



# ARPA's COBRA Premium Subsidies

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# ARPA's COBRA Premium Subsidies: What Employers Need to Know



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# ARPA: The Basics

- ▼ **The American Rescue Plan Act of 2021**
  - ▼ Signed into law on March 11, 2021
- ▼ **Economic stimulus legislation in response to COVID-19**
- ▼ **COBRA Provisions**
  - ▼ COBRA Premium Subsidies
  - ▼ Extended Election Period
  - ▼ Alternative Plan Enrollment Option

# COBRA Premium Subsidies: The Basics

## ▼ Who Must Provide the Subsidy?

- ▼ Group health plans sponsored by private-sector employers subject to COBRA
- ▼ Group health plans sponsored by state or local governments subject to PHSA
- ▼ Group health insurance required under state continuation (mini-COBRA) laws

## ▼ What Plans are covered?

- ▼ Major medical, dental, and vision plans
- ▼ This will not include Health FSAs

# COBRA Premium Subsidies: The Basics

- ▼ ARPA provides “assistance eligible individuals” with a 100% subsidy for COBRA premiums
- ▼ Qualifying event must be involuntary termination or reduction of hours
- ▼ This is a temporary COBRA premium subsidy
  - ▼ Subsidy Period: **April 1, 2021 through September 30, 2021**
- ▼ Employer, insurer, or plan will pay the premiums and will be reimbursed via a credit against payroll taxes
  - ▼ For self-insured plans and fully insured plans subject to COBRA, the employer is the responsible entity

# Assistance Eligible Individuals

## ▼ Who is an AEI?

- ▼ A COBRA qualified beneficiary who has a loss of coverage due to an involuntary termination of employment or reduction of hours, who elects or has elected COBRA, and who has COBRA coverage during the Subsidy Period

## ▼ An individual will not be an AEI if:

- ▼ eligible for Medicare
- ▼ eligible for other group health coverage
  - ▼ E.g., through new employer's plan or spouse's plan
  - ▼ This does not include a plan that provides only excepted benefits, a QSEHRA, or a flexible spending account

# Assistance Eligible Individuals

## ▼ **Involuntary Termination**

- ▼ This does not include retirement, death, or employee resignation
- ▼ Termination for “**Gross Misconduct**” is not eligible

## ▼ **Reduction in Hours** includes:

- ▼ Reduced hours due to change in hours of operations
- ▼ Change from full-time to part-time
- ▼ Taking a temporary leave of absence
- ▼ Participation in lawful labor strike



# Assistance Eligible Individuals

## ▼ Potential AElS include:

- ▼ Individuals already on COBRA as of 4/1/21
- ▼ Individuals newly-eligible for COBRA during the Subsidy Period
- ▼ Individuals that previously declined or dropped COBRA coverage and are still within their 18-month COBRA coverage period

## ▼ Wait! We have to look back 18 months? ☹️

- ▼ Yes. Former employees who had an involuntary termination or reduction in hours and were previously eligible for COBRA but declined or dropped coverage and are still within their maximum COBRA coverage period (i.e., **their original 18-month coverage period began on or after 11/1/19**) can receive the subsidy

# COBRA Extended (*Reinstated*) Election Period

- ▼ ARPA provides new election period for individuals who *would be* an AEI if they had a COBRA election in place during the Subsidy Period
  - ▼ Those who had an involuntary termination of employment or reduction in hours & either did not timely elect COBRA or dropped COBRA & are still within their 18-month COBRA coverage period
- ▼ New election period of **60 days** from date of notice of ARPA Extended Election Period
- ▼ Elected **coverage is not retroactive** to date of original qualifying event
  - ▼ Instead, coverage would begin with first period of coverage after ARPA (generally, April 1, 2021)
- ▼ Same maximum coverage period applies with respect to date of original qualifying event and original coverage period

# How Long is the Premium Subsidy Available?

- ▼ Subsidy is available only periods of coverage during the Subsidy Period
  - ▼ April 1, 2021 through September 30, 2021
  - ▼ 6 month maximum
- ▼ Subsidy will end earlier if the AEI:
  - ▼ reaches the end of his or her maximum COBRA coverage period; or
  - ▼ becomes eligible for another group health plan or Medicare
- ▼ AEIs are required to notify plans if they become eligible for other coverage.
  - ▼ DOL Model Reporting Form
  - ▼ Individuals will be subject to **penalties**

# Alternative Plan Enrollment Option

- ▼ Under ARPA, employer may allow AEs to elect to enroll in a different coverage option offered by the employer
- ▼ **90 days** from notice of enrollment option to elect
- ▼ **Strings Attached:**
  - ▼ Different coverage option may not have a premium that exceeds the premium for the individual's existing coverage
  - ▼ Different coverage option must also be offered to active employees
- ▼ **Optional** – employers are not required to make the alternative plan enrollment option available
- ▼ If permitted, must be included in subsidy notices and election forms

# What Notices Are Required?

## ▼ Notice of Subsidy Availability

- ▼ For all AEIs
- ▼ By **May 31, 2021** for those on COBRA or eligible to be under Extended Election Period
- ▼ With Election Notice for those who become eligible during Subsidy Period

## ▼ Notice of Extended Election Period (**May 31, 2021**)

- ▼ For those eligible to elect COBRA under the Extended Election Period

## ▼ Notice of Plan Enrollment Option (if applicable)

## ▼ Notice of Subsidy Expiration (between **45 and 15 days** before the expiration date)

- ▼ For all AEIs receiving the subsidy

# What Must Be Included in the Notices?

- ▼ The availability of the COBRA premium subsidy and the conditions for receiving it
- ▼ The forms necessary for establishing eligibility for the COBRA premium subsidy
- ▼ The name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with the COBRA premium subsidy
- ▼ A description of the Extended Election Period
- ▼ A description of the option to enroll in alternative coverage, if adopted by the employer

# DOL Model Notices & Forms

## ▼ Model General Notice

- ▼ For individuals who become COBRA eligible during the Subsidy Period
- ▼ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-general-and-election-notice.pdf>

## ▼ Model Extended Election Notice

- ▼ For AEIs currently enrolled in COBRA and those who are eligible to elect COBRA through the Extended Election Period
- ▼ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-extended-election-periods-notice.pdf>

## ▼ Summary of Provisions

- ▼ Summary of the Subsidy Provisions, includes Request for Treatment as an AEI form and form to report other coverage
- ▼ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.pdf>

# DOL Model Notices & Forms

## ▼ FAQs

- ▼ DOL FAQs that can be provided to employees to answer their questions regarding the subsidy
- ▼ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>

## ▼ Alternative Notice (for State Continuation)

- ▼ For use by insured coverage subject to state continuation requirements
- ▼ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-alternative-election-notice.pdf>

## ▼ Subsidy Expiration Notice

- ▼ Must be sent to AEs receiving the subsidy 45-15 days before their subsidy expires
- ▼ <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/notice-of-premium-assistance-expiration-premium.pdf>



# COBRA Premium Subsidies & the Outbreak Period Extensions

## ▼ As background

- ▼ In 2020, guidance was issued to disregard certain plan deadlines during the Outbreak Period (i.e., March 1, 2020 through 60 days after the end of the National Emergency)
- ▼ In 2021, guidance was issued to clarify the end date of the Outbreak Period extensions: the earlier of one year from the date the individual's deadline was first extended, or 60 days after the announced end of the National Emergency

## ▼ How does this all work together?

- ▼ ARPA's Extended Election Period does not cut off an individual's pre-existing right to elect COBRA coverage (extended deadlines included)
- ▼ Outbreak Period Extensions for COBRA deadlines do not apply to either ARPA's 60-day Extended Election Period for subsidized COBRA coverage or the deadline for plans to provide the required notices related to the subsidy

# COBRA Premium Subsidies & the Outbreak Period Extensions

- ▼ COBRA qualified beneficiaries have options, but it's **now or never** for the subsidy
  - ▼ If eligible for ARPA's Extended Election Period, qualified beneficiaries will have to make that election within ARPA's 60-day election period or they will be ineligible for the subsidy
  - ▼ If eligible qualified beneficiaries do not elect COBRA during ARPA's Extended Election Period, they may still be eligible for COBRA coverage under the Outbreak Period extended deadlines and can elect COBRA coverage later (but they will not be eligible to receive the subsidy)

# COBRA Premium Subsidies: Next Steps

- ▼ Employers and their COBRA administrators/vendors should immediately start identifying all potential AEs who are eligible for the subsidy
- ▼ Send out all required notices and forms
  - ▼ **May 31, 2021** deadline for some
  - ▼ Utilize DOL Model Notices and Forms
- ▼ Track AEs during the Subsidy Period
- ▼ Prepare and send expiration notices for AEs whose subsidy will expire
- ▼ Keep track of premiums for the subsidy in order to accurately claim tax credits
- ▼ Pay attention for further guidance



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