

US Stimulus Creates Temporary COBRA Premium Subsidy and Payroll Tax Credit

Under the new stimulus law, employers must make available temporary COBRA premium subsidies and special COBRA enrollment rights to eligible individuals. Employers are entitled to a refundable payroll tax credit for the amount of the subsidies.

The American Rescue Plan Act of 2021 (ARPA), which was signed into law on March 11, 2021, creates a 100% COBRA premium subsidy and special COBRA enrollment rights for certain individuals who lost or lose group health plan coverage due to an involuntary termination of employment or reduction in hours. The COBRA premium subsidy will be available for up to six months, from April 1, 2021 to September 30, 2021. Employers that provide the COBRA premium subsidy are entitled to a refundable tax credit for the amount of the subsidy. To comply, employers must determine who is eligible for the subsidy and the special enrollment rights and work with their COBRA administrators to distribute new required notices.

Eligible Individuals

An individual will be eligible for a COBRA premium subsidy (an Eligible Individual) if they:

- Lost or lose group health plan coverage due to an involuntary termination of employment (other than for gross misconduct) or reduction in hours; and
- Are or were eligible for COBRA continuation coverage at any time between April 1, 2021 and September 30, 2021, regardless of whether they elected such coverage when it was first made available.

Eligible Individuals may include employees and former employees and their spouses and dependents, but not their domestic partners.

Duration of COBRA Premium Subsidy

An Eligible Individual can be entitled to a 100% premium subsidy for COBRA continuation coverage for all or part of the period from April 1, 2021 through September 30, 2021.

However, the exact period is different for each person. For a given Eligible Individual, the COBRA premium subsidy will expire upon the earliest of:

- The first of the month on or after becoming eligible for coverage under Medicare or another employer group health plan (excluding coverage under a health FSA, a qualified small employer health reimbursement arrangement, or coverage only for excepted benefits);
- The end of their maximum COBRA coverage period (normally 18 months); and
- September 30, 2021.

Example: Due to an employer-initiated termination, an individual became eligible for and elected COBRA continuation coverage effective December 1, 2019. He will be eligible for the subsidy for April 2021 and May 2021. His coverage and his subsidy will expire on May 31, 2021, assuming that his maximum COBRA coverage period is 18 months.

Special Enrollment Period

Eligible Individuals who were entitled to, but not enrolled in, COBRA continuation coverage as of April 1, 2021 must be given a new opportunity to elect fully subsidized COBRA continuation coverage. This includes Eligible Individuals who had elected COBRA continuation coverage but dropped it prior to April 1, 2021.

COBRA continuation coverage that is elected under this special enrollment opportunity will be effective as of April 1, 2021 (rather than retroactive to the date that group health plan coverage was originally lost, as is ordinarily the case). This enables such Eligible Individuals to take advantage of the subsidized coverage without being required to pay for additional coverage.

Subsidy Mechanics and Payroll Tax Credits

An Eligible Individual who receives subsidized COBRA continuation coverage does not pay the premium. Rather, the employer (or, if applicable, the multiemployer plan) pays or advances the premium for the insured or self-insured coverage. Additionally, any premiums the Eligible Individual inadvertently pays for subsidized coverage must be refunded.

The employer or the multiemployer plan is reimbursed for the subsidies through a refundable payroll tax credit against the employer-side Medicare tax. The Internal Revenue Service will provide guidance on how such credits may be advanced. Such guidance will likely follow the refundable payroll retention and family leave credits that applied under the CARES Act.

New Notice Requirements

Plan administrators must notify Eligible Individuals of these changes by sending:

- **Updated COBRA Election Notice.** This informs individuals who become COBRA-eligible on or after April 1, 2021 of the subsidy.
- **New Special Enrollment Period Notice.** This alerts Eligible Individuals who have not elected COBRA continuation coverage as of April 1, 2021, and those who elected COBRA continuation coverage but dropped such coverage prior to April 1, 2021, that they can elect subsidized coverage. Such notices must be provided by May 31, 2021.

- **New Notice of Subsidy Expiration.** If an Eligible Individual's subsidy will expire prior to September 30, 2021 due to the end of their maximum COBRA coverage period, the plan administrator must provide notice 15 to 45 days in advance of the subsidy expiration.

In April 2021, the Department of Labor will issue model notices for these purposes that satisfy additional content requirements.

Next Steps

Employers must act quickly to implement the new COBRA subsidies and special enrollment rights under ARPA. Employers should begin reviewing their records to identify Eligible Individuals and work closely with their COBRA administrators to comply with the new notice requirements.

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