

LEGAL UPDATE

IRS Issues Guidance on American Rescue Plan's COBRA Subsidy

On May 18, 2021, the IRS issued [Notice 2021-31](#), a guidance document on the American Rescue Plan Act (ARPA) subsidy for continuation health coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

The Notice discusses the background of the subsidy and includes 86 questions and answers (Q&As) about its application.

The COBRA Subsidy

The ARPA subsidy covers 100% of COBRA and state mini-COBRA premiums from April 1–Sept. 30, 2021, for certain assistance-eligible individuals whose work hours were reduced or whose employment was involuntarily terminated. The subsidy is funded via a tax credit provided to employers, insurers or group health plans, according to the terms of the statute.

The IRS Guidance

Among the topics covered by the 40-page Notice are how to calculate and claim the tax credit, including when a third-party payer is involved. According to the guidance, employers must document individuals' eligibility for COBRA premium assistance in order to claim the credit.

The Q&As further clarify that:

- The subsidy is available for extended periods of COBRA coverage between April 1 and Sept. 30, 2021, due to a disability, second qualifying event or extension under state mini-COBRA.
- Involuntary termination includes constructive discharge and termination for cause, but not gross misconduct.
- Health reimbursement arrangements, dental-only plans and vision-only plans are covered by the subsidy.

IRS Q&A Topics

- Eligibility for COBRA premium assistance
- Reduction in hours
- Involuntary termination of employment
- Coverage eligible for COBRA premium assistance
- Beginning and end of COBRA premium assistance period
- Extended election period
- Extensions under the Emergency Relief Notices
- Payments to insurers under federal COBRA
- Comparable state continuation coverage
- Calculating and claiming the COBRA premium assistance credit

Employers must maintain documentation substantiating individuals' eligibility for the subsidy.

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