



New Temporary COBRA Subsidy Provided Under the American Rescue Plan Act

The American Rescue Plan Act (ARPA) requires that from April 1, 2021, through Sept. 30, 2021, certain COBRA qualified beneficiaries who are referred to as "assistance eligible individuals" who elect or will elect COBRA are not charged any amounts for COBRA coverage (premium assistance or subsidy). The employer, plan or insurer, as applicable, will be reimbursed for such amounts through a federal tax credit (against FICA taxes that fund Medicare hospital benefits). The statute also includes various notice requirements regarding the subsidy. President Joe Biden signed the ARPA on March 11, 2021.

While we do not currently offer COBRA administration services, we will publish two model notices from the federal government when they become available.

What is the duration and applicability of these requirements?

The subsidy starts April 1, 2021, and ends Sept. 30, 2021, unless ending sooner because the individual is no longer eligible as explained below.

"Assistance eligible individual" means someone, during the period of coverage of April 1, 2021 through Sept. 30, 2021:

- (A) who is a COBRA qualified beneficiary because of loss of employment (other than voluntary termination of employment or gross misconduct) or reduction in hours, and
- (B) who elects COBRA coverage.

Which employers are required to offer COBRA coverage?

COBRA generally applies to all private-sector group health plans maintained by employers that had **at least 20** employees on more than 50 percent of its typical business days in the previous calendar year. Both full- and part-time employees are counted to determine whether a plan is subject to COBRA. COBRA also applies to plans sponsored by state and local governments, but not to plans sponsored by the federal government or by churches and certain church-related organizations.

What extensions were made to the election period?

The following individuals may elect COBRA continuation coverage during the period beginning April 1, 2021, and ending 60 days after the date on which a new notification is provided to such individual:

- (A) an individual who does not have an election of COBRA continuation coverage in effect on April 1, 2021, but who would be an assistance eligible individual if such election were so in effect (if they were involuntarily terminated for other than gross misconduct or had a reduction in hours); or

Small Business Benefits

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(B) an individual who elected and discontinued COBRA continuation coverage before April 1, 2021.

When does COBRA continuation coverage begin?

Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period begins April 1, 2021, and lasts as long as it normally would.

What is included in the notice of premium assistance?

COBRA notices have to include an additional written notification within 60 days of April 1, 2021, (May 31, 2021) to the recipient in clear and understandable language of:

- (A) the availability of premium assistance;
- (B) the option to enroll in different coverage if the employer permits assistance eligible individuals to elect enrollment in different coverage;
- (C) the forms necessary for establishing eligibility for premium assistance;
- (D) the name, address and telephone number necessary to contact the plan administrator/COBRA administrator and any other person maintaining relevant information in connection with such premium assistance;
- (E) a description of the extended election period;
- (F) a description of the obligation of the qualified beneficiary to notify when becoming eligible for other group health coverage or Medicare and the penalty for failing to notify;
- (G) a description, displayed in a prominent manner, of the qualified beneficiary's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and
- (H) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage.

The above additional notification may be included in existing notice forms or in a separate document with the existing notice forms. Not later than 30 days after the date of enactment of the law, regulators must issue model notification content.

Example: Jeff was laid off on Oct. 1, 2020. Because of the federal guidance issued by the former administration that extended the deadlines for electing COBRA, Jeff will still be eligible to elect COBRA. Jeff can choose to elect COBRA starting, for example, April 1, 2021, and he can access the COBRA subsidy that will pay for all of his COBRA premiums through Sept. 30, 2021. Alternatively, Jeff can elect COBRA coverage retroactive to Oct. 1, 2020, in accordance with the federal guidance extending the deadlines for electing COBRA. However, the COBRA subsidies do not apply until April 1, 2021, through Sept. 20, 2021, during which time Jeff will not have to pay for COBRA premiums.

What election changes are permitted by employers?

Subject to the requirements below, any assistance eligible individual who is enrolled in a group health plan offered by a plan sponsor may, not later than 90 days after the date of notice of the plan enrollment option, elect to enroll in coverage under a plan offered by such plan sponsor that is different than coverage under the plan in which such individual was enrolled at the time of the qualifying event, because of loss of employment (other than voluntary termination of employment or gross misconduct) or reduction in hours.

What are the requirements for an eligible individual to enroll in different coverage?

Any assistance eligible individual may elect to enroll in different coverage as described above only if:

- I. the employer will permit such assistance eligible individual to enroll in different coverage;
- II. the premium for such different coverage does not exceed the premium for coverage in which such individual was enrolled at the time such qualifying event occurred;
- III. the different coverage in which the individual elects to enroll is coverage that is also offered to similarly situated active employees of the employer at the time at which such election is made; and
- IV. the different coverage in which the individual elects to enroll is not providing only excepted benefits, a qualified small employer HRA or an FSA.

What is a notice of expiration of period of premium assistance?

During the 45 to 15 days before the expiration of premium assistance (Aug. 16, 2021 - Sept. 15, 2021), the plan administrator/COBRA administrator must provide a written notice in clear and understandable language to the assistance eligible individual:

- (A) that the premium assistance for that individual will expire soon, with the expiration date prominently displayed; and
- (B) that the individual may be eligible for coverage without any premium assistance through:
 1. COBRA continuation coverage; or
 2. coverage under a group health plan.

However, no notice of premium assistance expiration is required when coverage is ending because an individual is eligible for coverage under any other group health plan or Medicare.

Federal regulators must issue a model notice of the expiration of premium assistance no later than 45 days after enactment of the law.

What happens if someone overpays for COBRA?

Any assistance eligible individual who pays COBRA premium in error and is otherwise subject to the premium relief must be reimbursed not later than 60 days after the date on which such individual made the premium payment.

What is the tax credit?

The "person to whom premiums are payable" (as defined below) for continuation coverage is allowed a credit against the tax imposed by section 3111(b) of the IRC (the FICA tax that funds Medicare hospital benefits), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for each calendar quarter an amount equal to the premiums not paid by assistance eligible individuals for such coverage.

Who is a person to whom premiums are payable?

- (A) The plan, if a multi-employer plan;
- (B) the employer maintaining the plan, if a single employer group health plan which is subject to the COBRA continuation provisions contained in the Internal Revenue Code, ERISA or the Public Health Service Act, or under which some or all of the coverage is not provided by insurance; and
- (C) the insurer, in the case of any group health plan not described in paragraph (A) or (B).

Is the tax credit refundable?

If the amount of the credit exceeds the amounts allowed for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded.

Can the tax credit be advanced?

In anticipation of the credit, including the refundable portion, the credit may be advanced, according to forms and instructions provided by the federal regulators, through the end of the most recent payroll period in the quarter.

We anticipate federal guidance on this new legislation.