

HR COMPLIANCE BULLETIN

Highlights

Eligible Individuals

The subsidy is generally available to people who elected COBRA, become eligible for COBRA, or declined or discontinued federal COBRA and are still within their original COBRA coverage period.

Funding

The subsidy is funded by a payroll tax credit for employers, plans or carriers.

Option to Switch Coverage

The ARPA allows covered individuals to switch to similarly priced health coverage, if permitted by the employer.

Important Dates

April 1, 2021

COBRA subsidies are available as of the first period of coverage beginning on or after this date.

Sept. 30, 2021

COBRA subsidies will not be available for periods of coverage beginning after this date.

COBRA Subsidy Provisions of the American Rescue Plan Act

The [American Rescue Plan Act](#) (ARPA), signed into law March 11, 2021, provides a 100% subsidy of premiums for employer-sponsored group health insurance continued under the [Consolidated Omnibus Budget Reconciliation Act of 1986](#) (COBRA) and similar state continuation of coverage (mini-COBRA) programs.

ARPA subsidies cover the full cost of COBRA or mini-COBRA premiums from April 1, 2021, through Sept. 30, 2021, for employees (and their qualifying family members), if the employee lost or loses group health insurance due to a reduction in work hours or **involuntary** job loss. The subsidy applies to people who are still within their original COBRA or mini-COBRA coverage period, for the length of that coverage period. Coverage under federal COBRA is available to individuals eligible for the subsidy even if they declined or dropped COBRA or mini-COBRA coverage earlier.

The subsidy does **not** apply to:

- Individuals whose job loss was **voluntary** or the result of **gross misconduct**; or
- Individuals who are eligible for another group health plan or Medicare.

The subsidies are funded through a **payroll tax credit**. Employers are required to provide **new notices** about the subsidy to employees. The U.S. Department of Labor (DOL) has issued [model notices](#) for this purpose and [FAQs](#) about the law; the IRS has also issued [guidance](#) on the subsidy.

Action Steps

Employers should familiarize themselves with the provisions of the ARPA and watch for additional agency guidance on its implementation.



Background - COBRA

COBRA requires group health plans to allow covered employees and their dependents to continue their group health plan coverage when it would be lost due to specific events, such as a termination of employment or reduction in working hours. Individuals are usually allowed to continue their COBRA coverage for 18 months, although for some qualifying events and state mini-COBRA laws, a longer coverage period is mandated.

Under COBRA, group health plans may require those covered to pay 102% of the premium for their continuing health insurance, leading many eligible individuals to decline coverage. The ARPA subsidy covers the full cost of COBRA or mini-COBRA premiums from April 1 - Sept. 30, 2021, for certain “assistance-eligible individuals.”

Covered Plans

The COBRA subsidy in the ARPA applies to group health plans subject to federal COBRA or to a state mini-COBRA program. Plans subject to federal COBRA are plans maintained by employers with 20 or more employees on more than 50% of the business days in the previous calendar year. Small-employer plans, small governmental plans and church plans are not subject to federal COBRA, but they may be subject to a state mini-COBRA law and therefore fall under the ARPA’s COBRA subsidy provisions.

According to the IRS guidance, health reimbursement arrangements (HRAs), dental-only plans and vision-only plans are covered by the ARPA subsidy. However, the statute is clear that health flexible spending arrangements under Section 125 cafeteria plans are **not** covered. Similarly, the subsidy does **not** cover qualified small employer health reimbursement arrangements (QSEHRAs). HRA coverage elected under the extended election period may reimburse only for expenses incurred after April 1, 2021.

Assistance-eligible Individuals

Individuals are eligible for the COBRA subsidy if they:

- Are a qualified beneficiary of the group health plan;
- Are eligible for COBRA or mini-COBRA continuation coverage because of the covered employee’s **involuntary** termination (unrelated to gross misconduct) or reduction in hours of employment (whether voluntary or involuntary); and
- Elect continuation coverage.

People who meet the above criteria are called “assistance-eligible individuals” by the ARPA statute, and **plans must treat them as having paid their COBRA premium in full from April 1, 2021, through Sept. 30, 2021.**

The subsidy is not available for people who voluntarily left their jobs, although it **is** available in cases of constructive discharge and termination for cause (other than gross misconduct). Whether a termination is voluntary depends on the facts and circumstances of the case; however, the IRS guidance provides clarification on the issue. (See Q&As 24-34.) Certain furloughs, as well as work stoppages resulting from strikes and lockouts, qualify as a reduction in hours under the ARPA.

In addition to being precluded in instances of voluntary termination, the COBRA subsidy is also unavailable for people who are eligible for Medicare or another group health plan, **not** including:

- ☒ A plan covering only excepted benefits;
- ☒ A QSEHRA; or



- ☒ A flexible spending arrangement.

(Assistance-eligible individuals enrolled in an Exchange plan are eligible for the subsidy.)

Furthermore, individuals receiving a COBRA subsidy who become eligible for a group health plan or Medicare must inform the health plan for which they are receiving the subsidy of that fact, or face a penalty. Employers may require individuals to provide a self-certification or attestation of their eligibility status with respect to a reduction in hours, involuntary termination of employment or eligibility for other disqualifying group health plan coverage or Medicare. Employers that claim the ARPA tax credit for the COBRA subsidy must retain in their records either this self-certification or attestation, or other documentation to substantiate that the individual was eligible for the COBRA premium assistance.

The premium subsidy is not counted as gross income to the assistance-eligible beneficiary.

Extended Election Period

The ARPA allows individuals to elect subsidized COBRA if they:

- Become eligible for COBRA or mini-COBRA due to involuntary job termination (not caused by gross misconduct) or reduction in hours between April 1 and Sept. 30, 2021;
- Previously declined federal COBRA after becoming eligible due to involuntary job termination (not caused by gross misconduct) or reduction in hours, but would still be within their federal COBRA coverage period had they elected the coverage at that point; or
- Previously elected federal COBRA but discontinued the coverage before April 1, 2021.

The special election opportunity for individuals who previously declined or discontinued COBRA does not apply to state mini-COBRA coverage.

The election period for subsidized COBRA under ARPA begins on April 1, 2021, and runs until 60 days after the date individuals receive notice from the health plan of the availability of the COBRA subsidy. Note that the extended deadline relief provided in DOL and Treasury Department [emergency relief notices](#) does not apply to the to the ARPA COBRA subsidy election.

Duration of COBRA Coverage

COBRA coverage under the ARPA election extension starts with the first period of coverage beginning on or after April 1, 2021, and continues through the end of the individual's COBRA coverage period. The individual's COBRA coverage period is the period that would have applied had the individual elected the continuation coverage when first eligible following the initial qualifying event. For individuals who previously discontinued COBRA and are now using the ARPA extended election period to obtain subsidized COBRA, the COBRA coverage period is calculated as if they had not dropped the coverage.

COBRA premium assistance under the ARPA ends with the period of coverage including Sept. 30, 2021. After that, COBRA continuation coverage automatically continues, and the payment for the first period of coverage after Sept. 30, 2021, will be timely if paid according to the terms of the plan or coverage. These terms are subject to applicable COBRA continuation coverage requirements, taking into account the deadline extensions in the DOL and Treasury Department emergency relief notices.



Beginning and End of Premium Assistance

Assistance-eligible individuals are entitled to receive COBRA premium assistance as of the first period of coverage beginning on or after April 1, 2021. For this purpose, “period of coverage” means a monthly or shorter period for which premiums are normally charged by the plan or issuer.

COBRA premium assistance applies until the **earliest** of:

- The first date the assistance-eligible individual becomes eligible for other group health plan coverage (with the exceptions described earlier) or Medicare coverage;
- The date the individual ceases to be eligible for COBRA continuation coverage; or
- The end of the last period of coverage beginning on or before Sept. 30, 2021.

COBRA premium assistance is available to individuals who have elected and remained on COBRA continuation coverage for an **extended period** due to a disability determination, second qualifying event or an extension under state mini-COBRA, to the extent the additional periods of coverage fall between April 1, 2021, and Sept. 30, 2021. This only applies if the original qualifying event was a reduction in hours or an involuntary termination of employment.

Switching Coverage

The ARPA contains a provision that—at the employer’s option—allows individuals eligible for the COBRA subsidy and enrolled in the employer’s group health plan to change to different health coverage also offered by the employer. The new coverage cannot have a higher premium than the individual’s previous coverage, and it must be coverage that is offered to similarly situated active employees. The option does not apply to plans that provide only excepted benefits, to QSEHRAs or to health flexible spending arrangements.

The change must be elected within 90 days of the employee receiving notice of the option.

Notice Requirements

The ARPA imposes new COBRA notice requirements on health plans. DOL and Treasury Department notice extended deadline relief does not apply to the notice periods for COBRA premium assistance under the ARPA.

General Notice and Alternative Notice

Group health plans subject to COBRA must provide a **general notice** to all qualified beneficiaries, not just covered employees, who have experienced any COBRA qualifying event at any time from April 1, 2021, through Sept. 30, 2021. The notice must be written in clear and understandable language, and it must inform recipients of the availability of ARPA premium assistance and the option under the ARPA to enroll in different coverage (if the employer permits the option).

An **alternative notice** must be provided by **issuers** that offer group health insurance coverage subject to state mini-COBRA laws. Like the general notice, the alternative notice must be provided to all qualified beneficiaries, not just covered employees, who have experienced any qualifying event at any time from April 1, 2021, through Sept. 30, 2021. The DOL is charged with issuing regulations about providing the alternative notice.

The general and alternative notice may be included in an amendment to a plan’s existing notices or be given in a separate notice, but they must contain the following information:

1. The forms necessary for establishing eligibility for premium assistance



2. The name, address and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with premium assistance
3. A description of the extended election period under the ARPA (if applicable to the individual)
4. A description of the obligation of qualified beneficiaries to notify the plan if they become eligible for another group health plan or Medicare, and the penalty for failure to do so
5. A prominently displayed description of the right to a subsidized premium and any conditions on entitlement to the subsidized premium
6. A description of the option of the right to enroll in different coverage (if the employer permits this option)

The DOL has issued a [model general notice](#) and a [model alternative notice](#) for plans to use in fulfilling their notice requirements.

Notice in Connection With Extended Election Periods

The ARPA requires group health plans to provide a notice in connection with extended election periods to any assistance-eligible individual (or any individual who would be an assistance-eligible individual if a COBRA continuation coverage election were in effect) who became entitled to elect COBRA continuation coverage **before April 1, 2021**. This notice must be provided by May 31, 2021, and it must include the information listed above in items 1-6.

The DOL has issued a [model notice in connection with the extended election period](#).

Notice of Expiration of Subsidy

Plans must also provide individuals eligible for the ARPA subsidy with notice of its expiration. The notice must be written in clear and understandable language, and inform recipients that:

- The premium assistance will expire soon, prominently identifying the expiration date; and
- The individual may be eligible for coverage without premium assistance through COBRA continuation or a group health plan.

Plans are not required to issue an expiration notice to individuals whose subsidy is expiring because they became eligible for other group health plan coverage or Medicare.

The notice must be provided during the 45 - 15-day period before the individual's subsidy expires. The DOL has issued a [model notice of expiration of premium assistance](#) that can be used to satisfy this requirement.

Summary of the COBRA Premium Assistance Provisions Under the American Rescue Plan Act of 2021

In addition to the model notices, the DOL has also developed a [summary of ARPA requirements](#), which according to instructions in the model notices, should be included with the ARPA general notice, alternative notice and notice in connection with extended election periods to satisfy the ARPA's notice requirements.

The summary includes the following:

- A summary of the ARPA's premium assistance provisions;



- A form to request the premium assistance under the ARPA; and
- A form for an individual to use to satisfy the ARPA's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage (other than coverage consisting of only excepted benefits, coverage under a health FSA, or coverage under a QSEHRA) or that the individual is eligible for Medicare.

Tax Credit

The ARPA COBRA subsidy is funded through a tax credit available to:

- Employers whose plans are subject to federal COBRA **or** are fully or partly self-insured;
- The plan for multiemployer plans; and
- The insurer for other plans (generally, fully insured coverage subject to state mini-COBRA, not federal COBRA).

The credit is taken against payroll taxes. It can be advanced and is fully refundable. The credits are provided each quarter in an amount equal to the premiums not paid by assistance-eligible individuals.

The employer, plan or insurer (as applicable) claims the credit by reporting it and the number of individuals receiving COBRA premium assistance on the federal employment tax return, usually Form 941, Employer's Quarterly Federal Tax Return. In anticipation of receiving the credit, the employer, plan or insurer (as applicable) may:

- 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
- 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.

(IRS [Notice 2021-24](#) includes more information on the reduction in deposits for the credit and other employment tax credits.) Deposits may not be reduced, and advances may not be requested, for a credit for a period of coverage that has not begun.

An employer, plan or insurer that uses a third-party payer to report and pay employment taxes to the IRS must nonetheless submit its own Form 7200 to request advance payment of the credit. A copy of the Form 7200 should be provided to the third-party payer that reports and pays federal employment taxes under the third-party payer's EIN, so the credit can be reported on the employment tax return.