



IRS COBRA Subsidy Overview

The IRS released [Notice 2021-31](#) which provides a set of FAQs regarding the COBRA subsidies under the American Rescue Plan Act (ARPA). The IRS notice, in conjunction with the notices and FAQs [previously released by the DOL](#), provide us with a more complete picture regarding what plan sponsors need to do to comply with the ARPA COBRA subsidy [requirements](#).

While the IRS guidance provides much needed answers to common questions, there are few surprises in the approach the IRS has taken regarding the subsidies. Some of the most pressing questions answered include:

- Generally, the only time the insurer of a fully-insured plan is responsible for claiming the tax credit for subsidies provided is for “fully insured coverage subject to State continuation coverage requirements, not Federal COBRA.” (Q/A-72)
- Stand-alone dental and vision plans are subject to the ARPA COBRA subsidy requirements. The only group health plans explicitly excluded are health FSAs. (Q/A-35)
- For purposes of COBRA premium assistance, an employee-initiated termination of employment in response to an involuntary material reduction in hours in which the employee retains coverage is treated as an involuntary termination of employment. (Q/A-32)
- An employer’s decision to not renew an employee’s contract is considered an involuntary termination if “the employee was otherwise willing and able to continue the employment relationship and was willing either to execute a contract with terms similar to those of the expiring contract or to continue employment without a contract. However, if the parties understood at the time they entered into the expiring contract, and at all times when services were being performed, that the contract was for specified services over a set term and would not be renewed, the completion of the contract without it being renewed is not an involuntary termination of employment.” (Q/A-34)
- An employer’s action to terminate the employment of an employee who is unable to work due to illness or disability may be an involuntary termination if there was a reasonable expectation that the employee would be returning to work. (Q/A-25)
- Death is not an involuntary termination of employment for purposes of ARPA subsidies. (Q/A-33)
- Any reduction in hours, including an employee’s voluntary reduction in hours, that results in a loss of eligibility will qualify for the ARPA COBRA subsidy. (Q/A-21)
- If an assistance eligible individual (AEI) has elected continuation coverage due to an initial qualifying event of involuntary termination or reduction in hours and that individual’s COBRA or state continuation coverage is extended due to a second qualifying event or a Social Security disability determination, COBRA premium assistance is available to these individuals “to the extent the additional periods of coverage fall between April 1, 2021 and September 30, 2021.” (Q/A-17)



- An individual can become an AEI more than once, in which case two employers might be required to provide the subsidy. (Q/A-3)
- Eligibility for coverage under a group health plan or Medicare will disqualify an AEI from receiving a subsidy only if the AEI has an ability to enroll in the coverage. Mere eligibility, without the current ability to enroll in the other coverage does not disqualify the AEI from receiving the subsidy. (Q/A-9)
- If, due to the extension of the HIPAA special enrollment periods during the Outbreak Period, an AEI retains the current right to enroll in another group health plan pursuant to HIPAA special enrollment (such as the group health plan sponsored by a spouse's employer), the AEI is disqualified from receiving the subsidy. (Q/A-9, Ex. 3)
- Enrollment in a group health plan following the AEI's initial qualifying event does not disqualify the AEI from receiving the subsidy if that coverage is not in effect during the subsidy period. (Q/A-10)
- While eligibility for coverage under another group health plan generally disqualifies an AEI from receiving the subsidy, that is not the case if the coverage for which the AEI is eligible under the other plan is COBRA coverage. (Q/A-11)
- Retiree coverage offered by the employer under a different group health plan than the one in which the AEI was enrolled while employed generally disqualifies an AEI from receiving the subsidy. (Q/A-18)
- An AEI electing COBRA coverage during the special election period provided by ARPA may elect to start the COBRA coverage as of any coverage period beginning on or after 4/1/21. (Q/A-44)
- If an AEI elects COBRA coverage under an HRA during the special election period provided by ARPA, the AEI will "have access to the same level of reimbursements during COBRA continuation coverage as was available immediately before the qualifying event." (Q/A-54)
- If the AEI received a COBRA election notice for the original qualifying event prior to 4/1/21 and the original election period remains open (e.g., due to the extension during the Outbreak Period), the original election period will expire no later than 60 days following receipt of the notice of the ARPA extended election period. (Q/A-56)
- If an AEI elects retroactive COBRA coverage by exercising the initial COBRA election rights (e.g., during the extended original election period), the termination of the retroactive COBRA coverage for failure to pay premiums does not impact the right to receive COBRA coverage and subsidies during the period of time covered by the COBRA subsidies. (Q/A-58)



- In the event non-AEIs are receiving COBRA coverage along with AEIs (e.g., because a COBRA participant has enrolled additional dependents during an open enrollment period or continuation coverage is provided to individuals who do not qualify as COBRA qualified beneficiaries), the subsidy and tax credit are available only for the AEIs. To the extent the total continuation premium exceeds the premium that would apply if only AEIs were enrolled in the continuation coverage, the excess is not covered by the ARPA subsidy. (Q/A-68)
- The subsidy is available for the full COBRA premium if an AEI changed COBRA coverage during an open enrollment period, even if they moved to a more expensive coverage option. (Q/A-69)
- The Notice clarifies which entities may claim the premium tax credit, the amounts that may be claimed in certain situations (such as when the employer sponsoring a group health plan subsidizes COBRA continuation by practice), how the tax credits or refund amounts when the permitted tax credit exceeds the payroll taxes payable, and recordkeeping requirements. (Q/A 71-86)

The Research and Compliance team will continue to review the IRS guidance and any additional guidance that may be provided by the agencies and will provide updates as they become available.

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