



## Additional IRS Guidance Concerning Premium Assistance for COBRA Benefits

On May 18, 2021, the IRS issued [Notice 2021-31](#), which provides FAQs for further guidance on the American Rescue Plan Act of 2021 (ARPA) that was signed on March 11, 2021. Due to ARPA, qualified beneficiaries are eligible to receive COBRA premium assistance if health coverage was lost due to involuntary termination of employment or a reduction in hours.

ARPA requires that health insurance issuers and group health plans acknowledge Assistance Eligible Individuals (AEI) as having paid the full amount of their COBRA premium for the specified period. The group to whom premiums are payable such as the employer or insurer are entitled to a refundable tax credit against Medicare taxes.

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### New COBRA Subsidy FAQs

IRS [Notice 2021-31](#) includes 86 questions and answers that clarify the application of ARPA COBRA premium assistance including:

#### **Eligibility (Questions 1–20)**

Notice 2021-31 clarifies that an assistance eligible individual (AEI) is an individual who experiences an original qualifying event of reduction in hours or involuntary termination of employment. If the AEI experiences an extension of COBRA continuation coverage period due to disability, a second qualifying event, or state mini-COBRA extension, he will be eligible for the subsidy to the extent that his additional period of coverage falls during the subsidy period. Finally, an AEI is no longer eligible for premium assistance if he is eligible for another group health plan or Medicare. An AEI is considered eligible for another group health plan if enrolled or eligible to enroll during the period April 1 to September 30, 2021.

Operationally, employers are not required to obtain an attestation or certification from the employee's eligibility status to provide premium

assistance. However, employers are required to maintain information used to make a determination, including any attestations or certification, if applicable.

### **Reduction in Hours (Questions 21–23)**

An employee's reduction in hours causes the qualified beneficiary to be eligible for premium assistance, regardless of whether the reduction in hours is voluntary or involuntary. In addition, furlough or strikes generally constitute reduction-in-hour events.

### **Involuntary Termination of Employment (Questions 24–34)**

This section provides examples of what is and what is not considered an involuntary termination. In general, involuntary termination is the severance from employment due to the independent unilateral exercise of authority by an employer where the employee was otherwise willing to continue employment.

### **Coverage Eligible for Premium Assistance (Questions 35–42)**

Premium assistance is available for group health plan coverage that includes medical, vision, or dental-only plans, health reimbursement arrangements (whether integrated or stand-alone), and retiree health plans (if available to active employees that are similarly situated). The premium assistance is not available for qualified small employer health reimbursement arrangements or health flexible spending accounts.

### **Premium Assistance Period (Questions 43–46)**

The premium assistance is available for the period April 1 to September 30, 2021, and the employee is eligible to receive premium assistance beginning the first period of coverage beginning on or after April 1, 2021. However, an employee is not required to elect the first period of coverage beginning on or after April 1, 2021 and may instead choose any prospective period of coverage within the available period (April 1 to September 30, 2021).

### **End of COBRA Premium Assistance Period (Questions 47–50)**

COBRA coverage will continue for the AEI at the end of the subsidy period, but premiums must be timely paid for subsequent periods of coverage.

### **Extended Election Period (Questions 51–55)**

An AEI will be able to have a second opportunity to elect coverage during the extended election period even if she had previously declined certain coverage while electing others (e.g., enrolling in continuation coverage for dental and vision but declining health coverage). Or if an employee had elected self-only continuation coverage, her spouse or dependent child, who would also qualify as an AEI, would also have a second election opportunity.

### **Extensions Under the Emergency Relief Notices (Questions 56–59)**

Individuals must elect or decline retroactive coverage within 60 days of receipt of the election notice. Individuals will not have a second opportunity to elect

coverage. The one-year extended period due to the pandemic continues to apply for premium payment outside the April 1 to September 30, 2021, period.

**Payments to Insurers Under Federal COBRA (Question 60)**

Insurers may be liable for excise taxes if they fail to treat an AEI as having made a full payment of the premium. The employer will be responsible for making a payment to the insurance carrier.

**Comparable State Continuation Coverage (Questions 61–62)**

State continuation programs will not fail to provide comparable coverage under ARPA if the programs provide different maximum periods of coverage, different qualifying events, or different qualified beneficiaries. However, a qualified beneficiary is eligible only if the individual meets the definition under COBRA.

**Calculation of Premium Assistance (Questions 63–70)**

The credit for the premium assistance is equal to the amount of COBRA premium costs not paid by the AEI plus any administrative costs otherwise allowed (generally, 102 percent). The premium credit includes the cost of COBRA plus 2% administrative fee or 50% administrative fee if eligible for disability COBRA. Subsidized coverage only includes the amount that would have been payable by the AEI and qualified beneficiaries; this does not include any additional administrative costs. [Notice 2021-31](#) specifies that an amount subsidized by the employer would not be eligible for a credit.

**Claiming the COBRA Premium Assistance Credit (Questions 71–86)**

Regarding payment of the premium assistance to the plan sponsor, employers are eligible for the credit if subject to COBRA or self-insured and insurers are eligible for the credit for insured plans subject to mini-COBRA.

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**Please Note**

The IRS and the Department of the Treasury are aware of additional issues concerning COBRA premium assistance that have not been addressed. They are continuing to consider the issues and may issue further subsequent guidance. We will provide further information when it is made available.