

The ARP COBRA Subsidy: Answers to Your Questions

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Today's Panel



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| Agenda

1. Overview
2. Eligibility for the Subsidy
3. Notice Requirements
4. How Assistance Eligible Individuals Apply for the Subsidy
5. How Plans or Plan Sponsors Get the Subsidy

Disclaimer

The summaries in this presentation are for informational purposes only and do not constitute legal or tax advice. Please discuss the issues raised here with your Segal Consultant, as well as your legal, tax and other advisors, in determining how the issues apply to your specific situation.

Provisions of this summary are subject to change as we become aware of future developments.

COBRA Subsidy

Overview

COBRA Subsidy Enacted

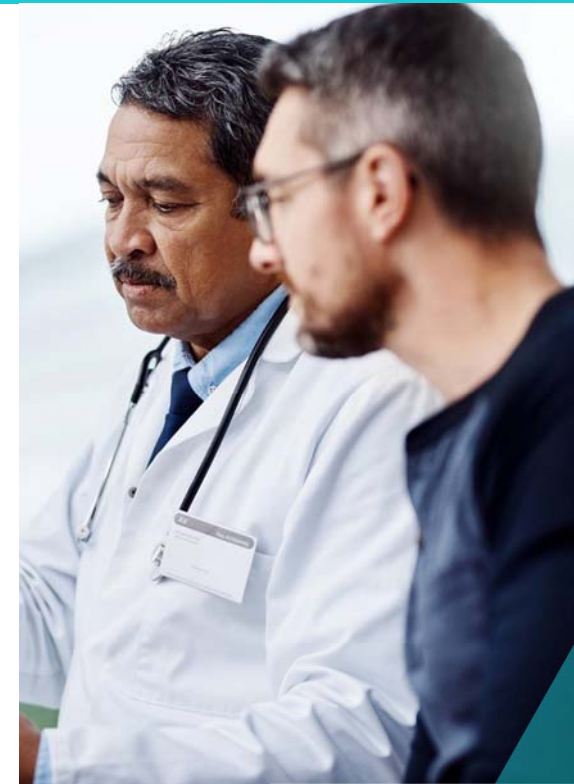
- American Rescue Plan Act of 2021 (ARP) was enacted March 11, 2021
- Language of ARP is very similar to the American Recovery and Reinvestment Act (ARRA) subsidy enacted in 2009
- Existing ARRA guidance is helpful until further information available from agencies
- 2009 ARRA guidance is available at
 - <https://www.irs.gov/newsroom/cobra-health-insurance-continuation-premium-subsidy>

Temporary 100% COBRA Subsidy

Federal government will fully subsidize COBRA premiums for 6 months, from April 1, 2021 through September 30, 2021

Applies when COBRA qualifying event is termination of employment or reduction in hours, except for an individual's voluntary termination

Subsidy ends earlier than September 30 if individual becomes eligible for other group coverage (excluding excepted benefits or FSA) or Medicare, or reaches end of 18-month COBRA period



COBRA Subsidy

Plan Requirements



New notice requirements using government models (subsidy availability, subsidy expiration)

Extended election opportunity for assistance eligible individuals without COBRA election in effect of as April 1, 2021

Plan/plan sponsor receives subsidy through payroll tax credit (refundable and advanceable)

COBRA Subsidy

Eligibility

What is an involuntary termination?

Determination needs to be made on a case-by-case basis depending on the facts.

In general:

- Treasury guidance from 2009 indicates that an involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment
- Other than due to the employee's implicit or explicit request



Is a termination for cause (e.g., poor performance) an involuntary termination?

- **Yes**, termination for cause is a COBRA qualifying event
 - Unless the termination is for gross misconduct
- An employee who is terminated for cause (but not for gross misconduct) is eligible for the COBRA subsidy



If the employer fails to renew an employment contract at the time the contract terminates, is that an involuntary termination?

- Under 2009 Treasury guidance, an involuntary termination may include the employer's failure to renew a contract at the time the contract expires
- If the employee was willing and able to:
 - Execute a new contract providing terms and conditions similar to those in the expiring contract
 - Continue providing the services



Does involuntary termination include retirement?

- Under 2009 Treasury guidance, if:
 - The facts and circumstances indicate that, absent retirement, the employer would have terminated the employee
 - The employee knew that he or she would be terminated
- Then, the retirement is an involuntary termination



Does a reduction in hours also have to be involuntary?

- No. The requirement that the event be involuntary applies only to termination of employment.



What are examples of a reduction in hours that would qualify for the subsidy?

- If the employee is still an employee, the subsidy would be available when hours are reduced due to the following events:
 - Change in a business’s hours of operation,
 - Change from full-time to part-time,
 - Taking a temporary leave of absence,
 - Participation in a lawful labor strike.

DOL FAQs Dated April 7, 2021



If an employee's family members are not enrolled in the health plan when the employee loses coverage due to an involuntary termination, can the family members later elect COBRA and get the subsidy?

- **No.** These family members are not entitled to elect COBRA because they were not enrolled when the employee was terminated
- Only the employee is eligible for the subsidy



Can the period during which the subsidy is claimed be extended by a second COBRA qualifying event?

- **No.** Under 2009 Treasury guidance, a second qualifying event such as death, divorce or a child aging out does not extend the period during which an individual may benefit from the subsidy.
- It is unclear if the subsidy is available when the COBRA coverage period of 18 months is extended to 29 months due to disability.



Is the subsidy available for dental and vision benefits, including for individuals who only have dental or vision benefits?

- **Yes**, the subsidy is available for any type of group health plan coverage other than a health flexible spending arrangement



For people who elect COBRA and apply for the subsidy as part of the ARP extended election opportunity, does their coverage begin on April 1 or is it retroactive back to their original loss of coverage?

- Their COBRA coverage and the subsidy would both begin on April 1.
- Individuals may still have a separate right to elect COBRA back to their original loss of coverage. This would be the case if they are in an ERISA-governed plan that is required to extend COBRA election deadlines generally. These individuals would have to pay premiums back to their loss of coverage.
- But, the subsidy is only available for April 1, 2021 through September 30, 2021.



COBRA Subsidy

Notice Requirements

Has the Department of Labor released model notices and forms?

- Yes. On April 7, 2021, the DOL released various model documents that will help plan administrators implementing the COBRA subsidy and plan participants seeking information about the subsidy and how to apply. These are available at:

<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>



What model notices/forms did DOL release?

1. Model general and election notice (for people newly eligible for COBRA between April 1 and September 30)
2. Model notice about extended election period (for subsidy eligible people with a COBRA election in effect on April 1, as well as people who may be eligible for the subsidy if they had elected COBRA and/or maintained COBRA)



Tip: For #2, consider individuals eligible for COBRA as far back as November 2019 (possibly earlier if people on 11-month disability extension qualify).

What model notices/forms did DOL release?

3. Summary of COBRA Premium Assistance Provisions under the ARP of 2021 (includes form to request subsidy and form to notify plan if individual later becomes eligible for other group coverage or Medicare) – **distribute along with notices #1 and #2**
4. FAQs for participants
5. Model notice of expiration of COBRA subsidy



Who must receive the election notice for qualifying events that happen between April 1 and September 30, 2021?

- FAQs released April 7, 2021 state this notice needs to be sent to individuals eligible for COBRA due to a reduction in hours or involuntary termination (See FAQ #10)
- Plan administrators should review with legal counsel whether broader distribution is advisable (e.g., to all qualified beneficiaries regardless of qualifying event, to those with reduction in hours or any type of termination)



When do notices about the subsidy have to be distributed?

- Notices about extended election period must be provided by May 31, 2021
- Notices for newly eligible COBRA QBs should be sent following usual COBRA procedures



When must the plan send notice of expiration of the subsidy?

- This notice must be provided between 15 and 45 days before the subsidy expires
- Notice is not required if the reason the subsidy is ending is due to the individual's eligibility for other group coverage or Medicare



Should the DOL model forms be used?

- Use of these forms is encouraged due to the highly technical issues involved
- DOL considers use of their models to be good faith compliance with content requirements



Can the DOL model notices/forms be used “as is”?

- These notices and forms will need to be customized (e.g., dates, contact information)
- In addition, if the plan will not permit individuals to enroll in a different (not more expensive) plan option, references to that option should be deleted
- Public sector plans that are not extending COBRA deadlines (as ERISA plans must do) should delete references to EBSA Disaster Notice 2021-01



How should the new notices be distributed to qualified beneficiaries?

- Follow regular COBRA procedures for distribution of these notices
- COBRA election notices are typically provided by first-class mail to their last known address
- The ARP does not contain new requirements or rules for distribution



COBRA Subsidy

How Assistance-Eligible Individuals Apply

How do individuals apply for the subsidy?

<i>[Insert Plan Name]</i>	REQUEST FOR TREATMENT AS AN ASSISTANCE ELIGIBLE INDIVIDUAL	<i>[Insert Plan Mailing Address]</i>
PERSONAL INFORMATION		
Name and mailing address of employee (list any dependents on the back of this form)	Telephone number	
	E-mail address (optional)	
To qualify, you must be able to check 'Yes' for all statements.		
1. The qualifying event was a loss of employment that was involuntary or a reduction in hours.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. I elected (or am electing) COBRA continuation coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. I am NOT eligible for other group health plan coverage (or I was not eligible for other group health plan coverage during the period for which I am claiming premium assistance).	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. I am NOT eligible for Medicare (or I was not eligible for Medicare during the period for which I am claiming premium assistance).	<input type="checkbox"/> Yes <input type="checkbox"/> No	



Is there a deadline for individuals to request the subsidy?

- Anyone applying for the subsidy must do so (and elect COBRA, if applicable) within 60 days of receipt of notice from the plan
- This is the case even if the plan is required to extend COBRA election deadlines under EBSA Disaster Relief Notice 2021-01



Do individuals receiving the subsidy have an additional notice requirement?

Use this form to notify your plan that you are eligible for other group health plan coverage or Medicare and therefore not eligible for premium assistance under the ARP.

Plan Name	Participant Notification	Plan Mailing Address
PERSONAL INFORMATION		
Name and mailing address	Telephone number	
	E-mail address (optional)	
PREMIUM ASSISTANCE INELIGIBILITY INFORMATION – Check one		
I am eligible for coverage under another group health plan. If any dependents are also eligible, include their names below. Insert date you became eligible _____	<input type="checkbox"/>	



COBRA Subsidy

How Plans or Plan Sponsors Get the Subsidy

Who gets the subsidy from the federal government?

- Multiemployer plan: the plan
- Single employer plan subject to federal COBRA under ERISA, the Public Health Service Act or the Code: the employer (even if coverage is insured)
- Waiting for guidance on other self-insured plans (such as state plans covering employees from a range of employing state agencies)



How do plans/plan sponsors collect the subsidy?

- Via a payroll tax credit
 - Refundable and advanceable
- Stay tuned for guidance from the IRS about what form to use and how to obtain the subsidy



Can a multiemployer plan with no employees and no payroll tax liabilities receive the subsidy?

- Yes. There will be a process to obtain the subsidy even if the plan has no employees and no payroll tax liability.
- The subsidy is refundable if the subsidy exceeds the plan's payroll tax liability.



If an employer subsidizes COBRA through a severance agreement or otherwise, can the employer claim the subsidy through the payroll tax credit?

- Unclear. We will need to see forthcoming guidance from the Treasury Department and IRS.



If a multiemployer plan subsidizes COBRA premiums, can the plan claim the subsidy through the payroll tax credit?

- Unclear. We will need to see forthcoming guidance from the Treasury Department and IRS.



Can employers and other plan sponsors rely on a former employee's attestation of involuntary termination, or must this be investigated and confirmed?

- In 2009, different requirements applied depending on the type of group health plan. We expect this will be addressed in forthcoming Treasury/IRS guidance.



Questions?

For more info, please contact us

segalco.com/contact