

## American Rescue Plan Act of 2021



# COBRA Subsidy

## *What Employers Need to Know*

*While the American Rescue Plan Act of 2021 (ARPA) garnered headlines for the recovery rebates, child tax credits, financial support for state and local governments, and other high-profile provisions, it also included a lesser-publicized provision providing premium coverage for eligible individuals who have lost*

*employer-provided health coverage. This article addresses the key components employers need to understand, including determination of eligible employees, required notice provisions, and how to claim the associated credit.*



## COBRA Continuing Coverage

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) requires employers with 20 or more employees to provide continuation of group health insurance coverage for a limited period of time in certain circumstances where it would otherwise be terminated. COBRA generally applies to medical, vision, and dental group health plans. Premiums associated with COBRA coverage are typically paid by the covered individual, and employers are allowed to charge up to 102% of the actual premium for the individual and any dependents to cover the premium and administrative expenses.

ARPA established a premium assistance program which provides that eligible individuals “shall be treated for purposes of any COBRA continuation provision as having paid in full the amount of such premium.” Plan sponsors may recover the cost of the COBRA premiums for eligible individuals through a payroll tax credit.

***“...The American Rescue Plan provides much-needed relief to U.S. workers as they face critical decisions about their health coverage.”<sup>i</sup>***

*- Ali Khawar, Acting Assistant Secretary for Employee Benefits Security*

The subsidy applies to COBRA continuation coverage provided from April 1, 2021 through September 30, 2021, regardless of whether a qualifying event resulting in loss of coverage occurred before or after April 1, 2021. The subsidy covers the premiums of the covered individual and any qualified beneficiaries (i.e., spouse and/or dependent children). The subsidy is not taxable income to the covered individual.

### Eligibility Requirements

ARPA defines “assistance eligible individual” as, with respect to a period of coverage between April 1 to September 30, 2021, a qualified

individual who is eligible for COBRA continuation coverage by reason of a qualifying event and properly elects such coverage. For this purpose, a qualifying event includes a reduction of hours or an involuntary termination of employment.

The subsidy does not apply if the covered employee voluntarily terminated employment. However, the legislation did not define “voluntary” or “involuntary,” so further guidance is needed on this issue.

No distinction is made between voluntary and involuntary reduction of hours; accordingly, it is presumed that the subsidy would qualify in either situation. The Department of Labor (DOL) issued an FAQ document<sup>ii</sup> noting the following examples for a qualifying reduction in hours, so long as the individual remains an employee during the time the hours are reduced:

- Change in hours of operations;
- Change from full-time to part-time status;
- Temporary leave of absence; or
- Participation in a lawful labor strike.

If an individual experienced a qualifying event (i.e., reduction in hours or involuntary termination of employment) prior to April 1, 2021, and elected COBRA continuation coverage at that time, the COBRA subsidy would apply for the period of coverage between April 1, 2021, and September 30, 2021. However, the subsidy would end when the individual becomes eligible for coverage under another group health plan, Medicare, or qualified small employer reimbursement arrangement, or when the COBRA coverage would otherwise expire (generally after eighteen months).

### Coverage Options

An employer may, but is not required to, offer the covered employee an option of enrolling in different coverage that is offered to similarly situated active employees. If this option is offered, the covered employee must enroll in the alternate coverage that will be treated as COBRA continuation coverage within 90 days of receiving notice. The alternate coverage cannot have a higher premium than the plan in which the



employee was enrolled at the time of the qualifying event, and cannot include only excepted benefits such as dental or vision coverage or a flexible spending arrangement.

### Extended Election Period

The election period for COBRA coverage is extended for individuals who:

- (1) experienced a qualifying event prior to April 1, 2021, and did not elect COBRA continuation coverage when it was initially offered but would otherwise be eligible for the subsidy; or
- (2) initially elected COBRA coverage, but discontinued it prior to April 1, 2021 (e.g., if they were unable to pay the premium).

In such circumstances, the individual may elect coverage between April 1, 2021, and 60 days after receiving notice of the extended election period, which must be provided by May 31, 2021. Electing coverage during this period does not extend the COBRA coverage beyond the period that would normally have applied (generally, 18 months). Furthermore, an individual who enrolled in COBRA coverage prior to April 1, 2021, is not entitled to a refund for premiums paid before April 1, 2021.

### Notice Requirements

Employers are required to provide extra information along with the general COBRA election notice after a qualifying event. The notice should be in writing and address the availability of premium assistance and, if offered by the employer, the option to enroll in different coverage, as well as other required elements.

Additionally, as noted previously, employers must provide notice of the extended election periods by May 31, 2021, to any assistance eligible individual who became entitled to COBRA continuation coverage prior to April 1, 2021.

Employers are also required to provide notice of the date on which premium assistance will

expire. This notice must be provided between 15 and 45 days before the expiration date. In the event the assistance expires due to the individual becoming eligible for other coverage, this notice requirement is waived.

The DOL has provided model notices that may be utilized to meet these notification requirements, which can be found on their [website](#).

Individuals receiving assistance from the COBRA subsidy must notify the group health plan upon becoming eligible for coverage through another group health plan, Medicare, or qualified small employer reimbursement arrangement.

### Claiming the Credit

To recoup the premiums that would normally be paid by the covered individual, the “person to whom premiums are payable for continuation coverage” (generally, the employer or the insurer) may claim a refundable credit against the employer’s share of Medicare tax for the calendar quarter. The credit is equal to the amount of premiums not paid by assistance eligible individuals because of the COBRA premium assistance provisions. However, the credit with respect to any calendar quarter cannot exceed the employer’s share of Medicare tax for all employees for the applicable quarter, reduced by any sick leave, family leave, or employee retention credit for which the entity claimed a payroll tax credit under other COVID relief provisions. If the credit exceeds such limit, the excess amount shall be refunded. The amount of credit claimed must be included in the entity’s gross income.

ARPA also allows for the credit to be advanced, though the Department of Treasury has not yet provided guidance on how the advance would be administered.

If an assistance eligible individual pays the premium that should be covered by the subsidy, the amount must be refunded within 60 days.



## Action Steps

Employers need to familiarize themselves with the COBRA subsidy program and make plans to provide the required notifications. If you work with a third-party vendor to administer your COBRA benefits, you should contact them directly to determine the processes they have set forth for their clients. This should include incorporating the required elements into the notice provided to employees following a qualifying event during the subsidy period (April 1, 2021 – September 30, 2021), as well as identifying assistance eligible individuals who experienced a qualifying event before April 1, 2021 and contacting them with the required notices. Generally, this would involve looking back to November 1, 2019 to identify individuals with time remaining on the typical 18 months of COBRA eligibility. It is also important to determine the applicable dates when expiration notices should be provided and develop processes to ensure this is properly executed. Should you have any questions regarding how to claim the payroll tax credit, please contact your JTaylor advisor.

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<sup>i</sup> “US Department of Labor Issues Guidance, Model Notices Implementing American Rescue Plan’s COBRA Premium Assistance Provisions.” *U.S. Department of Labor*, 7 Apr. 2021. <https://www.dol.gov/newsroom/releases/ebsa/ebsa20210407>. Accessed 14 Apr. 2021. News Release.

<sup>ii</sup> “FAQs About COBRA Premium Assistance Under the American Rescue Plan Act of 2021.” *U.S. Department of Labor*, 7 Apr. 2021. <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>. Accessed 14 Apr. 2021.

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*Because the facts and circumstances of each situation are unique, particularly as applied to these new, complex provisions of federal legislation and associated interpretive guidance, we recommend seeking professional guidance before undertaking actionable steps in regard to these provisions.*