



American Rescue Plan Act of 2021



Although the ARPA COBRA subsidy is similar in many aspects to the 2009 ARRA subsidy, it is also very different. Shortly after the ARRA was enacted in 2009, the IRS issued guidance that provided clarification to a number of issues and so we anticipate similar guidance with respect to the ARPA. Consequently many in the industry continue to digest the rules, looking to the [2009 ARRA guidance](#) to help find clarity as we anticipate guidance from the IRS in the near future. We will answer all the questions that we can now and hope to provide updates as they become available.

Notice 2021-01 Action Plans

- To view a copy of the new notice to COBRA qualified beneficiaries, providing guidance on the outbreak period relief issued in [EBSA Disaster Relief Notice 2021-01](#).
- The DOL has expressly noted that a notice is required to the extent prior communications did not contemplate this application of the 1-year rule.
- It is strongly recommended that these notices are mailed to all impacted Qualified Beneficiaries (QBs) and COBRA participants.

ADDITIONAL ARPA COBRA SUBSIDY FAQs

Q: When does the premium subsidy begin and end?

ARPA establishes a 100% COBRA premium subsidy for eligible individuals during the period beginning on April 1, 2021 and ending on September 30, 2021. This means that even eligible individuals who lost health coverage as far back as November 2019 may benefit from the subsidy, since their 18-month maximum COBRA period will not expire until the end of April 2021.

Q: Who is eligible for the COBRA premium subsidy?

Eligible individuals are those who had an involuntary termination or had a reduction in hours and are not eligible for other group health plan coverage or Medicare.

Q: Does the subsidy apply to the Individual only or also to dependents?

Yes. The subsidy will apply to any qualified beneficiary (QB) who loses coverage as a result of the covered employee's involuntary termination of employment or reduction in hours and who otherwise meets the eligibility criteria is eligible for the subsidy. Consequently, if a covered employee does not elect COBRA but the QB spouse does, the spouse would be eligible for the subsidy.

Q: What if the involuntarily terminated employee is now eligible for other group health plan coverage. Can their dependent still qualify for the subsidy?

It is possible. Each situation would need to be examined. The subsidy eligibility is tied to each QB who loses coverage due to the covered employee's involuntary termination/reduction in hours. In most cases, if the terminated employee is eligible/enrolled in other coverage, the QB spouse/children are eligible but that will not ALWAYS be the case. Also, if the employee previously elected self only COBRA, the QB spouse/children that didn't elect COBRA will now get second bit at the apple too, if they are not eligible for other coverage.

Q: What group health plans are subject to the premium subsidy?

Eligible individuals can receive 100% subsidy for the "COBRA premium" for all group health plans other than Health FSAs. The COBRA premium includes medical, dental, vision, HRAs, and the standard 2% COBRA administration fee.

Q: Does the ARPA subsidy apply to State Continuation?

Yes, the premium subsidy is applicable in states that have a state continuation law. In most states, the premium subsidy assistance would be applicable to only the *fully insured medical plan*. For groups subject to state continuation, the insurance carrier would be the one receiving the premium tax credit, not the employer.

Q: Can an eligible individual who either did not previously elect COBRA or elected but let their coverage lapse still qualify for the COBRA subsidy?

Yes. The subsidy is available to employees who did not elect COBRA coverage during their original election period, as well as those who initially elected COBRA but let their coverage lapse. These individuals must be offered an additional window of at least 60 days to elect COBRA coverage. Of course, since COBRA election deadlines have been extended during the pandemic as a result of the DOL/IRS deadline tolling guidance, many individuals are still within their original COBRA election periods. However, this special election opportunity allows these individuals to make a prospective COBRA election for the period beginning April 1, 2021, without requiring payment of premiums retroactive to the original loss of coverage. Keep in mind the maximum COBRA period is not extended in such a case (that is, it is still counted from the date of the original qualifying event).

Example: Individual has a qualifying event on 5/1/20 but they did not elect, could now elect COBRA on 4/1/21, and receive the subsidy. The QB would only be eligible to continue COBRA for the remaining months had they elected beginning 5/1/20.)

Q: What if someone (who was involuntarily terminated) didn't originally take COBRA, they went on Medicaid, can they drop Medicaid and now take COBRA and qualify for the subsidy?

Yes. Medicaid will not disqualify you.

Q: Who covers the cost of the coverage that is subsidized ?

- It varies depending on the situation.
- The entity covering the premium gets a credit against the HI portion of FICA tax.

Q: Covering entity (referred to in the statute as the entity to whom the premium is payable)?

- If Multi-employer plan—the Plan itself.
- If plan is subject to Federal COBRA or is self-funded plan subject to state continuation—the employer maintaining the plan;
- If neither of the above apply, the insurer
- This will be fully insured statute continuation coverage

Q: Can an eligible individual who either did not previously elect COBRA or elected but let their coverage lapse still qualify for the COBRA subsidy?

Yes. The subsidy is available to employees who did not elect COBRA coverage during their original election period, as well as those who initially elected COBRA but let their coverage lapse. These individuals must be offered an additional window of at least 60 days to **prospectively** elect COBRA coverage effective April 1, 2021 (for the remainder of the 18 month cobra period).

Q: Will additional notices need to be sent to Qualified Beneficiaries and COBRA participants regarding the subsidy?

Yes! ARPA calls for the Department of Labor to issue model notices within 30 days of April 1st. ARPA states that the Special Election Notice must go out within 60 days of April 1st. Eligible individuals will then have 60 days after the date on which the special notice is provided, with the subsidy going back to April 1st.

What's Next?

We understand how critical it is to provide accurate information, quickly, but until further guidance is issued, many of these questions remain unclear (i.e. how exactly will employers receive the premium tax credit, how will refunds be applied those eligible for the subsidy, etc.).

Click [HERE](#) To review a copy of the ARPA and language pertaining to the COBRA subsidies.

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