

American Rescue Plan Act of 2021 Provides Temporary Free COBRA Coverage for Certain Employees Affected by COVID-19

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The [American Rescue Plan Act of 2021](#) (ARPA), which was signed into law on March 11, 2021, provides substantial assistance in maintaining health care coverage for individuals who may have lost that coverage in connection with the Coronavirus Disease 2019 (COVID-19) pandemic. This assistance takes the form of 100% subsidized premiums for health care continuation coverage under COBRA for “assistance eligible individuals” (AEIs) and their dependents from April 1, 2021, to September 30, 2021 (i.e., the “premium assistance period”). The COBRA subsidy is available with respect to premiums for medical, dental, and vision coverage; however, health flexible spending arrangements are not eligible for premium assistance. Employers will be reimbursed for the subsidies through a credit against the 1.45% Medicare payroll taxes they are otherwise required to pay, but not the 1.45% Medicare payroll taxes they are required to withhold from employee wages or the 0.9% additional Medicare tax withheld from employee wages in excess of \$200,000. The new law provides for the tax credit to be advanced, but only in accordance with forms and instructions that have yet to be provided by the secretary of the Treasury.

Assistance Eligible Individuals

AEIs are individuals and their dependent family members who have lost health care coverage as the result of a termination of employment or a reduction in hours **other than** a voluntary termination of the individual’s employment and who have elected COBRA continuation coverage. ARPA does not define when a termination of employment will be considered voluntary or involuntary; guidance in this regard is needed and, therefore, may be provided fairly shortly. Qualified beneficiaries who lost health care coverage as a result of another qualifying event, such as divorce, death, or ceasing to be a dependent, are not AEIs.

An individual is an AEI if the individual was eligible for COBRA continuation coverage during the premium assistance period, regardless of when the employee’s involuntary termination of employment or reduction in hours occurred, and regardless of whether the individual is currently maintaining COBRA continuation coverage as of the beginning of the premium assistance period.

Special Enrollment Rules

Individuals who are not AEIs, but would be AEIs if they had had an election of COBRA continuation coverage in effect as of April 1, 2021 (i.e., individuals who did not originally elect COBRA continuation coverage and those who may have elected COBRA continuation coverage but discontinued it before April 1, 2021, but who could have been covered under COBRA continuation coverage as of April 1, 2021 if such an election had been made or had not been discontinued) must be given a new opportunity to elect COBRA continuation coverage and receive the premium assistance. This special enrollment period begins on April 1, 2021, and ends 60 days after the plan provides the individual with notice of the availability of premium assistance and the new enrollment opportunity.

Newly elected coverage will be effective retroactively to April 1, 2021, and can continue through the end of the period of COBRA continuation coverage that would have applied if the individual had elected COBRA continuation coverage at the time of the employee's involuntary termination of employment and had not discontinued COBRA continuation coverage, even if that period would extend beyond September 30, 2021. The premium assistance, however, will end September 30, 2021.

In addition, the health plan may, but is not required to, permit an AEI to elect to change coverage options from the option they were originally covered under when they commenced COBRA continuation coverage to a lower-cost plan option. This election must be made within 90 days of when the eligible individual is provided notice that the group health plan is offering this optional relief. Plans may not permit a change in enrollment to a coverage option providing only excepted benefits such as dental and vision coverage, a health care flexible spending account, or a qualified small employer health reimbursement arrangement.

Duration of Premium Assistance

Premium assistance to an AEI ends as of the earliest of the following dates:

- The expiration of the premium assistance period (i.e., September 30, 2021);
- The expiration of the AEI's ordinary COBRA continuation coverage (as determined by reference to the employee's involuntary termination of employment or reduction of hours); and
- The date the AEI becomes eligible for coverage under another group health plan or Medicare.

An AEI who becomes eligible for other coverage that would end the AEI's premium assistance is required to notify the plan administrator of that fact. Failure to do so timely (as required under rules to be provided by the Department of Labor) will subject the AEI to a penalty of \$250. The penalty may be significantly higher if the failure is due to fraud and may be waived if the failure was due to reasonable cause.

Notice Requirements

ARPA imposes three different notice obligations on plans subject to COBRA.

Modifications to Existing COBRA Notices. COBRA election notices provided in connection with qualifying events that occur during the premium assistance period must include the following additional information: (1) the forms necessary for establishing eligibility for premium assistance; (2) the name, address, and telephone number of the plan administrator and any other person maintaining relevant information in connection with the premium assistance; (3) a description of the special 60-day second enrollment election period; (4) a description of the AEI's obligation to notify the plan of other plan or Medicare coverage that would make the AEI ineligible for the premium assistance and the penalty for failure to provide this notification; (5) a description, displayed in a prominent manner, of the AEI's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and (6) a description of the right to enroll in different coverage if the plan allows this option.

COBRA election notices provided on or after April 1 need to include this additional information. Notices may be delayed slightly if not updated by April 1. Model notices should be available by April 10.

Notices to AEIs Entitled to COBRA Continuation Coverage Before April 1, 2021. AEIs who previously declined or terminated COBRA continuation coverage must be provided notice of the 60-day election period during which the AEI may elect subsidized coverage and the availability of the premium assistance. This notice must be provided by May 31, 2021.

Notice of Expiration of the Premium Assistance Period. Plan administrators must provide advance notice of the upcoming expiration of an AEI's premium assistance period. This notice must inform AEIs that their premium assistance is coming to an end, the date on which the premium assistance will expire, and that the AEI may be eligible for coverage without premium assistance through COBRA or under another group health plan. This notice applies to those whose COBRA coverage period is ending or when the premium assistance period is coming to a close. This notice is not required, however, for AEIs whose COBRA continuation coverage is ending as the result of the AEI's eligibility for coverage under another group health plan or Medicare. This notice must be provided no more than 45 days, and no fewer than 15 days, before the expiration of premium assistance.

ARPA directs the relevant federal agencies to provide model notices in the very near future.

Employer Action Steps

It is important that plan administrators begin to identify individuals who are currently enrolled in COBRA continuation coverage as a result of an involuntary termination of employment or reduction in hours and those who could enroll if they had not previously declined or terminated COBRA continuation coverage, so that notice of the availability of premium assistance and/or the availability of a 60-day second election period, as applicable, can be provided.

Plan administrators should also prepare to update their existing COBRA notices and prepare the new notices required by ARPA. It appears, though, that model notices will be made available by the agencies in time for a plan administrator to meet the applicable deadline.

Employers' payroll systems will need to be modified to enable employers to efficiently take advantage of the recovery of the subsidy from the Medicare taxes they would otherwise be required to pay.

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