

# COBRA Subsidy

The latest COVID relief package (the American Rescue Plan Act of 2021, “ARPA”) includes a COBRA subsidy that could affect many employers. The ARPA subsidy generally requires employers to cover 100% of the cost of COBRA continuation coverage for up to six months between April 1, 2021 and September 30, 2021 (the “Subsidy Period”). These premium amounts are then reimbursable via refundable payroll tax credit.

This subsidy is not universally available, but generally applies under rules similar to the standard COBRA rules. It applies for individuals who lose coverage under a covered employer’s health care plan due to involuntary termination or reduction of hours. Similar to the standard COBRA rules, it does not apply when an employee voluntarily quits, or if an employee is fired for gross misconduct. In addition, it is purely a monetary subsidy, and does not otherwise extend the length of the applicable COBRA period.

## Eligibility:

Eligible individuals include employees and dependents who (1) experience a qualifying event and elect COBRA during the Subsidy Period, (2) are already enrolled in COBRA during the Subsidy Period, (3) did not elect COBRA when it previously became available but are still within the original 18-month COBRA period, OR (4) elected COBRA initially but let the coverage lapse and are still within the original 18-month COBRA period. Note, for these third and fourth categories, this means you need to consider individuals who were terminated potentially as far back as November 1, 2019.

Note also, as it is currently written, this COBRA subsidy is for a maximum of six months. I.e., the subsidy will cease no later than September 30, 2021. Of course, Congress could always extend this, and that would not be surprising if prior COVID relief is any indicator. But as it is currently written, the subsidy will only be effective during the Subsidy Period.

## New Notices Required:

ARPA also creates two new COBRA notice requirements. First, on or before May 30, 2021, employers must notify eligible individuals regarding eligibility for the subsidy and provide the opportunity to enroll (or re-enroll) in COBRA during the subsidy period. Eligible individuals will have 60 days to elect coverage after receiving the required notice. And second, another notice must also be provided to eligible individuals between 45 and 15 days before the subsidy will expire. These notices are in addition to the standard COBRA eligibility notices, so employers will need to update their COBRA notices. The DOL has been instructed to update their model notices on or before April 11, 2021.

## Reimbursable Payroll Tax Credit:

During the Subsidy Period, the plan sponsor (this will generally be the former employer) is responsible for paying COBRA premiums on behalf of eligible individuals. In turn, the plan sponsor can obtain reimbursement for these premiums through a refundable payroll tax credit. Further details on this process are expected from the IRS.

The full text of the Bill can be found here: <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>, and these COBRA-specific provisions begin at page 124 (Subtitle F -- Preserving Health Benefits for Workers).

Further guidance is expected from the IRS, which will hopefully answer some open questions regarding compliance with this new law. In the meantime, employers should check in with their COBRA advisors and continue to monitor this.