



COBRA Continuation & Dependent Care FAQs for the American Rescue Plan Act (ARPA) of 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA), which provides premium assistance in order help individuals who have involuntarily experienced a job loss to maintain healthcare insurance coverage. ARPA offers a 100% COBRA premium assistance for eligible individuals beginning on April 1, 2021 and ending on September 30, 2021. ARPA also temporarily increases the annual contribution limit for dependent care FSAs for the 2021 tax year.

The following FAQs provide additional information. They represent our current understanding of ARPA's provisions as of March 26, 2021. Additional guidance provided by governmental agencies or other factors may affect our interpretation, so please verify this information with any new guidance before taking action.

COBRA Continuation Coverage Premium Assistance

Q1. What percentage of the COBRA premium does ARPA premium assistance cover?

A1. The premium assistance covers 100% of the COBRA continuation coverage premium for involuntarily terminated employees, including any applicable administrative fees.

Q2. Which coverage is included in ARPA premium assistance?

A2. The premium assistance is available for group health plans—including medical, dental, and vision benefits (excludes qualified small employer health reimbursement arrangements and healthcare FSAs).

Q3. Which individuals are eligible for ARPA premium assistance?

A3. Individuals are eligible for premium assistance if they meet the definition of an “assistance-eligible individual.” Assistance-eligible individuals are defined as qualified beneficiaries—including their eligible spouses and dependents—who are eligible for COBRA continuation coverage because of involuntary termination of employment or a reduction in hours that causes them to lose eligibility for their employer’s health plan, and who have elected COBRA continuation coverage. An employee that voluntarily terminates employment is NOT eligible for the premium assistance.

Q4. When is ARPA premium assistance available?

- A4. Premium assistance is available for the period of coverage beginning on or after April 1, 2021, and ending on September 30, 2021. The premium assistance will end before September 30, 2021, if the assistance-eligible individual becomes eligible for coverage under another employer's group health plan or under Medicare, or reaches the maximum period of COBRA continuation coverage.

Q5. Which employers are eligible for ARPA premium assistance?

- A5. An employer that is required to comply with COBRA pursuant to the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code (IRC), the Public Health Service Act (PHSA), or state mini-COBRA provisions are eligible for premium assistance.

Q6. Is an employer that voluntarily provides COBRA continuation coverage eligible for ARPA premium assistance?

- A6. As written, ARPA does not provide premium assistance to an employer that voluntarily extends COBRA continuation coverage.

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services.

Q7. Who will receive ARPA premium assistance?

- A7. The ARPA premium assistance is paid to the employer or the insurance carrier, depending on the type of benefit offered (i.e., self-insured or insured). The employer or carrier can either offset the premium against Medicare taxes or receive an advance.

Q8. How can the employer request an advance of ARPA premium assistance?

- A8. *Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services.*

Q9. What amount is included in the ARPA premium assistance received by the employer?

- A9. The ARPA premium assistance includes the cost of coverage or premium for COBRA continuation coverage and any applicable administrative fees.

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services regarding the collection and cap of administrative fees, if any.

Q10. What must an employer do to comply with ARPA's premium assistance provisions?

- A10. An employer must either amend its general notice or issue a separate notice to employees who are assistance-eligible individuals within the prescribed time frames. If an individual elects COBRA continuation coverage and is an assistance-eligible individual, the employer must offer 100% premium assistance. (See Q3 for the definition of "assistance-eligible individual" and Q13 regarding notice requirements.) The employer is not required to apply for a subsidy reimbursement but is required to provide the subsidy.

Q11. Are there any discretionary provisions within ARPA's premium assistance provisions?

A11. Yes. An employer is permitted, but not required, to allow assistance-eligible individuals to enroll in group health plan coverage that is different from coverage elected at the time of the qualifying event. The other coverage option must

- § be available to active employees,
- § be of equal or lesser cost than the coverage elected by the assistance-eligible individual, and
- § have been available at the time of the qualifying event.

An employer that elects to expand this option must amend its plan documents and provide a notice to affected employees.

Q12. Is there an extended election period if an individual would have met the assistance-eligible individual requirements, but is currently not enrolled in COBRA continuation coverage because of nonpayment or a failure to elect COBRA continuation coverage?

A12. Yes. ARPA requires employers to provide assistance-eligible individuals a 60-day election period following receipt of either the modified general notice or the separate notice to elect COBRA continuation coverage. Guidelines include the following.

- § Employers must provide the Notice of Extended Election Period by May 31, 2021
- § The notice may be included in the general notice or provided as a separate notice
- § An assistance-eligible individual must elect coverage by July 30, 2021
- § If coverage is elected, the effective enrollment date is the period of coverage beginning on or after April 1, 2021

The 60-day election period does not extend the COBRA continuation coverage period beyond the original maximum period.

Q13. Are there new notice requirements?

A13. Yes. An employer that is required to provide COBRA continuation coverage pursuant to ERISA, the IRC, or the PHSA must provide the following notices.

- § **Notice of Premium Assistance:** Informs assistance-eligible individuals of their eligibility for premium assistance. The notice may be included in the modified general notice or provided as a separate notice. The Departments must provide a model notice by April 12, 2021. Employers must provide the notice to assistance-eligible individuals by May 31, 2021.
- § **Notice of Extended Election Period:** Informs assistance-eligible individuals of a 60-day extended election period to elect COBRA continuation coverage and to receive the premium assistance. The notice may be included in the modified general notice or provided as a separate notice. The Departments must issue a model notice by April 12, 2021. Employers must provide the notice to assistance-eligible individuals by May 31, 2021.

§ **Notice of Other Coverage Option:** If elected by the employer, the notice informs assistance-eligible individuals of their option to change coverage election. Employers must provide the notice within 90 days of an individual's eligibility to change coverage. (See **Q11** regarding the discretionary provision.)

§ **Notice of Expiration:** Informs assistance-eligible individuals that the premium assistance is about to expire. The Departments must provide a model notice by April 26, 2021. Employers must provide the notice to assistance-eligible individuals between August 16 and September 15, 2021. The notice is **not** required if 1) the employee enrolls in another employer's group health plan or becomes eligible for Medicare, or 2) the maximum period of COBRA continuation coverage has been reached.

For employers subject to the state mini-COBRA provisions, the Departments must develop a notice in consultation with the public. The notice is expected to be released in April 2021.

Q14. What information must an amended general notice or separate notice contain?

A14. An amended general notice or separate notice must contain the following information.

- § Forms necessary to establish eligibility for premium assistance
- § Name, address, and telephone number of the plan administrator or any other person maintaining relevant information
- § A description of the extended election period
- § A description of the qualified beneficiary's obligation to notify the employer of other group health plan coverage, including the applicable penalty for failure to notify
- § A description, prominently displayed, of the qualified beneficiary's right to a subsidized premium and any conditions for entitlement to the subsidized premium
- § A description of the qualified beneficiary's option to enroll in other coverage if permitted by the employer (See **Q11** regarding the discretionary provision)

Q15. What notice requirements, if any, does an assistance-eligible individual have?

A15. Assistance-eligible individuals must notify their employer if other employer group health plan coverage is available to them. If an assistance-eligible individual fails to notify the employer, the assistance-eligible individual is subject to a penalty of either \$250 or 110% of the premium assistance provided (whichever is greater). The penalty will be waived for reasonable cause.

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services regarding reasonable cause.

Q16. Must assistance-eligible individuals include the premium assistance in their gross income?

A16. No. The premium assistance is excluded from the individual's gross income.

Q17. Is an assistance-eligible individual eligible for the healthcare tax credit?

A17. No. Assistance-eligible individuals are not eligible for the healthcare tax credit. In addition, assistance-eligible individuals will not be eligible for a premium tax credit, or advance payments of the premium tax credit, for the months in which they are enrolled in COBRA continuation coverage. Assistance-eligible individuals will also not be eligible to receive the healthcare tax credit during the months in which they remain an employee but are eligible for premium assistance because of a reduction in hours.

Q18. What information does an employer need to determine whether an individual is an assistance-eligible individual and to claim the credit or request an advance?

A18. An employer will need to review COBRA continuation reports and internal documents or information to determine if the individual was terminated on a voluntary or involuntary basis. An employee who was terminated involuntarily will be eligible for ARPA premium assistance (See Q3 for the definition of assistance-eligible individual). To claim the credit or to request an advance, the employer needs the COBRA continuation reports, internal documents or information, and invoices regarding the cost of COBRA administration.

Additional guidance is needed from the Departments of Treasury regarding how to claim the credit or request an advance.

Q19. If the employer needs to review COBRA continuation coverage information, what is the recommended applicable coverage period?

A19. Employers should review information for the period beginning on November 1, 2019, to the present. Specifically, an individual who would have been eligible for COBRA continuation coverage effective November 1, 2019, would be eligible for COBRA continuation coverage effective April 1, 2021, had an election been made. Therefore, a review of the period beginning November 1, 2019, to the present would include any individual that would qualify as an assistance-eligible individual and would be able to elect coverage under the expanded election period.

Q20. Will COBRA third-party administrators determine who is an assistance-eligible individual and provide the notices accordingly?

A20. No. COBRA third-party administrators do not receive information regarding an employee's termination status (i.e., whether the employee was terminated voluntarily or involuntarily). So the employer, plan sponsor, or plan administrator must provide the list of individuals that meet the definition of assistance-eligible individual. Once you have determined that an individual is an assistance-eligible individual, you must provide that information to the COBRA third-party administrator to issue required notices. On April 7, 2021, the Departments issued model notices. The [TPA] has begun reviewing these notices and will be ready to begin distribution in May 2021.

Q21. Recent guidance issued by the Department of Labor, in EBSA Notice 2021-01, provides that certain COBRA continuation coverage time frames are disregarded for a one-year period. How does this affect ARPA's expanded election or premium assistance provisions?

A21. The relief provided under EBSA Notice 2021-01 and the Joint Notice does not apply to the 60-day notice or to election periods related to ARPA's COBRA premium assistance.

Dependent Care FSA Contribution Limits

Q22. How does ARPA affect dependent care flexible spending accounts (DCFSAs)?

A22. ARPA permits an employer to amend its plan to increase the dependent care FSA contribution limit from \$5,000 to \$10,500 for married taxpayers who file a joint tax return and from \$2,500 to \$5,250 for married taxpayers filing separately for the 2021 tax year. In addition, the employer may amend its plan retroactively so long as the employer operates its plan according to the terms of the plan amendment.

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services regarding the interaction of the contribution maximums and carryover amounts.