



American Rescue Plan Act

COBRA Premium Assistance

The American Rescue Plan Act of 2021 (the "ARPA") institutes new COBRA subsidies starting April 1, 2021, and requires employers and health plan administrators to take prompt action to comply with strict notice requirements. In summary, the ARPA provides a tax-free **100%** premium assistance of COBRA premiums for Assistance Eligible Individuals ("AEI") from April 1, 2021 through September 30, 2021 (the "Subsidy Period"). During the Subsidy Period, COBRA premiums for AEIs will generally be paid by the federal government to employers or plan administrators through tax credits against Medicare taxes.

How long is the Premium Assistance Period?

The Premium Assistance Period is from April 1, 2021 through September 30, 2021.

Who is eligible for the premium assistance?

The premium assistance is available to an AEI for both federal and Cal-COBRA.

An **AEI** is a qualified beneficiary (Employee or Employee's family member) who meets the following requirements during the period from April 1, 2021 through September 30, 2021:

- (1) is eligible for COBRA continuation coverage, during all or a part of the Premium Assistance Period, as a result of a qualifying event which resulted in termination of health coverage between 10/31/2019 and 8/31/2021 due to either
 - (a) a reduction in hours or
 - (b) an involuntary termination of employment (not including a voluntary termination); and
- (2) elects COBRA coverage during the Premium Assistance Period or is already enrolled in COBRA or Cal-COBRA coverage during the election period of April 1, 2021 to September 30, 2021, even if the triggering/qualifying event occurs during the subsidy period itself.

The subsidy does not apply to:

- Individuals whose job loss was voluntary, i.e., resignation or the result of gross misconduct;
- Individuals who are eligible for another group health plan coverage (such as through a new employer) or Medicare.



Does the premium assistance apply to medical premium only?

No. The premium assistance applies to all eligible coverages available for COBRA election, including dental and vision. The premium assistance, however, does not apply to a qualified small employer health reimbursement arrangement (“QSEHRA”), or a health flexible spending arrangement (FSA).

What about qualified beneficiaries who did not elect COBRA continuation coverage when first offered?

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 ARPA (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). The additional election period does not apply to Cal-COBRA.

If the COBRA participant only elected to enroll in medical coverage, can they now elect to enroll in other lines of coverage (i.e. dental, vision) that were initially offered but declined?

Yes, but only for federal COBRA AEIs only. If the federal COBRA AEI was enrolled in such coverage at the time of involuntary termination or reduction in hours (i.e., had medical, dental and/or vision), but did not choose to enroll in one or more of those coverages with the COBRA election (or elected the continuation coverage but dropped it), the AEI may re-enroll in the line of coverage but must do so within sixty (60) days after receiving notice of the extended enrollment period under ARPA. This special enrollment rights are not available for Cal-COBRA.



If the COBRA participant only elected to enroll in medical coverage, can they now elect to enroll in other lines of coverage (i.e. dental, vision) that they were not previously enrolled in?

No, If the AEI was not enrolled in a coverage (i.e., medical, dental or vision) before involuntary termination or reduction in hours and did not enroll in that coverage (i.e., medical, vision or dental) with the COBRA election, the AEI cannot enroll in the coverage not held at the time of involuntary termination or reduction in hours.

Can an AEI switch to a different coverage (i.e. Carrier, plan within carrier) option offered by the same employer?

Group health plans (e.g., an Employer) 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. For example, an AEI has a medical PPO plan coverage and desires to switch to the different HMO plan coverage, can switch this line of coverage, provided the requirements are met. The ARPA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium assistance, provided:

1. 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;
2. The different coverage is also offered to similarly situated active employees; and
3. 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.

What if only part of a family elected COBRA continuation coverage but all of the family were eligible? Can those who had not enrolled then enroll and take advantage of the premium assistance?

Yes, 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 AEI, that individual has an additional opportunity to enroll and qualify for the premium assistance.



What if the employee was eligible for COBRA coverage effective 01/01/2021 and did not elect COBRA but wants to enroll now?

Due to ARPA, the COBRA member can now have a lapse in coverage and has the option to enroll effective 04/01/2021. This additional election period does not apply to Cal-COBRA.

Who is not eligible for the COBRA premium assistance?

Employees who voluntarily terminate employment are not eligible. If the Employee's termination of employment occurred for gross misconduct, the employee and any dependents would not qualify for COBRA continuation coverage or the premium assistance.

In addition, an individual is not eligible for the premium assistance if the individual is eligible for other group health coverage, or if the individual is eligible for Medicare.

Does ARPA extend an individual's original COBRA coverage period?

No. ARPA does not provide for an extension of an individual's COBRA coverage period.

When does an individual cease being an AEI?

An individual ceases to be an AEI upon the earliest of the following dates:

1. The date upon which the individual becomes 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 the individual becomes eligible for Medicare;
2. The end date of the individual's maximum COBRA continuation coverage period; or
3. September 30, 2021.

How does an AEI apply for the premium assistance?

If an AEI was covered by an employment-based group health plan on the last day of the AEI's employment or a family member's employment (or the last day before AEI or AEI family member's reduction in hours causing a loss of coverage), the plan or issuer should provide the AEI and the AEI beneficiaries with a notice of their eligibility to elect COBRA continuation coverage and to receive the premium assistance. The notice should include any forms necessary for enrollment.



For Federal COBRA AEIs:

CaliforniaChoice employers will need to notify CaliforniaChoice of the AEIs who have opted in for the subsidy by completing and submitting the ARPA AEI Notification Form or Letter of Request signed by an authorized employer group contact.

ChoiceBuilder employer groups will identify AEIs for their internal notification requirements. No notification to ChoiceBuilder is necessary.

If this is a new election, a COBRA application must be submitted along with their AEI election.

For Cal-COBRA AEIs:

CaliforniaChoice AEI's must opt-in for the COBRA subsidy via WageWorks/HealthEquity.

ChoiceBuilder AEI's will need to notify ChoiceBuilder of their opt-in election by returning the AEI election notice sent to them by ChoiceBuilder.

If this is a new election, a COBRA application must be submitted along with their AEI election form.

What must an individual receiving the COBRA premium assistance do if the individual becomes eligible for coverage under another group health plan or Medicare?

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 by completing the Participant Notification form that is included in the Summary of the COBRA Premium Assistance Provisions under the ARPA of 2021 document. Failure to do so can result in a tax penalty. That penalty can be \$250 for each such failure. If the failure is fraudulent, then the penalty is mandatory and equal to the greater of (1) \$250, or (2) 110 percent of the premium assistance provided under ARPA after termination of eligibility. No penalty is to be imposed, however, with respect to any failure if it is shown that such failure is due to reasonable cause and not willful neglect.

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.

What are the notice requirements for plan administrators?

Cal-COBRA

The carrier is responsible for notifying eligible Cal-COBRA members of their subsidy rights.

HealthEquity will send notifications to members on behalf of the Health Plan/Carriers participating in the CaliforniaChoice Program.

ChoiceBuilder will send notifications on behalf of the Health Plans/Carriers participating in the ChoiceBuilder Program.

Federal COBRA

The employer is responsible for notifying eligible Federal COBRA members of their subsidy rights. There are model notices on the Department of Labor website.

ARPA imposes a number of new notice requirements on plans and issuers. Plans and issuers are required to notify qualified beneficiaries regarding the premium assistance and other information about their rights under the ARPA, as follows:

ARP General Notice and COBRA Continuation Coverage Election Notice. A general notice to all qualified beneficiaries who are entitled to the subsidy during the period April 1, 2021 through September 30, 2021. This notice may be provided separately (such as for individuals already receiving COBRA or Cal-COBRA) or with the COBRA election notice following a COBRA qualifying event. This general notice must include an additional written notification to the recipient in clear and understandable language of (1) the availability of premium assistance with respect to such coverage; and (2) the option to enroll in different coverage if the employer permits an AEI to elect enrollment in different coverage.

- *COBRA Continuation Coverage Notice in Connection with Extended Election Periods.* A notice of the extended COBRA election period to any AEI (or any individual who would be AEI 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 October 1, 2019). This notice must be provided within 60 days following April 1, 2021 (that is, by May 31, 2021).

- *Alternative Notice of ARP Continuation Coverage.* A notice of extended COBRA election period is required for any qualified beneficiary, as follows. The qualifying event was a reduction in hours or an involuntary termination of employment prior to April 1, 2021, and the Employee 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.) 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 ARPA (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). The additional election period does not apply to Cal-COBRA.
- *Notice of Expiration of Premium Assistance.* The ARPA 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. This notice is not required if the premium assistance will terminate due to the individual's eligibility for other coverage.
- *Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021.* This notice must be distributed with the *ARP General Notice and COBRA Continuation Coverage Election Notice*, *COBRA Continuation Coverage Notice in Connection with Extended Election Periods* and the *Alternative Notice of ARP Continuation Coverage Election Notice* and includes two forms, a *Request for Treatment as an Assistance Eligible Individual* (which an individual uses to apply for ARP premium assistance), and a *Participant Notification* form (which an individual uses to notify the group health plan that he or she has become ineligible for ARP premium assistance because he or she has become eligible for other group health plan coverage or Medicare).

When do these members need to be notified?

All eligible members must be notified in writing by May 31, 2021.



How much time does a member have to decide to opt-in to the subsidy?

The member will have 60 days after the date that they initially received their COBRA subsidy notice to elect COBRA continuation coverage.

How will billing be handled?

Cal-COBRA AEIs:

- For CaliforniaChoice, billing will be administered by WageWorks/HealthEquity. The Employer is not required to do anything.
- For ChoiceBuilder, billing will be administered by ChoiceBuilder. The Employer is not required to do anything.

COBRA (Federal) AEIs:

- For CaliforniaChoice and ChoiceBuilder, during the AEIs premium subsidy period, Employers will be billed 100% of the COBRA premium. Partial payments for COBRA AEIs will not be accepted.

How are the subsidized COBRA premiums funded?

The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance tax credit, which is a tax credit for Medicare taxes paid by the employer (*i.e.*, the 1.45% HI tax).

Do AEIs need to send payments for COBRA continuation assistance during the Premium Assistance Period?

AEIs 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/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>.

What if an AEI has paid premium for coverage that falls within the Premium Assistance Period?

Federal COBRA

For CaliforniaChoice and ChoiceBuilder, if an individual was eligible for premium assistance, but paid
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in full for periods of COBRA continuation coverage beginning on or after April 1, 2021 through September 30, 2021, the individual should contact the plan administrator or employer sponsoring the plan to discuss a credit against future payments (or a refund in certain circumstances).

Cal-COBRA

For CaliforniaChoice, if an individual was eligible for premium assistance, but paid in full for periods of COBRA continuation coverage beginning on or after April 1, 2021, through September 30, 2021, Wage Works/HealthEquity will refund applicable premiums to the member.

For ChoiceBuilder, if an individual was eligible for premium assistance, but paid in full for periods of COBRA continuation coverage beginning on or after April 1, 2021, through September 30, 2021, ChoiceBuilder will refund applicable premiums to the member.

What if the Employer or Plan fails to provide the premium assistance to an otherwise eligible AEI?

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.

Does the ARPA change any State program requirements or time periods for election of continuation coverage?

No. ARPA does not change any requirement of a State's continuation coverage program, *e.g.*, Cal-COBRA. ARPA only allows Cal-COBRA AEIs who elect continuation coverage under State insurance law to receive premium assistance from April 1, 2021, through the earliest date upon which the individual (1) becomes 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 (2) the individual becomes eligible for Medicare, or (3) the date their Cal-COBRA eligibility expires, or (4) September 30, 2021, if the Cal-COBRA-eligible AEI elected coverage prior to the premium assistance period or is within their election period to enroll during the premium subsidy period. It also allows AEIs 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.

What should employers and plan administrators do now?

Employers and plan administrators should promptly begin preparations for compliance with the ARPA COBRA premium assistance provisions.



This may include actions such as:

- (1) identifying individuals entitled to receive a notice regarding the new premium assistance;
- (2) Deciding whether to permit individuals to enroll in a different plan option than the one in which they were enrolled when coverage was lost; and
- (3) Updating internal processes such as those related to termination of COBRA coverage for nonpayment of premiums. Penalties apply if the required notices are not timely provided, so employers and plan administrators should be diligent in ensuring the notices are timely provided and include the requisite information.

The IRS and DOL may continue to issue guidance to further clarify implementation procedures.

Additional guidance is available on the following government sites:

- FAQs were issued by the Department of Labor (DOL) on April 7, 2021, to answer questions from stakeholders to help individuals understand the law and benefit from it, as intended. The Department of the Treasury and the Internal Revenue Service (IRS) have reviewed these FAQs, and, concur in the application of the laws under their jurisdiction as set forth in these FAQs. These FAQs are available at the following link:
<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>
- FAQs were issued by the Internal Revenue Service on May 4, 2021, to provide guidance for employers, plan administrators, and health insurers regarding the new credit available to them for providing continuation health coverage to certain individuals under COBRA.
<https://www.irs.gov/pub/irs-drop/n-21-31.pdf>
- For group health plans sponsored by private-sector employers, guidance and other information is available on the DOL web site at <https://www.dol.gov/cobra-subsidy>. You can also contact one of EBSA's Benefits Advisors at askebsa.dol.gov or 1.866.444.3272.
- AEs 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/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>.
- DOL has developed model notices that are available at <https://www.dol.gov/cobra-subsidy>.
- 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”). See <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01>.

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