

## COBRA subsidy under the American Rescue Plan



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The American Rescue Plan contains a number of provisions designed to assist employees negatively affected by the COVID-19 pandemic. One such provision is a mandatory employer subsidy for group health plan continuation commonly called COBRA coverage.

### **Subsidy period**

Under the American Rescue Plan, “assistance eligible individuals” who are on COBRA or who elect COBRA will be treated as having their COBRA premium paid for a period of six months from April 1, 2021 through September 30, 2021 (Subsidy). The American Rescue Plan effectively requires employers who are obligated to provide COBRA to totally subsidize COBRA premiums for these individuals for this period.

### **Who is considered an assistance eligible individual?**

An assistance eligible individual is anyone who is or who would be eligible for COBRA continuation coverage under the normal COBRA rules due to a reduction in hours or an involuntary termination of employment for any reason except misconduct. An individual who voluntarily terminates may be eligible for COBRA continuation coverage, but will not be eligible for the Subsidy.

In addition, an assistance eligible individual who would have had COBRA continuation coverage during the April 1 to September 30 period, but for his or her failure to elect coverage or failure to pay premiums, is also eligible for the Subsidy.

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What this means in practice is anyone an employer terminates between April 1, 2021 and September 1, 2021, for any reason other than misconduct, or anyone whose hours are reduced during that same period such that they lose group health coverage, can elect COBRA coverage and not pay premiums for the period from April 1, 2021, to the earlier of the date COBRA coverage would cease under the normal COBRA rules or September 30, 2021.

An individual who would have been eligible for COBRA coverage during that six month period but who either did not elect COBRA coverage or stopped making premium payments is to be given the opportunity to elect COBRA coverage and receive the Subsidy. Note the COBRA subsidy for such individuals and the special election does not lengthen the time of COBRA eligibility. If the 18 month period has expired or the individual has actually become covered by another health plan the individual is not eligible for the election or the Subsidy. If a person loses COBRA eligibility during the six month period because the 18 months have expired or they become covered by another health plan the Subsidy period ends for them.

If an assistance eligible individual who is receiving the Subsidy becomes covered by another health plan such that COBRA coverage would end under the normal COBRA rules, the individual is to notify the employer. Failure to do so may subject the individual to penalties.

In brief, any employee of an employer obligated to provide COBRA continuation coverage who is or was involuntarily terminated (except for misconduct) or who suffered will suffer a reduction in hours such that they lose group health plan coverage between April 1, 2020 and September 30, 2021, may elect COBRA coverage and not pay a premium. The coverage is only for the period April 1, 2021 to September 30, 2021. A person may not go back and retroactively elect coverage for an earlier period.

### **Optional special election to change coverage**

In addition, an employer may, but is not required, to permit assistance eligible individuals who are on COBRA to change their coverage election. Such individuals may elect a different form of coverage so long as the coverage is not more expensive than the coverage they elected initially and the coverage is available to similarly situated active employees. An assistance eligible individual will have 90 days after receipt of the notice describing this option to make the election. Once again employers are not required to make this available.

### **Notices**

The American Rescue Plan requires employers to provide various notices to employees or COBRA eligible individuals.

- COBRA notices issued for what would be normal “qualifying events” under COBRA on or after April 1, 2021 must contain a description outlining the Subsidy provisions described above.
- In addition, employers are required to send out notices to assistance eligible individuals who previously terminated employment or who previously experienced a reduction of hours no later than 60 days after April 1, 2021 describing the Subsidy and their ability to elect COBRA continuation coverage.
- As the Subsidies expire, employers must also notify individuals who are “receiving” the premium Subsidies that their Subsidy is expiring. This notice must be provided no earlier than 45 days, and no later than 15 days before the date of expiration. No notice is required for individuals who are no longer eligible for the Subsidy by reason of being eligible for other coverage.

The American Rescue Plan has instructed the Departments of Labor, Health and Human Services and

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Treasury to develop model notices for employers to use.

### Collected premiums

If an employer collects a premium from an assistance eligible individual, who is eligible for the Subsidy the employer must return the premium within 60 days of receipt.

### Employer credits

As is apparent, it is the employer that is providing the Subsidy. The health insurance premiums will be paid by the employer but there will be no premium collected from the COBRA beneficiary. Employers that provide the required notice will be eligible to receive a credit for the COBRA premiums that are effectively “subsidized.” The maximum credit per quarter is limited to the Medicare payroll taxes for such quarter, reduced for any other credits received by the employer under the paid sick leave credit (Internal Revenue Code Section 3131), the paid family leave credit (Internal Revenue Code Section 3132) and the employee retention credit (Internal Revenue Code Section 3134) for such period.

Although the credit is refundable and may be advanced, employers may simply choose to not deposit the amount of Medicare payroll taxes that they anticipate will be refundable via the credit. Any overstatement of the credit will be treated as an underpayment of taxes and may be assessable up to 5 years after the filing of the employer’s tax return which includes the credits. The amount of these credits will constitute gross income of the employer.

Further guidance will need to be issued describing the operation of the credit process.

### Action steps for employers

In the relatively near future employers will need to deal with these new Subsidy rules. In preparation, employers are advised to do the following:

- Work with their health care provider or COBRA service to develop the appropriate notices. Hopefully, the model notices will be available shortly to assist with that process.
- Identify the individuals who were previously terminated or had a reduction in hours who would be eligible to elect COBRA during the April-September 30 period and receive the Subsidy.
- Develop a process to notify such individuals and permit the election.
- Determine whether the employer will permit modifications of prior elections and, if so, notify the individuals and permit the modification.

The [Employee Benefit Practice Group](#) is available to assist employers in meeting this obligation.

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