.

### Transition Relief

Notice 2021-58 also provides “transition relief” for individuals who made elections more than 60 days after the receipt of the election notice. The transition relief does not require payment to be made before November 1, 2021, if the initial payment is made within one year and 45 days after the date of the initial election. The following rules apply:

- The relief applies from the date the individual elects COBRA.
- **Initial Payment (COBRA election *within* the 60-day deadline):** Individual has one year and 45 days after that election date to make the payment. This represents the one-year suspension of the 45-day payment period.
- **Initial Payment (COBRA election *outside* the 60-day deadline):** Individual has one year and 105 days after the date the election notice was provided. This represents the one-year suspension of both the 60-day election period and the 45-day payment period.
- **Subsequent Payments:** Individual has one year and 30 days after the date the payment would have been due. This represents the one-year suspension of the 30-day payment grace period.
- **Transition Relief:** Individuals who made their COBRA continuation coverage election after the 60-day deadline.

Notice 2021-58 highlights that individuals who delay electing COBRA coverage may not have more than one year of total disregarded time for the COBRA election and initial COBRA premium payment. The Notice specifically addresses concerns about the ability to collect premium payments beyond the one-year period.

Notice 2021-58 reiterates that the deadline extensions do not apply to electing COBRA coverage for the ARPA subsidy, therefore employers are entitled to deny a qualified beneficiary who failed to return the required ARPA subsidy forms by July 1, 2021. However, the same individual is permitted to elect unsubsidized COBRA continuation coverage if within the one-year extension period.

## Notice Requirements

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 Joint Notice and subsequent Emergency Relief Notices, it does not discuss notice requirements for Covered Employees and Qualified Beneficiaries. However, for employers subject to the Employee Retirement Income Security Act (ERISA), the plan administrator has a fiduciary duty to provide notification to its plan participants, including Covered Employees and Qualified Beneficiaries. Plan administrators may want to send a general notice relating to the updated guidance.

## More Information

HR Simplified is now following the guidance for anyone to whom this applies. We do not plan to communicate with participants, as the existing language in our documents doesn't conflict with the guidance. Please reach out to your Account Executive.

***[Click here for helpful examples to apply Notice 2021-58:](#)***

**Examples**

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