

# If Your Plan is Subject to State Mini-COBRA, Your Obligations Under ARPA are Different

By: Alex Mattingly on April 12, 2021 on [graydon.law](https://graydon.law)

We have previously written blog posts on the [COBRA subsidy added by ARPA](#), the follow-up [FAQs that were recently issued](#), and the [new notice requirements](#) for the COBRA subsidy. Those posts were primarily focused on the federal COBRA laws, which generally apply to ERISA group health plans maintained by private-sector employers with twenty or more employees and governmental plans. Mini-COBRA laws have been adopted by many states to fill in some of the gaps where the Federal COBRA laws do not apply. Ohio's continuation coverage, for example, applies to church plans and employer plans when the employer has fewer than twenty employees.

The temporary subsidy under ARPA is also be provided to Assistance Eligible Individuals (AEIs) paying premiums under these state continuation programs, but there are key differences in the application of the COBRA subsidies to plans only subject to state continuation.

Let's start with the similarities. The COBRA subsidy will still pay for 100% of the premiums for periods of health coverage on or after April 1, 2021 through September 30, 2021 for AEIs under state continuation coverage. The employer (for self-funded funded plans) or the insurer (for fully-insured plans) will pay the premiums instead of the employee and is entitled to a tax credit for the amount of the premium assistance. And like federal COBRA, ARPA permits, but does not require, employers to allow AEIs the ability to choose a different cheaper group health plan than the individual's current plan.

The newly issued Department of Labor FAQs clarify that the COBRA subsidy does not change any state program requirements or time periods for election of continuation coverage, which will cause the following differences when applying the subsidy to mini-COBRA plans:

- Eligibility requirements for the mini-COBRA subsidy will most likely be different than eligibility under the federal COBRA subsidy. The federal COBRA subsidy is applicable to AEIs (employees who have an involuntary termination or reduction in hours are

eligible for the subsidy), whereas the eligibility conditions of state programs must be examined to determine eligibility under state continuation coverage. For example, if a state only provides for continuation coverage due to an involuntary termination, an employee who lost coverage due to a reduction in hours would be eligible for the COBRA subsidy if the plan was covered under federal COBRA, but not under that state's continuation coverage.

- The Federal COBRA subsidy gives some individuals a second chance to elect COBRA. An extended election period is provided for AEIs who did not have a COBRA election in effect on April 1, 2021, or AEIs who elected but discontinued COBRA coverage before April 1, 2021. This second chance COBRA election does not apply to plans subject to state continuation coverage. Only individuals who elected to receive state continuation coverage within the state's original time period will be eligible to receive the mini-COBRA subsidy, unless a state issues guidance permitting a second election period. These individuals do still need to be informed of their ARPA right and given an opportunity to elect the subsidy.
- ARPA requires plan subject to federal COBRA to provide a notice that the AEIs subsidy is expiring. Plans subject to state continuation are not subject to this requirement.

State continuation plans are subject to fewer notice requirements than the plans subject to federal COBRA. The general notice, second election notice, and expiration notice requirements were drafted under ARPA to only apply to federal COBRA plans. The notice requirements for plans not subject to federal COBRA were dealt with in a separate section of ARPA, which stated that the Department of Labor would issue rules regarding plans to which the federal COBRA notice provisions do not apply. The Department of Labor has issued a [model alternative notice](#) to be used by these other plans to satisfy the mini-COBRA subsidy notice requirements.

If you have any questions regarding the COBRA subsidy guidance, or its interaction with a particular state's continuation coverage, contact a Graydon Employee Benefits attorney.