

FAQs | The Impact of the American Rescue Plan Act of 2021 (ARPA)

EPIC & BRI COBRA Subsidies Webinar
Updated: April 8, 2021

Frequently Asked Questions (FAQs)

Subsidy Eligibility

1. Who is an “assistance eligible individual”?

An Assistance Eligible Individual (AEI) is a former employee who experienced a Consolidated Omnibus Budget Reconciliation Act (COBRA) qualifying event due to an involuntary termination or reduction in hours. AEIs who are still within their maximum COBRA period (generally 18 months, individuals who experienced a second qualifying event will have a longer coverage period) on April 1, 2021 are allowed subsidized COBRA coverage until the earliest of: September 30, 2021, the end of their COBRA maximum coverage period, or they become eligible for other employer sponsored health coverage.

2. Who is a covered employer?

The premium assistance provisions apply to all private sector group health plan sponsors and unions subject to COBRA under the Employee Retirement Income Security Act of 1974 (ERISA). Further, the rules apply to State and local government plan sponsors subject to continuation under the Public Service Health Act (PSHA) and for group health insurance required under state “mini-COBRA” laws.

3. Does the involuntary requirement apply to both termination and reduction in hours?

The subsidy, also referred to as premium assistance, applies to involuntary terminations regardless of whether those terminations are related to COVID-19 and reduction in hours which the Department of Labor (DOL) defined as hours reduced due to change in a business’s hours of operations, a change from full-time to part-time status, taking of a temporary leave of absence, or an individual’s participation in a lawful labor strike, as long as the individual remains an employee at the time that hours are reduced.

4. Does the involuntary termination requirement apply only to COVID-related terminations/reduction in hours?

No. Involuntary terminations and reductions in hours can be for any reason and do not need to be related to COVID.

5. Do spouses and dependents who are eligible for COBRA due to divorce qualify for the subsidy?

No. The subsidy only applies to individuals who experience a COBRA qualifying event due to an involuntary termination or reduction in hours.

6. How do the COBRA rules around termination for “gross misconduct” apply?

Individuals who experience an involuntary termination due to “gross misconduct” are not eligible for COBRA, and therefore are not eligible for premium assistance.

7. Must an employer offer COBRA if the previously terminated employee is currently covered on another employer sponsored plan?

No. Once an assistance eligible individual (AEI) is eligible for other employer sponsored health coverage, they are no longer eligible for subsidized COBRA. Recently released guidance from the DOL is clear that premium assistance can last from April 1, 2021 through

September 30, 2021 and will end earlier if an AEI becomes eligible for another group health plan, such as a plan sponsored by a new employer or a spouse's employer (not including excepted benefits, a QSEHRA, or a health FSA), or an AEI becomes eligible for Medicare, or an AEI reaches the end of their maximum COBRA continuation coverage period.

8. Must an employer offer COBRA if the previously terminated employee is currently working for another employer?

Maybe. Eligibility depends on eligibility for other employer sponsored health coverage. If the employee is working but not eligible for other coverage, then he would still be eligible for the COBRA subsidy.

9. Must the employer offer COBRA if the employer has rehired the employee?

If an employee is rehired and eligible for employer coverage, then he would not be eligible for COBRA.

10. Must the employer offer COBRA if the previously terminated employee is not enrolled in but eligible for Medicare?

An individual who experienced an involuntary termination or reduction in hours is not eligible for a subsidy if they are eligible to enroll in Medicare. They do not need to be enrolled in Medicare, only eligible to enroll.

11. Does employer sponsored coverage include coverage eligible through a spouse's employer?

Yes. An individual who experienced an involuntary termination or reduction in hours who is eligible to enroll in coverage through a spouse's employer is not eligible to receive a COBRA subsidy.

12. Do these requirements apply to multiemployer/union plans?

Yes.

13. Does this apply to employers of all sizes?

The rules apply to all employers who are required to offer COBRA or state continuation coverage, regardless of their size. Recently released guidance from the DOL is clear that the ARPA premium assistance provisions apply to all private sector group health plan sponsors and unions subject to COBRA under the Employee Retirement Income Security Act of 1974 (ERISA). Further, the rules apply to State and local government sponsored plan subject to continuation under the Public Service Health Act (PSHA) and for group health insurance required under state "mini-COBRA" laws.

14. Does employer eligibility relate to the FFCRA?

No. The ARPA is not related to the Families First Coronavirus Response Act (FFCRA), signed into law in March 2020, and none of the FFCRA eligibility requirements apply to the ARPA requirements.

15. Does this apply to all individuals who experienced an involuntary termination or reduction in hours or only those who were enrolled in the employer health plans?

The ARPA COBRA subsidy rules only apply to assistance eligible individuals who were enrolled in employer health plans at the time of their involuntary termination or reduction in hours.

16. I have a group who as an ex-employee on state continuation, she exhausted her federal COBRA. Does the subsidy apply to her?

Premium assistance under ARPA is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under comparable state continuation coverage (“mini-COBRA”) laws.

17. Does this apply to self-funded plans?

Yes.

Timeline

1. When are the subsidies effective?

April 1, 2021.

2. When do the subsidies end?

Recently released guidance from the DOL is clear that premium assistance can last until September 30, 2021 but will end earlier if an AEI becomes eligible for another group health plan, such as such as a plan sponsored by a new employer or a spouse’s employer (not including excepted benefits, a QSEHRA, or a health FSA), an AEI becomes eligible for Medicare, or an AEI reaches the end of their maximum COBRA continuation coverage period.

3. If an employee was terminated November 2019 or later, and chose to elect coverage, do they have to pay for the coverage from November 2019-March 2021?

No. Assistance eligible individuals who are still within their maximum COBRA period (generally 18 months) may elect subsidized COBRA on April 1 even if they did not previously elect COBRA, and they do not need to pay retroactive premiums back to their original COBRA qualifying event date. For more information on a “second chance” at COBRA enrollment review the questions below.

4. Does the subsidy apply to individuals who experienced a second COBRA qualifying event and have an extended maximum COBRA period?

Yes. An individual who experienced an involuntary termination or reduction in hours that later experienced a second COBRA qualifying event is allowed a subsidy beginning April 1, 2021 if they are still within their maximum COBRA period.

5. Are these changes permanent?

No. These are temporary changes that go into effect April 1, 2021 and end on September 30, 2021. Congress would need to enact new legislation to extend the subsidies. As of the date of publication of this document, April 8, 2021, no new legislation has been passed extending the premium assistance end date.

6. How much time does an assistance eligible individual have to enroll in subsidized COBRA?

Generally speaking, eligible AEIs have 60 days from the date they initially receive their COBRA election notice to elect COBRA continuation coverage. Recent guidance (Disaster Relief Notice 2021-01) from the DOL, the Treasury Department, and the IRS due to the COVID-19 National Emergency extends timeframes for certain actions related to health coverage under private-sector employment-based group health plans. The extensions provided under Disaster Relief Notice 2021-01 do not apply to the notices and elections related to COBRA premium assistance available through ARPA. AEIs must elect COBRA continuation with premium assistance within 60 days of receipts of notice or forfeit their right to COBRA with premium assistance.

Premium Payment

1. How much are employers required to pay?

Employers must pay the entire cost of the COBRA premium but will recover lost premium payments through a payroll tax credit. Assistance eligible individuals will pay \$0.

2. Does the subsidy include the 2% COBRA administration fee?

Yes.

3. Does the subsidy include the cost of coverage for employees and their family members?

Yes. Employers will pay the entire cost of COBRA for both the assistance eligible individual and any family members enrolled in COBRA coverage.

4. How are the subsidies determined?

Subsidies are based on the COBRA rates that former employees are required to pay, plus the COBRA administrative fee, which is usually 2% of the cost of coverage.

5. How do self-funded plans determine premiums?

Self-funded plan premiums are based on the COBRA premium equivalent rates that employees are required to pay, plus the COBRA administrative fee, which is usually 2% of the cost of coverage.

6. Will we need to refund an assistance eligible individual that paid for COBRA coverage between April 1, 2021 – September 30, 2021?

According to recently released guidance from the DOL, an AEI must be treated, for purposes of COBRA, as having paid the full premium amount from April 1, 2021 through September 30, 2021. Premiums should not be collected from AEIs during this time. AEIs eligible for premium assistance, but who paid in full for periods of COBRA continuation coverage beginning on or after April 1, 2021 through September 30, 2021 should contact the plan administrator or employer sponsoring the plan to discuss a credit against future payments or a refund in certain circumstances.

Coverage Election

1. Is the subsidy required to cover all plans (medical, dental, and vision) or just medical?

Absent other guidance, the subsidy applies to all COBRA eligible plans except Flexible Spending Accounts.

2. Can an assistance eligible individual change plans when they elect COBRA, or must they enroll in the plan they were previously enrolled in?

Yes. Recently released guidance from the DOL is clear that group health plans (GHPs) can choose to allow qualified beneficiaries to enroll in coverage that is different from the coverage they had at the time of the COBRA qualifying event. ARPA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium assistance, provided that:

- The COBRA premium charged for the different coverage is the same or lower than for the coverage the individual had at the time of the qualifying event;

- The different coverage is also offered to similarly situated active employees; and
- The different coverage is not limited to only excepted benefits, a QSEHRA, or a health FSA.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice of their opportunity to do so. Individuals have 90 days to elect to change their coverage after the notice is provided.

3. Do assistance eligible individuals automatically receive the COBRA subsidy?

Yes. Assistance eligible individuals who are enrolled in COBRA will automatically receive the subsidy. AEIs will not receive a payment, but rather do not have to pay any of the COBRA premium for the period of coverage from April 1, 2021 through September 30, 2021. The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance credit.

4. Are assistance eligible individuals automatically enrolled in COBRA on April 1?

No. Any assistance eligible individual (AEI) must affirmatively opt into COBRA coverage to receive the subsidy. AEIs who are still within their maximum COBRA coverage period are eligible to enroll and receive subsidized coverage. For more information on “second chance” COBRA elections review the questions below.

5. Are assistance eligible individuals able to add dependents that were not enrolled at the time of the COBRA qualifying event?

No. Only dependents who were enrolled at the time of the COBRA qualifying event may enroll in and receive subsidized coverage. Assistance eligible individuals (AEIs) may make changes to enrolled dependents if they experience a qualified life event.

Each COBRA qualified beneficiary may independently elect COBRA continuation coverage. If a family member did not elect COBRA continuation coverage when first eligible and that individual would still be an AEI and has an additional opportunity to enroll and qualify for the premium assistance.

6. How will COBRA administrators know that past terminations or reductions in hours were involuntary?

Coordinate with your COBRA administrator to determine what information they need to ensure only those enrolled in COBRA who experienced an involuntary termination or reduction in hours are receiving the subsidy.

Second Chance

1. What does the phrase “second chance” period refer to?

“Second Chance” refers to an assistance eligible individual (AEI) who is still within their maximum COBRA period but either did not elect COBRA when they first became eligible or elected COBRA coverage but subsequently dropped. These AEIs have another chance to elect subsidized COBRA coverage starting on April 1, 2021.

2. When does the second chance period begin?

April 1, 2021.

3. Why does the second chance period begin in November 2019?

November 2019 is 18 months prior to April 2021. Absent a second qualifying event, the maximum COBRA period is 18 months. A COBRA beneficiary who experienced an involuntary termination or reduction in hours starting in November 2019 or later has an opportunity to receive subsidized coverage starting April 2021. Note that the ARPA does not extend the COBRA maximum period, so an assistance eligible individual with a qualifying event in November 2019 will only be eligible for the subsidy in April 2021, which is month 18 of their COBRA period. Note that in this example, an individual who experienced a second qualifying event would be eligible for subsidized coverage past April 1.

4. Is premium assistance retroactive to their original COBRA qualified event date?

No. The subsidy applies only from April 1, 2021 to September 30, 2021.

5. Can the assistance eligible individuals have a gap in coverage?

Yes. An assistance eligible individual (AEI) who is taking advantage of the second chance to enroll may elect subsidized COBRA coverage starting April 1, 2021 and does not need to elect retroactive coverage back to their COBRA qualifying event. This means that AEIs may have a gap in coverage.

6. Do previously eligible individuals who are taking advantage of the second chance to enroll need to pay retroactive COBRA premium?

No. Assistance eligible individuals (AEI) may but are not required to pay retroactive COBRA premiums. AEIs may choose to have a gap in coverage. Any AEI who wants continuous coverage must pay retroactive premium back to their COBRA qualifying event.

7. How do these new rules coordinate with the “Outbreak Period” guidance for COBRA elections?

The COBRA rules under the ARPA are separate from the recent Employee Retirement Income Security Act of 1974 (ERISA) deadline extensions from DOL Disaster Relief Notices 2020-01 and 2021-01 that allow a “disregard period” for the earlier of 12 months or the “outbreak period” for individuals to elect and pay for COBRA. As background, the “outbreak period” is defined as the time of the national emergency as declared by the President plus 60 days. The outbreak period guidance allows all COBRA eligible individuals not just assistance eligible individuals (AEI), to disregard the normal COBRA election and payment deadlines for a period of up to 12 months or the end of the outbreak period, whichever is earlier. Any AEI who is currently taking advantage of additional time to enroll in COBRA may elect starting April 1, 2021 to receive subsidized COBRA without paying retroactive premiums as is normally required under the Disaster Relief Guidance.

Recent guidance from the DOL states that the Disaster Relief Notice extended timeframes do not apply to AEIs who receive a notice of an election right under the ARPA premium assistance requirements. These AEIs have 60 days from the date they receive notice to elect subsidized COBRA coverage, or they forfeit their right to elect COBRA continuation coverage with premium assistance.

Notice Requirements

1. What are the different notices that are required?

On April 7, 2021 the DOL through the Employee Benefits Security Administration (EBSA) released updated COBRA model notices to assist employers with notifying assistance eligible individuals (AEI) of their right to elect COBRA with premium assistance.

Qualified beneficiaries and AEIs must receive notice of their rights under the ARPA including:

- General notice to all qualified beneficiaries who have a qualifying event that is a reduction in hours or an involuntary termination of employment between April 1, 2021 through September 30, 2021. Recent guidance from the DOL states that this notice may be provided separately or with a COBRA election notice following a qualifying event.
- A special notice of a second chance to elect COBRA with premium assistance to AEIs within their maximum COBRA period titled “Notice in Connection with Extended Election Period.” This requirement does not include those individuals whose maximum COBRA continuation coverage period, if COBRA had been elected or not discontinued, would have ended before April 1, 2021 (generally, those with applicable qualifying events before October 1, 2019). This notice must be provided by May 31, 2021, which is 60 days after the premium assistance period begins on April 1, 2021.
- A “Notice of Expiration of Premium Assistance” titled which explains that subsidized coverage will expire and include the expiration date and explain that the individual may be eligible for coverage without premium assistance through Healthcare.gov. This notice is due 15-45 days before premium assistance ends.

The DOL has provided model notices for employers and issuers to use; however, plans and issuers may choose to provide their own notices. Recent guidance from the DOL is clear that notices must provide the following information:

- The forms necessary for establishing eligibility for the premium assistance;
- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium assistance;
- A description of the additional election period (if applicable to the individual);
- A description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan (not including excepted benefits, a QSEHRA, or a health FSA), or eligible for Medicare and the penalty for failing to do so;
- A description of the right to receive the premium assistance and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

The DOL updated Model Notices can be found here:

- [General Notice & Election Notice](#)
- [Notice in Connection with Extended Election Period](#)
- [Alternative Notice](#)
- [Notice of Expiration of Premium Assistance](#)

2. Are employers responsible for writing their own notices?

The DOL will provide new and updated model notices for employer to use on April 7, 2021. Employers may update their current notices with custom verbiage, but we recommend that any custom language be reviewed by ERISA counsel to ensure it meets the requirements outlined by the DOL and the ARPA.

3. Who is responsible for sending the notices?

Employers are responsible for providing notice to assistance eligible individuals but may contract with COBRA administrators to distribute the notice.

4. When are the notices due?

The “Notice in Connection with Extended Election Period” notices are due to assistance eligible individuals no later than May 31, 2021.

The “Notice of Expiration of Premium Assistance, end of subsidy notices are due to individuals receiving subsidies between 15 and 45 days from the premium assistance expiration date.

Recent guidance from the DOL states that the extensions under Disaster Relief Notice 2021-01 do not apply, however, to the notices or the election periods related to COBRA premium assistance available under the ARPA. Plans and issuers must provide the notices according to the timeframes specified in the ARPA.

5. How do notices have to be delivered?

Recent guidance from the DOL is clear that unless modified by the ARPA, existing requirements for the manner and timing of COBRA notices continues to apply. Employers should review DOL and ERISA guidelines for information on proper distribution of COBRA notices and ensure that notices are delivered in a manner that is consistent with these rules. Generally speaking, employers must deliver notices in a manner that reasonably ensures receipt of the notice such as mailing to an assistance eligible individual's (AEI) home. Electronic delivery, such as posting to company website is only allowed if certain criteria are met. The best practice to ensure compliance with ERISA distribution rules is to mail hard copies of the notices to AEIs.

6. Do new notices have to be sent to all employees?

The DOL provided a new COBRA general notice and election notice that can be used for all employees from April 1, 2021 through September 30, 2021. The previous notice was modified to include ARPA subsidy language.

Notices for the Notice of Expiration of Premium Assistance and Subsidy Expiration apply only to assistance eligible individuals.

Penalties

1. What circumstances would cause an individual to be penalized?

The ARPA requires assistance eligible individuals to notify their former employer an offer of employer sponsored coverage or eligibility for Medicare. Failure to report new health coverage eligibility and remain on subsidized coverage may face a tax penalty.

2. What is the penalty amount?

Failure to notify the former employer will result in a penalty of \$250. If the penalty is intentional then it will be the greater of \$250 or 110% of the amount of the premium assistance.

3. How is the penalty collected?

We are currently awaiting clarifying guidance from the government on how penalties will be assessed and collected.

Tax Credit

1. How is the tax credit determined?

The tax credit is based on the amount of premiums an employer pays for assistance eligible individual's subsidized coverage.

2. How do self-funded plans determine their tax credit amount?

Self-funded plans will determine tax credits based on premiums paid not based on claims paid. Premiums for subsidized coverage will be determined by a self-funded plan's COBRA premium equivalent rates.

3. Where can employers get the forms for the payroll tax credit?

We are currently waiting for more information from the IRS on the payroll tax credit. We anticipate that the IRS will release updated forms and instructions in the coming weeks.

4. How is employer reimbursement from the employer portion of FICA affecting employee Social Security accounts?

We are currently waiting for more information from the IRS on the payroll tax credit. We anticipate that the IRS will release updated forms and instructions in the coming weeks.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.

EPIC offers this material for general information only. EPIC does not intend this material to be, nor may any person receiving this information construe or rely on this material as, tax or legal advice. The matters addressed in this document and any related discussions or correspondence should be reviewed and discussed with legal counsel prior to acting or relying on these materials.