

# HR COMPLIANCE BULLETIN

## 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 an **involuntary** job loss or reduction in work hours. 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.

### Action Steps

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

Provided to you by [Summit Financial Group](#)

### 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 or carriers.

#### Option to Switch Coverage

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

### Important Dates

#### April 1, 2021

ARPA 100% subsidy begins to cover COBRA premiums.

#### Sept. 30, 2021

ARPA subsidy provision for COBRA premiums expires.





## Overview

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 some similar state mini-COBRA laws mandate a longer coverage period.

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 may be subject to a state mini-COBRA law and therefore be covered by the ARPA’s COBRA subsidy provisions.

Health flexible spending arrangements under Section 125 cafeteria plans are not covered by the ARPA COBRA subsidy.

## 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; and
- Elect continuation coverage.

These people are called “assistance-eligible individuals” by the ARPA statute.

The subsidy is not available for people who voluntarily left their job. It is also unavailable for people who are eligible for Medicare or another group health plan, not including:

- ☒ A plan covering only excepted benefits;
- ☒ A qualified small employer health reimbursement arrangement; or
- ☒ A flexible spending arrangement.

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. The premium subsidy is not counted as gross income.

## 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 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.

## Duration of 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 elected COBRA, discontinued it and are now using the ARPA extended election period to obtain COBRA, the COBRA coverage period is calculated as if they had not dropped the coverage.

## 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 offered to similarly situated active employees. The option does not apply to plans that provide only excepted benefits, to qualified small employer health reimbursement arrangements 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.

### *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 to employers whose plans are subject to federal COBRA or are self-insured, to the plan for multiemployer plans, and to the insurer for other plans. The credit is taken against payroll taxes. It can be advanced (according to forms and instructions to be provided by federal agencies) and is fully refundable. The credits will be provided each quarter in an amount equal to the premiums not paid by assistance-eligible individuals.