

American Rescue Plan Act of 2021: COBRA Subsidy

Section 9501 of the American Rescue Plan Act of 2021 (ARPA) provides for temporary, fully subsidized COBRA continuation coverage premiums for up to six months. An individual who is eligible for, and elects, continuation coverage due to a reduction in hours or a termination in employment that is not voluntary (an “assistance eligible individual”) is treated as having paid for coverage during the period beginning April 1, 2021 and ending on the earlier of September 30, 2021 or the end date of the COBRA continuation coverage period.

The COBRA premium assistance provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by State or local governments subject to the continuation provisions under the Public Health Service Act. The premium assistance is also available for group health insurance required under state mini-COBRA laws.

The COBRA coverage election period is extended for a COBRA eligible individual who (1) does not have an election in effect on April 1, 2021 but who would be assistance eligible if one were in effect or (2) elected COBRA coverage and discontinued it before April 1, 2021. Individuals eligible for this additional COBRA election period must receive a notice of extended COBRA election period informing them of this opportunity. This notice must be provided by May 31, 2021 and individuals have 60 days after the notice is provided to elect COBRA. Generally, assistance-eligible individuals who experienced a COBRA qualifying event on or after October 1, 2019 should receive notice of the extended COBRA election rights. Employers should consider using the model notice published by the U.S. Department of Labor (<https://www.dol.gov/cobra-subsidy>).

This additional election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's reduction in hours or involuntary termination).

An assistance eligible individual is not eligible for the premium assistance if he or she is eligible for other group health coverage, such as through a new employer's plan, a spouse's employer's plan, or Medicare. If assistance eligible individual has individual health insurance coverage, like a plan through the Health Insurance Marketplace or Medicaid, he or she may be eligible for ARPA premium assistance.

Employers who normally receive the COBRA continuation coverage premium are allowed a credit against the hospital insurance portion of the FICA tax for the calendar quarter equal to the amount of premiums not paid by assistance eligible individuals due to premium assistance. The credit cannot exceed the hospital insurance tax imposed for the quarter for all of the employer's employees and is reduced by any paid sick leave, paid family leave, or COVID-19 employee retention credit allowed against the hospital insurance portion of the FICA tax. Also, unlike the forgiveness of PPP loans, no double benefit is allowed, so the amount of the credit is included in the employer's gross income. An excess credit is refundable, while an overstated credit is treated as an underpayment. The credit may be advanced.

The IRS must waive penalties for failure to deposit hospital insurance tax if the IRS determines that the failure is attributable to anticipation of the credit allowed. If an assistance eligible individual pays the amount of the premium the individual would otherwise be required to pay, the person to whom the premium is payable must reimburse the excess over the required amount within 60 days after the individual elected continuation coverage. A credit is allowed for the payment.

Employers should work with its COBRA administrator to ensure that the notice of extended COBRA election rights is timely provided. If you have any questions or need assistance complying with the new COBRA rules, please contact Derek Schryer (daschryer@dcamplaw.com) or Chris Curry (c Curry@dcamplaw.com).