

## CLIENT ALERT: COBRA Subsidized Until September 30

Under the American Rescue Plan of 2021 (ARPA), enacted March 11, 2021, Assistance Eligible Individuals (AEIs) who were involuntarily terminated or had hours reduced anytime since November 1, 2019 (or May 1, 2020 for employers with under 20 employees) may receive a 100% subsidy for COBRA (or state continuation coverage) premiums paid for any COBRA coverage between April 1, 2021 and September 30, 2021. This does not apply to individuals eligible for other group plan coverage or Medicare.

Employers and employees should be aware of important deadlines and rules:

- **By 4/10/21:** Employers required to update their standard COBRA notices for qualifying events occurring after April 1, 2021. DOL recently issued model notices:

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

- **By 5/31/21:** Employers must notify assistance eligible individuals (AEIs) of their right to receive the subsidy and their extended 60-day election period. This includes individuals currently receiving COBRA/state coverage and those who previously waived or dropped coverage but are still within their eligible coverage period (COBRA period began on or after November 1, 2019 or state coverage began on/after May 1, 2020).

If the employer does not notify and then collects premiums from the former employee, the employer must reimburse the employee within 60 days.

- Extended election period: AEIs must elect COBRA within 60 days of receiving employer/insurer notice.

- Employers will also be required to notify AEIs when their subsidies are about to expire. The notice must be provided between 15 and 45 days prior to the date that the subsidies end. DOL will provide a model expiration notice by April 25, 2021.

- Refundable tax credit. Employers will be allowed a quarterly tax credit against the Medicare payroll tax equal to the premium amounts not paid by AEIs. If the credit amount exceeds the quarterly Medicare payroll tax, the excess will be treated as an overpayment refundable under Code Sec. 6402(a) and Code Sec. 6413(b). The quarterly credit may be paid in advance according to forms and instructions to be provided by the Department of Labor.

## FAQ

Who is entitled to the premium subsidy?

Individuals entitled to the premium subsidy are referred to as assistance eligible individuals (AEIs). In order to be an AEI, an individual must have been eligible for COBRA due to the covered employee's involuntary termination of employment or reduction of hours since November 1, 2019 (i.e. at least 1 month left in 18-month COBRA coverage). For state continuation, the date would be May 1, 2020 (i.e. at least 1 month left in 12-month continuation coverage), and the individual must have timely elected or now timely elect COBRA.

Qualified beneficiaries who are eligible for COBRA due to a voluntary termination of employment are not eligible for the premium subsidy (nor are individuals terminated for gross misconduct or whose qualifying event is anything other than involuntary termination of employment or a reduction in hours, such as children entitled to COBRA due to aging off coverage).

An AEI must be (or continue to be) eligible for COBRA coverage sometime between April 1, 2021 and Sept. 30, 2021.

Are [individuals who previously declined COBRA coverage or discontinued COBRA coverage potentially eligible for the subsidy?](#)

**Yes.** If an individual whose COBRA qualifying event was either an involuntary termination of employment or reduction of hours either has not elected COBRA, or previously elected COBRA and discontinued COBRA coverage before April 1, 2021, the individual may elect COBRA continuation coverage pursuant to a [special "second chance" election right](#). [If elected, the subsidized coverage will commence April 1, 2021](#). Note that this rule differs from the normal COBRA rules which require the coverage to be effective as of the date of the original qualifying event.

No extension of COBRA coverage: Importantly, if COBRA is elected pursuant to this special election period, it does not extend the duration of the applicable COBRA period. That period continues to run from the date that would have applied if the individual had initially elected COBRA or, in the case of an individual who discontinued coverage, from the original COBRA commencement date. For example, a qualified beneficiary whose COBRA period would have normally run during the 18-month period commencing July 1, 2020 and ending Dec. 31, 2021, does not have his or her maximum period extended to 18 months following the April 1, 2021 effective date applicable under the special election rules – the end date for the COBRA period would continue to be Dec. 31, 2021.

### Duration of Premium Subsidy

What is the premium subsidy period?

The premium subsidy is available with respect to any premium owed for a period of COBRA coverage beginning on April 1, 2021 and ending on Sept. 30, 2021. If an AEI has already paid the applicable premium for the month of April 2021, the AEI is entitled to a refund of the premium paid. The refund is due within 60 days of the date of payment.