



American Rescue Plan Act (ARPA) of 2021 COBRA Continuation & Dependent Care FAQs 3.26.21

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA), which provides premium assistance to maintain healthcare insurance coverage to individuals who have involuntarily experienced a job loss. The ARPA offers a 100% COBRA premium assistance for eligible individuals for the period beginning April 1, 2021 and ending September 30, 2021. ARPA also temporarily increases the annual contribution limit for Dependent Care FSAs for the 2021 tax year from \$5,000 to \$10,500.

The following FAQs provide additional information. They represent our current understanding of the ARPA 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 more recent 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 but excludes qualified small employer health reimbursement arrangements (QSEHRAs) and healthcare flexible spending accounts (FSAs).

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services regarding whether other excepted benefits will be excluded (e.g., vision and dental).

Q3. Which individuals are eligible for ARPA premium assistance?

A3. An individual is eligible for premium assistance if the individual meets the definition of an “assistance-eligible individual.” An assistance-eligible individual is defined as a qualified beneficiary—and an eligible spouse and dependent(s)—who is eligible for COBRA continuation coverage due to involuntary termination of employment or a reduction in hours that causes them to lose eligibility for their employer’s health plan, and who has elected COBRA continuation coverage. An employee that voluntarily terminates employment is NOT eligible for the premium assistance.

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

Q4. When is ARPA premium assistance available?

- A4. Premium assistance is available for the period of coverage beginning on or after April 1, 2021 until 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 becomes eligible for Medicare, or
 - the maximum period of COBRA continuation coverage has been reached.

Q5. What 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 make premium assistance available for 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 will be able to 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 ARPA premium assistance the employer will receive?

- 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. The employer is required to 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 is required to 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. If an individual would have met the assistance-eligible individual requirements, but is currently not enrolled in COBRA continuation coverage due to non-payment or failure to elect COBRA continuation coverage, is there an extended election period?

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

- The Notice of Extended Election Period is required by May 31, 2021
- This 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

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services as to whether the April 1, 2021 date applies to the receipt of premium assistance only or extends the COBRA continuation coverage 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.
- **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. The notice must be provided 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. The notice must be provided within 90 days following the 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. The notice must be provided 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 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 to contact the plan administrator or any other person maintaining relevant information;
 - A description of the extended election period;
 - A description of 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 the greater of (i) \$250 or (ii) 110% of the premium assistance provided. 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. Is the premium assistance included in gross income for an assistance-eligible individual?

- 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. An assistance-eligible individual will not be eligible for the healthcare tax credit.

Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services regarding whether the ineligibility applies to the entire tax year or only to the month of coverage.

Q18. What information does an employer need to determine eligibility of an individual as an assistance-eligible individual and for the employer 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 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 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 the COBRA third-party administrator determine who is an assistance-eligible individual and provide the notice(s) accordingly?

A20. No. The COBRA third-party administrator does 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 are required to 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, then you must provide that information to the COBRA third-party administrator to issue required notices. Please note that we are waiting for the Departments to issue model notices and any related guidance. The first model notice should be issued by April 12, 2021. If you want to draft your own notices, please consult with independent counsel and provide the information to us as soon as possible so that we may update our system.

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. *Additional guidance is needed from the Departments of Labor, Treasury, and Health and Human Services regarding the intersection and applicability of the two provisions, if any.*

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 and from \$2,500 to \$5,250 for married taxpayers filing separately for the 2021 tax year. In addition, the employer is permitted to amend its plan retroactively so long as the plan is operated consistent with 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.