

# HR COMPLIANCE BULLETIN

## DOL Issues FAQs About American Rescue Plan's COBRA Subsidy

On April 7, 2021, the U.S. Department of Labor (DOL) issued [answers to frequently asked questions](#) (FAQs) about the American Rescue Plan Act's (ARP) premium assistance for health insurance continuation coverage under the [Consolidated Omnibus Budget Reconciliation Act of 1986](#) (COBRA) and similar state mini-COBRA programs. The DOL's FAQs are reprinted in this Compliance Bulletin.

### The FAQs

The DOL's new guidance on the COBRA subsidy consists of 21 FAQs, clarifying:

- New plan notice requirements for the subsidy;
- The applicability of the ARP election extension; and
- That extended deadline relief under earlier federal guidance does not apply to the ARP's COBRA notice and election time frames.

However, the FAQs explain that the prior COBRA deadline relief **does** apply to an individual's eligibility to elect the COBRA subsidy based on an earlier qualifying event.

### The ARP Subsidy

The ARP provides a **100% subsidy** of COBRA premiums for eligible individuals who lost group health coverage due to a reduction in hours or **involuntary** termination of employment. The subsidy applies from **April 1, 2021, through Sept. 30, 2021**, and it is available to eligible qualified beneficiaries even if they earlier declined or dropped COBRA coverage.

## Action Steps

Employers should review the DOL's FAQs to ensure compliance with the ARP, especially with respect to new plan notice obligations.

## Highlights

### Coverage Is Retroactive

Individuals may start their subsidized coverage April 1, 2021, even if they make their election at a later date.

### Violations Subject to Penalty

Failing to satisfy the ARP COBRA requirements may result in a tax of \$100 per qualified beneficiary per day to employers and plans.

### Family Members May Newly Elect COBRA

Each COBRA qualified beneficiary may independently elect COBRA continuation coverage.

## Important Dates

### April 1, 2021

ARP COBRA subsidy began.

### Sept. 30, 2021

ARP COBRA subsidy ends.



JP Griffin Group



## FAQs About COBRA Premium Assistance Under the American Rescue Plan Act of 2021

### General Information

**Q1: I have heard that the ARP included temporary COBRA premium assistance to pay for health coverage. I would like more information.**

The ARP provides temporary premium assistance for COBRA continuation coverage for Assistance Eligible Individuals (see Q3 to determine if you are eligible). COBRA allows certain people to extend employment-based group health plan coverage, if they would otherwise lose the coverage due to certain life events such as loss of a job.

Individuals may be eligible for premium assistance if they are eligible for and elect COBRA continuation coverage because of their own or a family member's reduction in hours or an involuntary termination from employment. This premium assistance is available for periods of coverage from April 1, 2021, through Sept. 30, 2021. This premium assistance 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.

If you were offered federal COBRA continuation coverage as a result of a reduction in hours or an involuntary termination of employment, and you declined to take COBRA continuation coverage at that time, or you elected federal COBRA continuation coverage and later discontinued it, you may have another opportunity to elect COBRA continuation coverage and receive the premium assistance, if the maximum period you would have been eligible for COBRA continuation coverage has not yet expired (if COBRA continuation coverage had been elected or not discontinued).

**Q2: Which plans does the premium assistance apply to?**

The COBRA premium assistance provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by state or local governments subject to the continuation provisions under the Public Health Service Act. The premium assistance is also available for group health insurance required under state mini-COBRA laws.

**Q3: How can I tell if I am eligible to receive the COBRA premium assistance?**

The ARP makes the premium assistance available for "Assistance Eligible Individuals." An Assistance Eligible Individual is a COBRA-qualified beneficiary who meets the following requirements during the period from April 1, 2021, through Sept. 30, 2021:

- Is eligible for COBRA continuation coverage by reason of a qualifying event that is a reduction in hours (such as reduced hours 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) or an involuntary termination of employment (not including a voluntary termination); and



- Elects COBRA continuation coverage.

However, you are not eligible for the premium assistance if you are eligible for other group health coverage, such as through a new employer's plan or a spouse's plan (not including excepted benefits, a qualified small employer health reimbursement arrangement (QSEHRA) or a health flexible spending arrangement (FSA)), or if you are eligible for Medicare. Note that if you have individual health insurance coverage, like a plan through the Health Insurance Marketplace, or if you have Medicaid, you may be eligible for ARP premium assistance. However, if you elect to enroll in COBRA continuation coverage with premium assistance, you will no longer be eligible for a premium tax credit, advance payments of the premium tax credit or the health insurance tax credit for your health coverage during that period.

Note: If the employee's termination of employment was for gross misconduct, the employee and any dependents would not qualify for COBRA continuation coverage or the premium assistance.

#### **Q4: If I am eligible for the premium assistance, how long will it last?**

Your premium assistance can last from April 1, 2021, through Sept. 30, 2021. However, it will end earlier if:

- You become 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 you become eligible for Medicare, or
- You reach the end of your maximum COBRA continuation coverage period.

If you continue your COBRA continuation coverage after the premium assistance period, you may have to pay the full amount of the premium otherwise due. Failure to do so may result in your loss of COBRA continuation coverage. Contact your plan administrator, employer sponsoring the plan or health insurance issuer for more information.

When your COBRA premium assistance ends, you may be eligible for Medicaid or a special enrollment period to enroll in coverage through the Health Insurance Marketplace or to enroll in individual market health insurance coverage outside of the Marketplace. A special enrollment period is also available when you reach the end of your maximum COBRA coverage period. You may apply for and, if eligible, enroll in Medicaid coverage at any time. For more information, go to <https://www.healthcare.gov/medicaid-chip/getting-medicaid-chip>.

Individuals receiving the COBRA premium assistance must notify their plans if they become eligible for coverage under another group health plan (not including excepted benefits, a QSEHRA or a health FSA), or for Medicare. Failure to do so can result in a tax penalty.

#### **Q5: Who is eligible for an additional election opportunity for COBRA continuation coverage?**

A qualified beneficiary whose qualifying event was a reduction in hours or an involuntary termination of employment prior to April 1, 2021, and who did not elect COBRA continuation coverage when it was first offered prior to that date or who elected COBRA continuation coverage but is no longer enrolled (for example, an individual who dropped COBRA continuation coverage because he or she was unable to continue paying the premium) may have an additional election opportunity at this time. Individuals eligible for this additional COBRA election period must receive a notice of extended COBRA election period informing them of this opportunity. This notice must be provided within 60 days of the first day of the first month beginning after the date of the enactment of the ARP (so, by May 31, 2021), and individuals have 60 days after the notice is provided to elect COBRA. However, this additional election period does not extend the period of COBRA continuation coverage



beyond the original maximum period (generally 18 months from the employee's reduction in hours or involuntary termination). COBRA continuation coverage with premium assistance elected in this additional election period begins with the first period of coverage beginning on or after April 1, 2021. Individuals can begin their coverage prospectively from the date of their election, or, if an individual has a qualifying event on or before April 1, choose to start their coverage as of April 1, even if the individual receives an election notice and makes such election at a later date. In either case, please note that the premium assistance is only available for periods of coverage from April 1, 2021, through Sept. 30, 2021.

Due to the COVID-19 National Emergency, the DOL, the Department of the Treasury and the IRS issued a Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak ("Joint Notice"). This notice provided relief for certain actions related to employee benefit plans required or permitted under Title I of ERISA and the Code, including the 60-day initial election period for COBRA continuation coverage. The DOL's Employee Benefits Security Administration (EBSA) provided further guidance on this relief in EBSA Disaster Relief Notice 2021-01. This extended deadline relief provided in the Joint Notice and Notice 2021-01 does not apply, however, to the 60-day notice or election periods related to COBRA premium assistance under the ARP.

**Q6: Does the ARP change any state program requirements or time periods for election of continuation coverage?**

No. The ARP does not change any requirement of a state continuation coverage program. The ARP only allows Assistance Eligible Individuals who elect continuation coverage under state insurance law to receive premium assistance from April 1, 2021, through Sept. 30, 2021. It also allows Assistance Eligible Individuals to switch to other coverage offered to similarly situated active employees if the plan allows it, provided that the new coverage is no more expensive than the prior coverage. See Q15 and Q17 for more information.

## Premiums

**Q7: How do I apply for the premium assistance?**

If you were covered by an employment-based group health plan on the last day of your employment or a family member's employment (or the last day before your or your family member's reduction in hours causing a loss of coverage), the plan or issuer should provide you and your beneficiaries with a notice of your eligibility to elect COBRA continuation coverage and to receive the premium assistance. The notice should include any forms necessary for enrollment, including forms to indicate that you are an Assistance Eligible Individual and that you are not eligible for another group health plan (this does not include excepted benefits, a QSEHRA or a health FSA), or eligible for Medicare.

If you believe you are (or may be, upon a COBRA election) an Assistance Eligible Individual and have not received a notice from your employer, you may notify your employer of your request for treatment as an Assistance Eligible Individual (for example, using the "Request for Treatment as an Assistance Eligible Individual Form" that is attached to the Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021) for periods of coverage starting April 1, 2021. If you are an Assistance Eligible Individual, the ARP provides that you must be treated, for purposes of COBRA, as having paid in full the amount of such premium from April 1, 2021, through Sept. 30, 2021. Accordingly, plans and issuers should not collect premium payments from Assistance



Eligible Individuals and subsequently require them to seek reimbursement of the premiums for periods of coverage beginning on or after April 1, 2021, and preceding the date on which an employer sends an election notice, if an individual has made an appropriate request for such treatment. You should contact your plan or issuer directly to ask about taking advantage of the premium assistance.

**Q8: How will the premium assistance be provided to me?**

You will not receive a payment of the premium assistance. Instead, Assistance Eligible Individuals do not have to pay any of the COBRA premium for the period of coverage from April 1, 2021, through Sept. 30, 2021. The premium is reimbursed directly to the employer, plan administrator or insurance company through a COBRA premium assistance credit.

**Q9: Am I required to pay any administrative fees?**

If you are an Assistance Eligible Individual, you will not need to pay any part of what you would otherwise pay for your COBRA continuation coverage, including any administration fee that would otherwise be charged.

## Notices

**Q10: Does the ARP impose any new notice requirements?**

Yes, plans and issuers are required to notify qualified beneficiaries regarding the premium assistance and other information about their rights under the ARP, as follows:

- A general notice to all qualified beneficiaries who have a qualifying event that is a reduction in hours or an involuntary termination of employment from April 1, 2021, through Sept. 30, 2021. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event.
- A notice of the extended COBRA election period 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 had a qualifying event before April 1, 2021. 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 Oct. 1, 2019). This notice must be provided within 60 days following April 1, 2021 (that is, by May 31, 2021).

The ARP also requires that plans and issuers provide individuals with a notice of expiration of periods of premium assistance explaining that the premium assistance for the individual will expire soon, the date of the expiration, and that the individual may be eligible for coverage without any premium assistance through COBRA continuation coverage or coverage under a group health plan. Coverage may also be available through Medicaid or the Health Insurance Marketplace. This notice must be provided 15 - 45 days before the individual's premium assistance expires.

Unless specifically modified by the ARP, the existing requirements for the manner and timing of COBRA notices continue to apply. Due to the COVID-19 National Emergency, DOL, the Department of the Treasury and the IRS issued guidance extending timeframes for certain actions related to health coverage under private-sector employment-based group health plans. (Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak (Joint Notice); EBSA Disaster Relief Notice 2021-01 (Feb. 26, 2021)). The extensions under the Joint Notice and EBSA Disaster Relief Notice 2021-01 do not apply,



however, to the notices or the election periods related to COBRA premium assistance available under the ARP. Therefore, plans and issuers must provide the notices according to the time frames specified in the ARP (outlined above).

DOL is committed to ensuring that individuals receive the benefits to which they are entitled under the ARP. Employers or multiemployer plans may also be subject to an excise tax under the Internal Revenue Code for failing to satisfy the COBRA continuation coverage requirements. This tax could be as much as \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the taxpayer is in violation of the COBRA rules.

## **Q11: What information must the notices include?**

The notices must include 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 they become 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.

## **Q12: Will there be model notices?**

Yes. DOL has developed model notices that are available at <https://www.dol.gov/cobra-subsidy>.

## **Individual Questions for Employees and Their Families**

### **Q13: How much time do I have to enroll in COBRA continuation coverage?**

In general, individuals who are eligible for COBRA continuation coverage have 60 days after the date that they initially receive their COBRA election notice to elect COBRA continuation coverage. Due to the COVID-19 National Emergency, DOL, the Department of the Treasury and the IRS issued guidance extending time frames for certain actions related to health coverage under private-sector employment-based group health plans. The extensions under the Joint Notice and EBSA Disaster Relief Notice 2021-01 do not apply, however, to the notices or elections related to COBRA premium assistance available under the ARP. Potential Assistance Eligible Individuals, therefore, must elect COBRA continuation coverage within 60 days of receipt of the relevant notice or forfeit their right to elect COBRA continuation coverage with premium assistance.

Note, however, that a potential Assistance Eligible Individual has the choice of electing COBRA continuation coverage beginning April 1, 2021, or after (or beginning prospectively from the date of your qualifying event if your qualifying event is after April 1, 2021), or electing COBRA continuation coverage commencing from an earlier qualifying event if the individual is eligible to make that election, including under the extended time frames provided under the Joint Notice and EBSA Notice 2021-01. The election period for COBRA continuation coverage with premium assistance does not cut off the individual's preexisting right to elect COBRA continuation coverage,



including under the extended time frames provided under the Joint Notice and EBSA Notice 2021-01. Note that the premium assistance is only available for periods from April 1, 2021, through Sept. 30, 2021.

Similarly, plans and issuers must provide the notices required under the ARP within the time frame required by the ARP.

Assistance Eligible Individuals do not need to send any payments for the COBRA continuation coverage during the premium assistance period. For additional information about this guidance, visit <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief>.

**Q14: I am an Assistance Eligible Individual who has been enrolled in COBRA continuation coverage since December 2020. Will I receive a refund of the premiums that I have already paid?**

No. The COBRA premium assistance provisions in the ARP apply only to premiums for coverage periods from April 1, 2021, through Sept. 30, 2021. If you were eligible for premium assistance but paid in full for periods of COBRA continuation coverage beginning on or after April 1, 2021, through Sept. 30, 2021, you should contact the plan administrator or employer sponsoring the plan to discuss a credit against future payments (or a refund in certain circumstances).

**Q15: I am currently enrolled in COBRA continuation coverage, but I would like to switch to a different coverage option offered by the same employer. Can I do this?**

Group health plans 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. The ARP 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.

**Q16: Only part of my family elected COBRA continuation coverage, but all of us were eligible. Can I enroll the others and take advantage of the premium assistance?**

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 be an Assistance Eligible Individual, that individual has an additional opportunity to enroll and qualify for the premium assistance. However, this extended election period does not extend the maximum period of COBRA continuation coverage had COBRA continuation coverage been originally elected. See Q3 and Q5 above for more information.

**Q17: I received my COBRA election notice. Can I change my coverage option from the one I had previously?**

In general, COBRA continuation coverage provides the same coverage that the individual had at the time of the qualifying event. However, under the ARP, a plan may offer Assistance Eligible Individuals the option of choosing other coverage that is also offered to similarly situated active employees and that does not have higher premiums than the coverage the individual had at the time of the qualifying event. See Q15 for more information.



**Q18: I am currently enrolled in individual market health insurance coverage, but I am potentially an Assistance Eligible Individual. Can I switch to COBRA continuation coverage with premium assistance?**

Yes, Potential Assistance Eligible Individuals can use the election period to change from individual market health insurance coverage (that they got either through a Health Insurance Marketplace, such as through HealthCare.gov, or outside of the Marketplace) to COBRA continuation coverage with premium assistance. Additionally, you may apply for and, if eligible, enroll in Medicaid at any time. If you elect to enroll in COBRA continuation coverage with premium assistance, you will no longer be eligible for a premium tax credit, or advance payments of the premium tax credit, for Marketplace coverage you otherwise would qualify for during this premium assistance period. You must contact the Marketplace to let them know that you've enrolled in other minimum essential coverage or you may have to repay some or all of the advance payments of the premium tax credit made on your behalf during the period you were enrolled in both COBRA continuation coverage and Marketplace coverage. This repayment would be required when filing your income tax return for 2021 (see additional information about contacting the Marketplace below).

**Q19: Can I end my individual health insurance coverage retroactively if I can qualify for COBRA with premium assistance starting on April 1?**

Enrollees generally are not permitted to terminate coverage purchased through a Marketplace retroactively. You must do so prospectively. If you want to end coverage that you got from a Health Insurance Marketplace, such as on HealthCare.gov, because you want to change to COBRA continuation coverage with premium assistance, you must update your Marketplace application or call the Marketplace to do so. If you enrolled in coverage through HealthCare.gov, you can call 1-800-318-2596 (TTY: 1-855-889-4325). If your state has its own Marketplace platform, find contact information for your State Marketplace here: <https://www.healthcare.gov/marketplace-in-your-state/>.

If you want to end individual health insurance coverage that you got outside of a Marketplace, such as directly from an insurance company, you must contact the insurance company to do so.

**Q20: What should I consider when making a decision whether to continue with individual market health insurance coverage or change to COBRA continuation coverage with premium assistance?**

You should consider the factors you normally would when deciding on which health insurance coverage is right for you and your family. For example, in addition to premium cost, you may want to compare cost-sharing requirements such as plan deductibles and copays. You may also want to consider how much progress you have made toward your deductible and other plan accumulators, and compare different plans' and coverage options' provider networks and prescription drug formularies based on your family's medical care needs. Note, however, that if you are currently employed by the employer offering the COBRA continuation coverage with premium assistance, you may enroll in Marketplace coverage but are ineligible for a subsidy or a premium tax credit for the Marketplace coverage for the period you are offered the COBRA continuation coverage with premium assistance.

**Q21: Can I qualify for a special enrollment period (SEP) to enroll in individual market health insurance coverage, such as through a Health Insurance Marketplace, when my COBRA premium assistance ends on Sept. 30? What about if my COBRA continuation coverage ends sooner than that?**

When your COBRA premium assistance ends, you may be eligible for a SEP to enroll in coverage through a Health



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Insurance Marketplace, or to enroll in individual health insurance coverage outside of the Marketplace. You may also qualify for a SEP when you reach the end of your maximum COBRA coverage period. For more information about this SEP, see <https://www.healthcare.gov/unemployed/cobra-coverage/>.

For more information about enrolling in Marketplace coverage, see [HealthCare.gov](https://www.healthcare.gov) or call 1-800-318-2596 (TTY: 1-855-889-4325). If your state has its own Marketplace platform, find contact information for your state Marketplace here: <https://www.healthcare.gov/marketplace-in-your-state/>.

You may apply for and, if eligible, enroll in Medicaid coverage at any time. For more information, go to <https://www.healthcare.gov/medicaid-chip/getting-medicaid-chip>.

## More Information

### **Q21: How can I get more information on my eligibility for COBRA continuation coverage or the premium assistance, including help if my employer has denied my request for the premium assistance?**

For group health plans sponsored by private-sector employers, guidance and other information is available on the DOL website at <https://www.dol.gov/cobra-subsidy>. You can also contact one of EBSA's Benefits Advisors at [Ask EBSA](#) or 1.866.444.3272.

EBSA's Benefits Advisors may also be able to assist if you feel that your plan or employer has improperly denied your request for treatment as an Assistance Eligible Individual. Employers and plans may be subject to an excise tax under the Internal Revenue Code for failing to satisfy the COBRA continuation coverage requirements. This tax could be as much as \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the plan or employer is in violation of the COBRA rules. If you feel you may have been improperly denied premium assistance, contact EBSA at [Ask EBSA](#) or 1.866.444.3272. If you work for a state or local government employer and have questions regarding the premium assistance, please contact the Centers for Medicare & Medicaid Services via email at [phig@cms.hhs.gov](mailto:phig@cms.hhs.gov) or call 410-786-1565.

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