

Publications

100% COBRA Subsidies under the American Rescue Plan Act

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The American Rescue Plan Act (ARPA), signed by President Biden on March 11, 2021, includes a six-month 100% subsidy of COBRA premiums.

Who is eligible for the subsidy?

The subsidy is available to “assistance eligible individuals.” An assistance eligible individual is a COBRA qualified beneficiary:

- who became eligible for COBRA coverage due to an employee’s *involuntary* termination of employment (other than for gross misconduct) or reduction in hours; and
- whose COBRA period includes months between April 1, 2021 and September 30, 2021.

An employee who voluntarily terminates employment cannot be an assistance eligible individual and so will not be eligible for the subsidy.

An assistance eligible individual can elect COBRA coverage starting April 1, 2021, even if he or she does not elect or pay for COBRA coverage retroactive to the involuntary termination of employment or reduction in hours. This may result in a gap in coverage between (a) the involuntary termination of employment or reduction in hours (or some later date), and (b) April 1, 2021.

Status as an assistance eligible individual is not limited to the employee. A family member who was enrolled in group health coverage at the time of the employee’s involuntary termination or reduction in hours can also be an assistance eligible individual. Note that a family member whose COBRA qualifying event was not due to the employee’s involuntary termination of employment or reduction in hours (e.g., a family member whose COBRA qualifying event was a divorce or a child attaining age 26) cannot be an assistance eligible individual and so will not qualify for the subsidy.

The 2009 COBRA subsidy under the American Recovery and Reinvestment Act (ARRA) and the 2021 COBRA subsidy under ARPA have some similar characteristics. As a result, the Internal Revenue

Service (IRS) and Department of Labor (DOL) may consider interpretations of the 2009 COBRA subsidy under ARRA when providing guidance with respect to the COBRA subsidy under ARPA. Under ARRA: (1) the death of an employee was not treated as an involuntary termination of employment; (2) the COBRA subsidy was available during the 11-month extension of an 18-month COBRA period where the Social Security Administration had found the employee or a covered family member to be disabled; and (3) the COBRA subsidy was not available during the 18-month extension of an 18-month COBRA period due to a second COBRA qualifying event.

What coverage will be subsidized?

The subsidy is available for all types of group health coverage (including dental and vision coverage), but excluding health care flexible spending accounts.

How will an assistance eligible individual elect to get the subsidy?

The DOL is required to publish two model notices: (1) an updated COBRA election notice with information about the subsidy and how to elect it, and (2) an “additional notification” for potential assistance eligible individuals who received a COBRA election notice prior to the update. The analogous notices published in connection with the 2009 COBRA subsidy under ARRA included a “request for treatment as an assistance eligible individual” wherein a COBRA qualified beneficiary was required to attest that he or she met the criteria for the subsidy. Both 2021 model notices may include a similar attestation. The model notices are supposed to be published by April 10, 2021 (within 30 days of enactment of ARPA).

Plan sponsors will need to distribute the additional notification by May 31, 2021 (within 60 days of April 1, 2021). If an assistance eligible individual is not currently enrolled in COBRA coverage, he or she may elect COBRA coverage within 60 days after receipt of the additional notification. (This election period does not appear to be tolled during the Outbreak Period.) If elected, the subsidized coverage will be retroactive to April 1, 2021.

A plan sponsor may, but is not required to, permit an assistance eligible individual to switch from the coverage in effect at the time of the involuntary termination or reduction in hours to a lower cost group health plan option (but not to a higher cost group health plan option).

When does an assistance eligible individual’s COBRA subsidy end?

An assistance eligible individual’s subsidy ends on the earliest of:

- September 30, 2021;
- The last day of the assistance eligible individual’s COBRA period; or
- The day that the assistance eligible individual becomes eligible for Medicare or “non-excepted” group health coverage.
 - Eligibility for excepted benefits like dental and vision coverage does not end eligibility for the subsidy.
 - Eligibility for a non-excepted group health coverage would end eligibility for the subsidy, but it would not end the individual’s right to continue COBRA coverage at his or her own expense. Eligibility for

COBRA coverage does not end until the individual actually enrolls in another group health plan.

The DOL is required to publish a model “notice of expiration of period of premium assistance” by April 25, 2021 (within 45 days of enactment of ARPA). A plan sponsor will have to send the notice of expiration of period of premium assistance to each assistance eligible individual receiving a subsidy within a 30-day window. The 30-day window starts 45 days before, and ends 15 days before, the assistance eligible individual’s COBRA subsidy period is set to expire due to (a) the September 30, 2021 global end of the subsidy, or (b) the exhaustion of the individual’s COBRA period.

How will a plan sponsor be reimbursed for the COBRA subsidy?

Plan sponsors will treat the subsidy as a credit against the employer’s share of Medicare tax under Internal Revenue Code Section 3111(b). If the credit exceeds the taxes owed for a quarter, the excess will be refundable.

Now what?

The IRS and DOL are expected to publish guidance and model forms in the near future. (As noted above, it is possible that the guidance and forms will be similar to what the agencies provided in connection with the 2009 COBRA subsidies under ARRA, since the two COBRA subsidies have some similar characteristics.) While waiting for the guidance and forms, plan sponsors may want to start identifying which COBRA qualified beneficiaries became eligible for COBRA due to involuntary (as opposed to voluntary) termination or reduction in hours in the past 18 (and possibly 29) months so as to be ready with this information when the DOL publishes model notices. Plan sponsors may also want to connect with their COBRA administrators to confirm the allocation of tasks and flow of data.

Vorys COVID-19 Task Force

Vorys is continuing to monitor developments in this area and will continue to provide updates. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines in which we have been and expect to continue receiving questions. [Learn more and see the latest updates from the Task Force.](#) If you have questions regarding this news, please contact your Vorys attorney or a member of our [Coronavirus Task Force](#).