



COBRA and American Rescue Plan Act Overview and FAQ

Document is updated with additional guidance in form of FAQs on August 6, 2021

On March 11, 2021, the **American Rescue Plan Act of 2021** (ARPA) was signed by President Biden and includes a provision for a COBRA continuation coverage premium subsidy of 100% for individuals and families who experienced involuntary job loss or a reduction in hours of work leading to a loss in coverage.

This subsidy will be available for assistance eligible individuals (AEIs), as defined under the Act, from April 1, 2021 through September 30, 2021.

Federal COBRA * participants must meet the below criteria to be an assistance eligible individual (AEI):

- Coverage was lost due to reduction in hours or involuntary job loss.
- The COBRA participant is still within the COBRA eligibility period as of April 1, 2021 or elected COBRA and discontinued it prior to April 1, 2021.
- Eligible COBRA participants who do not have an election in place will have the opportunity to elect coverage during an Extended Election Period and will be able to take advantage of the subsidy effective April 1, 2021. This will be referred to as the "lookback period" in determining member eligibility.
- COBRA elected under the ARPA will start on or after April 1, 2021 and may go through September 30, 2021.
- The ARPA will not extend the normal 18-month period of COBRA continuation coverage in the case of job loss or a reduction in hours.
- Eligible COBRA participants who have an election in place as of April 1, 2021 will be able to take advantage of the subsidy effective April 1, 2021.
- Eligible COBRA participants who become eligible for COBRA continuation coverage on or after April 1, 2021 will be eligible for the subsidy while it is in effect.

* **Important:** State continuation (SC) laws vary from state to state and by funding type. Assistance eligible individuals (AEIs) may receive subsidized coverage from April 1 through September 30. Because state continuation laws do vary by state, please talk to your plan administrator for additional information.

We continue to navigate the requirements and impact to COBRA eligible members and will provide updates as they are available.

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Updated 6/16/2021

Frequently Asked Questions

Who can apply for assistance?

The subsidy applies to an “assistance eligible individual,” which may include an employee and their dependents who had elected or will elect COBRA.

What amount is covered and who pays for the premium?

The 100% subsidy covers the COBRA premium including the 2% administrative fee that health plans are permitted to charge for COBRA.

For federal COBRA, the premium is advanced by the employer for fully insured or self-funded groups of 20 or more employees. The eligible individual does not pay the COBRA premium. In the case of fully insured state continuation for groups 1 to 19, the insurer handles the premium. This is sometimes called mini COBRA.

In both cases, either the employer for large group or the insurer for small groups 1 to 19 will be reimbursed by the government for the premium through a refundable tax credit against the Medicare hospital insurance tax.

What about self-funded group health plans with fewer than 20 employees that are not covered by federal COBRA? Are individuals in those plans who experience involuntary job loss leading to a loss of coverage eligible for the 100% subsidy?

It depends. State continuation of coverage laws do not apply to self-funded ERISA plans with fewer than 20 employees. State continuation of coverage laws may apply to self-funded state and local government plans depending on how the law is written. Contact your plan administrator for additional information.

How does the tax credit work for insured or self-funded plans or multiemployer plans?

The American Rescue Plan specifically states that the *employer* is the entity that claims the tax credit for both insured and self-funded coverage where the employer’s group health plan is subject to COBRA under the Code, ERISA, or the PHSA.

In the case where entities do not have employees, the IRS has stated “If the premium payee entitled to claim the credit does not have any employment tax liability, the premium payee should claim the credit on the Form 941 for the quarter in which the premium payee becomes entitled to the credit. The premium payee entitled to the credit should also report any advance payments received in anticipation of the credit on the same Form 941. The premium payee should enter zero on all remaining non-applicable lines so that the overpayment amount on the Form 941 is the amount of the credit reduced by any advance payment received.”

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Does the American Rescue Plan Act change any State program requirements or time periods for election of continuation coverage?

No. The American Rescue Plan Act (ARPA) does not change any requirement of a state continuation coverage program. The ARPA only allows Assistance Eligible Individuals who elect continuation coverage under state insurance law to receive premium assistance from April 1, 2021 through September 30, 2021. It also allows Assistance Eligible Individuals to switch to other coverage offered to active employees if the plan allows it, provided that the new coverage is no more expensive than the prior coverage.

The legislation provides that a subsidy will be available to AEIs within the 18-month COBRA eligibility period starting on October 1, 2019, which would extend through end of April 2021. Thus, if COBRA started between Oct 1, 2019 and Nov 1, 2019, and first month spans Nov 1, 2019, does this enrollment extension apply? For example - would an October 15, 2019 event be eligible for subsidy?

Yes. Subsidized coverage (from April 1, 2021 through September 30, 2021) will be made available to AEIs within the federal COBRA eligibility period beginning on or after October 1, 2019 and extending for 18 months.

For what months are the subsidies covered at 100%?

The subsidy will begin for coverage periods beginning on April 1, 2021 and ending on September 30, 2021. The subsidy would end sooner if the qualified beneficiary's maximum COBRA coverage period ends or if the individual is eligible for another group health plan or Medicare.

How would subsidies work if the individual was involuntarily terminated from employment leading to a loss of health benefits prior to April 1, 2021?

For federal COBRA, the Act also provides additional enrollment options for individuals who already had an involuntary termination of employment or reduction in hours leading to a loss in coverage (a qualifying event under federal COBRA) within the 18 month period prior to April 1, 2021, and did not timely elect COBRA or elected and then dropped COBRA. These individuals have a new 60-day election period following the date that they receive a new required COBRA notice.

Additionally, employers are permitted but not required to allow assistance-eligible individuals to change elections to other plan options that have the same or lower cost premiums.

For State Continuation if an individual already had a reduction in hours or an involuntary termination of employment resulting in a loss in coverage and was continuously enrolled in state continuation coverage as of March 31, 2021 and are still eligible April 1, 2021, they may qualify for subsidy beginning April 1.

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Can an AEI who was involuntarily terminated August 31, 2020 and did not select Federal COBRA and now wants to elect it effective April 1, 2021, do so without paying for September 2020 through March 2021?

Yes.

Do we cover fully insured premium for all states where there is state continuation?

Yes, for groups not subject to federal COBRA and depending on state continuation rules.

Are new notices or other communications required to be sent to eligible individuals?

For federal COBRA, Employers are required to update COBRA notices sent to individuals with a qualifying event to describe the subsidy and to issue extended COBRA election notices within 60 days of the date of applicability.

For State Continuation, Employers are required to send the Alternative Notice of ARP Continuation Coverage Election Notice to individuals with a qualifying event to describe the subsidy per state requirements.

Failure to update and send a new COBRA notice to an eligible individual would be treated as a failure of the COBRA notice requirements. Employers also must provide a notice of expiration before the premium subsidy expires.

The U.S. Department of Labor has published templates notices to use for creating/providing these notices.

Does the plan document language need to be updated?

UnitedHealthcare and our clients do not need to update coverage documents such as COC, SPD or ERISA wrappers during the presidential proclamation under DOL guidance. UnitedHealthcare has posted information which summarizes the program on the publicly available site uhc.com and on member portals.

What is the process to get a subsidy?

As part of your COBRA election notice, you should have received the Summary of the COBRA Premium Assistance Provision which includes the Request for Treatment as an Assistance Eligible Individual which must be completed by the individual and returned to your employer/COBRA Administrator within 60 days.

How does the new ARPA election period of 60 days work with the Joint Notice and EBSA Disaster Relief Notice that were issued previously?

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The suspension of deadlines for electing federal COBRA under the Joint Notice and EBSA Disaster Relief Notice do not apply to the new ARPA notices or extended election periods.

If you fail to elect COBRA continuation coverage and the premium assistance within 60 days of notification, you may be ineligible for the premium assistance under the American Rescue Plan Act.

If an Assistance Eligible Individual previously elected COBRA continuation coverage with premium assistance for dental-only or vision-only coverage, does the individual cease to be eligible for COBRA premium assistance if the individual subsequently becomes eligible to enroll in other disqualifying group health plan coverage or Medicare that does not provide dental or vision benefits?

Yes. Eligibility for COBRA premium assistance ends when the Assistance Eligible Individual becomes eligible for coverage under any other disqualifying group health plan or Medicare, even if the other coverage does not include all of the benefits provided by the previously elected COBRA continuation coverage. For example, eligibility for Medicare, which generally does not provide vision or dental coverage, ends eligibility for premium assistance related to all previously elected COBRA continuation coverage, including previously elected dental-only or vision-only COBRA continuation coverage.

Does the ARPA subsidy cover FSA premiums?

No

Additional FAQs from Subsequent Guidance

Who qualifies as an Assistance Eligible Individual?

An Assistance Eligible Individual is any individual who is (1) a qualified beneficiary as the result of (A) the reduction of hours of a covered employee's employment or (B) the involuntary termination of a covered employee's employment (other than by reason of an employee's gross misconduct), (2) is eligible for COBRA continuation coverage for some or all of the period beginning on April 1, 2021, through September 30, 2021, and (3) elects the COBRA continuation coverage. This includes qualified beneficiaries who are the spouse or dependent child of the employee who had the reduction in hours or involuntary termination of employment resulting in a loss of coverage, as well as the employee, if that reduction in hours or involuntary termination of employment caused the qualified beneficiary to lose coverage and the other requirements are satisfied.

Does a qualifying event other than a reduction in hours or an involuntary termination of employment qualify an individual for COBRA premium assistance?

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No. Qualifying events other than a reduction in hours or an involuntary termination of employment, such as divorce or a covered dependent child ceasing to be a dependent child under the generally applicable terms of the plan (such as loss of dependent status due to aging out of eligibility), are not events qualifying an individual for COBRA premium assistance.

If a potential Assistance Eligible Individual was eligible for other group health plan coverage before April 1, 2021, but on and after April 1, 2021, has not been permitted to enroll in that other group health plan coverage, is COBRA premium assistance available for the individual's COBRA continuation coverage?

Yes. COBRA premium assistance is available to a potential Assistance Eligible Individual until the individual is permitted to enroll in coverage under any other group health plan (including during a waiting period for any other plan).

Is an individual who is a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment but who is currently enrolled in individual health insurance coverage through a Health Insurance Exchange eligible to elect COBRA continuation coverage and receive COBRA premium assistance?

Yes. An individual who is a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment but who is currently enrolled in individual health insurance coverage through a Health Insurance Exchange may be eligible to elect COBRA continuation coverage and for COBRA premium assistance. However, an individual is not eligible for a premium tax credit to help pay for the cost of Exchange coverage during any month that the individual is enrolled in COBRA continuation coverage. An individual who elects COBRA continuation coverage (with or without COBRA premium assistance) and who is enrolled in coverage through a Health Insurance Exchange with advance payments of the premium tax credit (APTC) may be required to repay the APTC for the overlap months.

If, as the result of an involuntary termination of employment, an individual loses coverage under a health plan that is not subject to COBRA continuation coverage requirements (as defined under the ARP) and the individual is then offered and elects continuation coverage provided voluntarily by the employer, is COBRA premium assistance available with respect to that continuation coverage?

No. In order for COBRA premium assistance and the related premium assistance credit to be available, the plan must be subject to COBRA continuation coverage requirements as defined under the ARP. Examples of health plans that may not be subject to either Federal COBRA or State mini-COBRA include a self-insured church plan or a small employer plan. (Treas. Reg. § 54.4980B-2, Q&A-5 provides that a small-employer plan excluded from Federal COBRA is a group health plan maintained by an employer that normally employed fewer than 20 employees during the preceding calendar year.)

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Is COBRA premium assistance available to individuals who have elected and remained on COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA, to the extent those additional periods of coverage fall between April 1, 2021, and September 30, 2021, if the original qualifying event was a reduction in hours or an involuntary termination of employment?

Yes. If the original qualifying event was a reduction in hours or an involuntary termination of employment, COBRA premium assistance is available to individuals who have elected and remained on COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA, to the extent the additional periods of coverage fall between April 1, 2021, and September 30, 2021.

Does COBRA premium assistance apply to portions of the premium attributable to COBRA continuation coverage for individuals who are not qualified beneficiaries?

No. COBRA premium assistance is limited to premiums attributable to COBRA continuation coverage for Assistance Eligible Individuals. For purposes of Federal COBRA, a qualified beneficiary with respect to a covered employee under a group health plan is the spouse of the employee or a dependent child of the employee if the spouse or dependent child was a beneficiary under the plan on the day before the qualifying event. A child who is born to or adopted by the covered employee during the period of COBRA continuation coverage may also be a qualified beneficiary. Otherwise, a spouse or dependent child who was not a beneficiary under the plan before the qualifying event is not a qualified beneficiary. In addition, if an individual does not meet the definition of a qualified beneficiary under Federal COBRA, the individual's coverage is not eligible for COBRA premium assistance, even though the individual may continue to be covered or be eligible to continue coverage under a plan by its terms, or as required by State law.

If an individual makes or owes COBRA premium payments for retroactive COBRA continuation coverage elected under the federal Emergency Relief Notices for which the payment due date has been extended, does that make the individual ineligible for premium assistance?

No. If an individual elected retroactive federal COBRA continuation coverage under the Emergency Relief Notices, neither making nor owing COBRA premium payments for retroactive COBRA continuation coverage for which the payment due date has been extended makes an individual ineligible for COBRA premium assistance. However, an individual may lose retroactive COBRA continuation coverage for the months for which the premium is not timely paid under the Emergency Relief Notices. Any late or unpaid premiums for retroactive COBRA continuation coverage will not affect an individual's eligibility for COBRA premium assistance.

Is COBRA premium assistance available for COBRA continuation coverage under a vision-only or dental-only plan?

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Yes. COBRA premium assistance is available for COBRA continuation coverage of any group health plan, except a health FSA under Section 106(c) offered under a Section 125 cafeteria plan. Group health plans include vision-only and dental-only plans, regardless of whether the employer pays for a portion of the premiums for active employees. COBRA premium assistance is not available for continuation coverage offered by employers for non-health benefits that are not subject to Federal COBRA continuation coverage requirements, such as group-term life insurance.

Is COBRA premium assistance available for COBRA continuation coverage under a health reimbursement arrangement (HRA)?

Because an HRA is paid for with employer contributions, not salary reduction amounts, a traditional HRA would qualify for premium assistance.

Must an Assistance Eligible Individual electing federal COBRA continuation coverage under the ARP extended election period begin coverage as of the first period of coverage beginning on or after April 1, 2021?

No. While a group health plan must make COBRA continuation coverage with COBRA premium assistance available as of the first period of coverage beginning on or after April 1, 2021, in the case of an Assistance Eligible Individual electing COBRA continuation coverage under the ARP extended election period, the Assistance Eligible Individual may waive COBRA continuation coverage for any period before electing to receive COBRA premium assistance, including retroactive periods of coverage beginning prior to April 1, 2021. The individual may elect COBRA continuation coverage either retroactively to qualifying event date, retroactively to April 1, 2021, or prospectively.

If an employer is no longer subject to Federal COBRA due to a reduction in the number of employees, is the employer still required to provide the ARP extended election period to individuals who had a qualifying event that was a reduction in hours or involuntary termination of employment while the employer was subject to COBRA, and are those qualified beneficiaries potential Assistance Eligible Individuals?

Yes. Whether a qualified beneficiary is eligible to elect Federal COBRA continuation coverage is determined by the employer's status at the time of the qualifying event, and whether a qualified beneficiary is a potential Assistance Eligible Individual who may elect COBRA continuation coverage during the ARP extended election period is determined by whether the qualified beneficiary was eligible to elect COBRA continuation coverage at the time of the qualifying event.

Is COBRA premium assistance available for periods of coverage from April 1, 2021, through September 30, 2021, if the election for COBRA continuation coverage is made after September 30, 2021?

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Yes, but only if the individual makes the election within the applicable 60-day election period. A qualified beneficiary who is a potential Assistance Eligible Individual has 60 days to elect COBRA continuation coverage after being provided either the general notice under § 9501(a)(5)(A) of the ARP (for a qualifying event after April 1, 2021), or the notice regarding the ARP extended election period under § 9501(a)(5)(C) (with respect to a qualifying event before April 1, 2021). If the individual makes the COBRA election after September 30, 2021, but within the applicable 60-day period, then the individual is entitled to COBRA premium assistance through the earlier of the last period of coverage beginning on or before September 30, 2021, or the date that COBRA continuation coverage expires. COBRA premium assistance would start with the later of the first period of coverage beginning on or after April 1, the date of the qualifying event, or the date the qualified beneficiary elects to begin COBRA continuation coverage.

Once subsidized COBRA continuation coverage ends with the period of coverage including September 30, 2021, does coverage for a qualified beneficiary who was an Assistance Eligible Individual automatically continue with unsubsidized COBRA and, if so, when is the payment for the first subsequent period of coverage due?

COBRA continuation coverage automatically continues, and the payment for the first period of coverage after September 30, 2021 will be timely if paid according to the terms of the plan or coverage, subject to applicable COBRA continuation coverage requirements taking into account the Emergency Relief Notices.

Does the death of an employee who has had a reduction in hours or involuntary termination of employment end the eligibility for COBRA premium assistance of any qualified beneficiary spouse and dependent children?

No.

May a potential Assistance Eligible Individual whose qualifying event occurred before April 1, 2021, elect COBRA continuation coverage under the ARP extended election period and receive COBRA premium assistance that starts on or after April 1, 2021?

Yes. The extended election period for electing COBRA continuation coverage is available for a potential Assistance Eligible Individual if the qualifying event occurred before April 1, 2021, and if the individual has not yet elected COBRA continuation coverage, including for an individual who has an open COBRA election period as of April 1, 2021. If the individual elects retroactive COBRA continuation coverage under the original COBRA election period available prior to the ARP extended election period under Federal COBRA, COBRA continuation coverage is retroactive to that individual's loss of coverage. COBRA premium assistance, however, does not apply to periods of coverage prior to the first period of coverage beginning on or after April 1, 2021.

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What is the election period for a potential Assistance Eligible Individual to make the election for COBRA premium assistance if the individual is also eligible to elect COBRA continuation coverage under the Emergency Relief Notices?

If a qualified beneficiary received a COBRA notice under § 4980B before April 1, 2021, and also receives the notice of the ARP extended election period, then, within 60 days of receiving the notice of the ARP extended election period, the qualified beneficiary may elect COBRA continuation coverage with COBRA premium assistance for periods of coverage beginning on or after April 1, 2021. If a qualified beneficiary elects COBRA continuation coverage with COBRA premium assistance, the individual must also elect or decline COBRA continuation coverage retroactive to the loss of coverage, if eligible, within 60 days of receiving the notice of the ARP extended election period. If the qualified beneficiary elects retroactive COBRA continuation coverage, the qualified beneficiary may be required to pay COBRA premiums for periods of coverage beginning before April 1, 2021.

May a potential Assistance Eligible Individual who elects COBRA continuation coverage with COBRA premium assistance and who declines to elect retroactive COBRA continuation coverage at that time later elect retroactive COBRA continuation coverage?

No. If a potential Assistance Eligible Individual elects COBRA continuation coverage with COBRA premium assistance but declines to elect COBRA continuation coverage that would begin at the time of a qualifying event that occurred before April 1, 2021, that individual may not, after the 60-day extended election period for electing COBRA continuation coverage under the ARP has ended, later elect COBRA continuation coverage that begins at the time of the qualifying event.

Does a state continuation coverage program fail to provide comparable coverage qualifying for COBRA premium assistance under the ARP solely because the maximum period of continuation coverage under the program differs from the maximum period available under Federal COBRA?

No. A different period of continuation coverage under a State continuation coverage program does not by itself mean a State program fails to provide comparable coverage to Federal COBRA continuation coverage under the ARP. For example, the fact that a State continuation coverage program provides only six months of continuation coverage (instead of 18 months) would not by itself result in the State program failing to provide comparable coverage. Similarly, state continuation coverage programs providing for different qualifying events, different qualified beneficiaries, or different maximum premiums generally do not fail to provide comparable coverage solely for those reasons.

New addition from recent IRS Q&A

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For a period of State-mandated continuation coverage that is comparable to Federal COBRA, if the plan is also subject to Federal COBRA (for example, a period of State-mandated continuation coverage that extends beyond the applicable Federal COBRA period), which entity is the premium payee entitled to claim the COBRA premium assistance credit?

For State-mandated continuation coverage that is comparable to Federal COBRA and is a group health plan subject to both Federal COBRA and the State-mandated continuation coverage, the common law employer is the premium payee entitled to claim the credit because the plan is subject to Federal COBRA. Consequently, even if the State-mandated continuation coverage would require the Assistance Eligible Individual to pay the premiums directly to the insurer after the period of Federal COBRA ends, the insurer is not entitled to claim the COBRA premium assistance credit.