



# AMERICAN RESCUE PLAN ACT (ARPA) COBRA & STATE CONTINUATION PREMIUM SUBSIDY

## FREQUENTLY ASKED QUESTIONS

### 01.

#### What changes have been made to COBRA election deadlines due to COVID-19?

In April of 2020, the Department of Labor (DOL) and IRS issued a pause on COBRA election and premium payment deadlines during the “Outbreak Period” of the Coronavirus pandemic.

The “Outbreak Period” is defined as the “period beginning March 1, 2020 and ending 60 days after the end of the National Emergency is declared by the President; not to exceed one year.

Qualified beneficiaries can now delay their COBRA elections and payments until these deadlines expire.

The DOL later released Notice 2021-01 in February of 2021 which clarified the extensions during the Outbreak Period. Deadlines were extended until the earlier of:

- One year from the date the individual was first eligible for relief, OR
- 60 days after the end of the National Emergency is announced (which means the end of the Outbreak Period), before their 60-day election or 30-day payment clock starts again.

Since the National Emergency is still ongoing, the determination of when the “Outbreak Period” ends will be calculated based on each individual’s qualifying event. But it will never exceed one year plus the applicable election or grace period.

For qualified beneficiaries which had a portion of their standard election period begins prior to the extensions, they will have the remainder of their election period to select coverage without penalty.

### 02.

#### What changes have been made to COBRA premium payment deadlines due to COVID-19?

For the premium extensions, simply add one year to the standard date that the premium would have been due. There is some debate about whether an employer can require the entirety of the premium in a lump sum at the end of the extension or if each payment has a one-year extension added on; additional guidance is expected.

Please note, the DOL states that if the plan administrator or other responsible plan fiduciary knows, or should reasonably know, that the end of the relief period for an qualified beneficiary is exposing a participant or beneficiary to a risk of losing benefits, the administrator or other fiduciary should consider sending a notice regarding the end of the relief period.

## 03.

**What is the “Outbreak Period”?**

The “Outbreak Period” is defined as the “period beginning March 1, 2020 and ending 60 days after the end of the National Emergency is declared by the President; not to exceed one year.

## 04.

**What is the American Rescue Plan Act (ARPA)?**

The American Rescue Plan Act allows employers to subsidize COBRA coverage 100% (including the 2% administration fee, if applicable) for all “assistance eligible individuals” (AEIs) and their qualified beneficiaries were enrolled in at the time of their original qualifying event. Under the new rules, subsidized COBRA participants will not be required to make any COBRA premium payments during the subsidy period.

## 05.

**To what time period to ARPA subsidies apply?**

For the period of time beginning April 1, 2021 and ending September 30, 2021.

## 06.

**Who is eligible for a premium subsidy?**

In order to be eligible for the subsidy:

- The qualifying event must be an involuntary termination of employment or reduction in hours.
- Involuntary terminations will have to be identified.
- An AEI qualified beneficiary is one who was involuntarily terminated from employment or suffered a reduction in hours who are or could have been eligible for COBRA between April 1, 2021 and September 30, 2021. The word “involuntary”, applies only to terminations.
- Qualified beneficiaries must still be in their original 18-month COBRA coverage period.
- Even employees 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.
- The qualified beneficiary is not eligible to receive the subsidy if he/she is eligible for coverage under Medicare or an employer-sponsored plan (that provides other than excepted benefits).

For example:

- Mary lost her job and her coverage on December 1, 2019.
- Mary’s 18-months of COBRA begins December 1, 2019 through May 31, 2021.
- The subsidy begins April 1, 2021. Mary is only able to receive two months’ worth of the COBRA subsidy (April and May 2021) because her 18 months of COBRA continuation expires on May 31, 2021.

## 07.

**Who is responsible for the subsidized premium payment?**

Further guidance is needed however it appears that the below applies:

- Self-Insured COBRA Eligible Plans – Plan Sponsors (employers) are entitled to claim the ARPA COBRA subsidy as Medicare payroll taxes credits.
- Fully Insured COBRA Eligible Plans- Additional guidance is expected.
- State Continuation Eligible Plans – Additional guidance is expected.
- Multi-employer (Union-sponsored) health plans - Additional guidance is expected for multiemployer (union) and professional employer organizations (PEOs).

## 08.

**What plans do the subsidies apply to?**

The subsidies apply to all plans subject to Federal COBRA. This includes both fully and self-insured medical, dental, and vision plans. The subsidy also applies in states that offer state continuation.

Keep in mind that state continuation does not apply to self-insured plans, or dental and vision.

## 09.

**Does the subsidy apply to state continuation?**

Yes, the subsidy applies to state continuation, but may be subject to certain limitations. State continuation does not apply to self-insured plans, or dental and vision.

## 10.

**Must COBRA coverage be continuous to be eligible for the subsidy?**

No, the ARPA subsidy does not require COBRA coverage to be continuous and provides qualified beneficiaries with a second chance to prospectively elect coverage.

## 11.

**Are there additional notice requirements?**

Under the new rules, plan sponsors must still notify all qualified beneficiaries within, what would otherwise be, their 18-month coverage period of their right to elect coverage effective April 1, 2021.

The DOL will issue a model notice for this purpose within 30 days that must be sent to qualified beneficiaries by May 31, 2021.

The Notice must include:

- The forms necessary to elect coverage;
- The name, address, and telephone number to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance;
- A description of their right to elect coverage effective April 1 at any time during the 60 days following the date of the notice;

- A description of the obligation to notify the plan if they become ineligible for the subsidy (i.e., because they become eligible for coverage through a new employer); and
- A prominently displayed statement regarding the right to subsidized coverage.

A second notice is required to be sent to any individual who elects the subsidized coverage and will remain eligible for COBRA after the subsidy period ends. This notice, which must be sent between August 16, 2021 and September 15, 2021, must explain when the subsidy will expire.

12.

### Are model notices available?

Model notices and guidance from the Department of Labor and/or the Internal Revenue Service regarding these new rules are available here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

13.

### If an employer was subject to COBRA in June of 2020 and an employee was involuntarily terminated but the employer is no longer subject to COBRA today, is the employer required to offer COBRA??

Changes in COBRA status occur in January of each year based on employee counts from the previous calendar year. If an employer is no longer subject to COBRA, changes only apply to events that occur after January 1. Those individuals on or eligible for coverage prior to the change in status retain their rights under COBRA. In addition, state continuation may apply to certain employers.

14.

### Are plans subject to state continuation (not federal COBRA) eligible for the subsidy?

Yes, state continuation is eligible for the subsidy. The below outlines the language reflecting this:

*The term “COBRA continuation coverage” means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, or section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section of the Internal Revenue Code of 1986.*

15.

### Would a secondary qualifying event impact the subsidy?

The guidelines do not address this issue yet. Further guidance is expected.

## 16.

### **If an employer offers multiple health care options, can eligible participants enroll in a different group health plan?**

ARPA allows employers to give employees the option of switching to a less expensive plan when enrolling in COBRA. However, this is an optional provision. The DOL will be providing model notices for this purpose.

## 17.

### **What forms are needed to receive the tax credit?**

The credit for self-insured groups subject to federal COBRA will be taken against their quarterly Medicare payroll taxes on Form 941.