

**\*\*\*PLEASE READ\*\*\***

## **Important Updates About COBRA Premium Subsidies**

President Biden recently signed the American Rescue Plan Act of 2021 (the “Act”). The Act is an economic stimulus bill aimed at helping alleviate the impact of the pandemic. For more information, [click here](#).

### **COBRA Subsidy**

The Act includes a 100% subsidy of COBRA coverage for “assistance eligible individuals” (AEIs). The subsidy is available to AEIs from April 1, 2021, through September 30, 2021.

### **Who’s Eligible?**

Anyone – including the employee, their spouse, and eligible dependents – who meets the definition of an assistance eligible individual is eligible for the subsidy. An AEI is anyone who:

- Had a COBRA qualifying event that was the covered employee’s involuntary termination of employment or reduction in hours;
- Is not eligible for other group health coverage (that provides other than excepted benefits), or Medicare, and
- Elects COBRA.

An AEI includes anyone who was offered COBRA but didn’t elect or elected and later lost coverage, if:

- Their 18-month COBRA period extends into the subsidy period that begins April 1, 2021.
- They elect COBRA coverage during the new election period available under the Act.

### **What COBRA Coverage Qualifies?**

The subsidy is available for any group health plan coverage subject to federal COBRA (other than health FSA coverage) or coverage subject to a comparable state continuation law.

### **New Election Rights**

Any AEIs who are not currently on COBRA get a new 60-day election period. The 60-day election period starts on the date they are notified of the COBRA subsidy and the new election period.

The Department of Labor is tasked with issuing model notices to use for this purpose. The model notices must be published on or before April 10, 2021 (30 days after the Act passed). Regardless of the model notice and any guidance that may be released, employers must notify AEIs by May 31, 2021.

### **How Long Does the Subsidy Last?**

The subsidy runs from April 1, 2021, through September 30, 2021. That said, the Act does not extend the COBRA coverage period. In other words, the subsidy is only available for as long as the individual remains eligible for COBRA.

### **Examples**

Because the subsidy is limited to involuntary termination and reduction in hours qualifying events, the COBRA coverage period for subsidy eligibility purposes is limited to 18 months. This is true even if one or more individuals experience a second qualifying event.

Here are a few examples to help show how this works:

#### Example 1. Joe

Joe worked for ACME Corp and was involuntarily terminated on November 15, 2019. By plan rules, Joe's coverage expired on the last day of the month, and COBRA coverage started on December 1, 2019.

Joe elected COBRA coverage for himself and his spouse and has made timely premium payments for each month of coverage since. Joe's COBRA coverage is set to expire on May 31, 2021 (18 months after it started). Joe and his spouse are eligible for the subsidy for April and May 2021. At the end of May, their coverage terminates because their maximum COBRA coverage period has expired.

#### Example 2. Mary

Mary worked for Widgets, Inc. and was terminated involuntarily on April 8, 2020. Mary was offered the right to elect COBRA coverage beginning May 1, 2020, but she declined. Mary is still unemployed and is not eligible for other group health coverage or Medicare.

Mary must be given another opportunity to elect COBRA. If Mary elects, her coverage will begin April 1, 2021. Assuming she continues to meet the eligibility requirements, Mary can continue COBRA coverage through October 2021, but she's only eligible for subsidized coverage from April 2021 through September 2021. If Mary wants to continue coverage for October 2021, she must make the full premium payment.

*Note.* Mary's situation is quite unusual by typical COBRA standards. Under normal circumstances, it is exceedingly rare for a gap in coverage to occur. But under these new rules, AEIs without current coverage have the right to elect COBRA coverage beginning April 1, 2021 – without the requirement to elect and pay for coverage for the preceding months.

### **Updates to COBRA Notices**

The Act requires a new election notice for eligible individuals, along with a new subsidy termination notice. The termination notice must be sent to AEIs no more than 45 days (but no less than 15 days) before their subsidy ends.

Existing COBRA notices must be updated to include subsidy information for individuals who become eligible for COBRA during the subsidy period.

Further COBRA Services will work with counsel to create the new notices and update existing notices once the model notices are published. These new and updated notices will be put in place without requiring any action on your part.

### **How Does the Subsidy Work?**

Employers must pay for the coverage upfront and apply for a refundable credit against the Medicare Hospital Insurance portion of employment taxes.

Additional details regarding how the credits work are available in the attached PDF.

### **Different Coverage**

The Act allows employers to permit AEIs to elect different coverage than they had before their qualifying event (typically, qualified beneficiaries can only elect the same coverage they had before their qualifying event). While employers may choose to offer this option, they are not required to do so.

Under the Act, an employer may allow an AEI to change their coverage option if:

- The premium for the new coverage option does not exceed the premium for coverage in which the individual was enrolled at the time of the qualifying event (that means the AEI can elect less expensive coverage);
- The different coverage is also offered to similarly situated active employees; and
- The different coverage is not coverage that only provides [excepted benefits](#), a qualified small employer health reimbursement arrangement, or a health flexible spending arrangement.

If different coverage is offered, an AEI must elect to change to the different coverage within 90 days after receiving notice of the option.

### **Further Guidance**

These new rules can be confusing – and we don't yet know how the new rules interact with the extended COBRA timeframes available as part of the pandemic relief efforts. Given the complexity, further guidance is expected from the DOL and IRS. We will share this guidance with you when it becomes available.

### **What does this mean for you?**

We will soon forward a list of termination qualifying events dating back to November 2019. You must review the list to determine which qualifying events were involuntary. We will use this information to identify individuals who are eligible for the subsidy and must receive notices.

If you used someone other than Further COBRA Services at any time dating back to November 2019, you must review your records of all termination qualifying events so you can identify those events that were involuntary.

We'll provide more detailed instructions when we send the list of qualifying events to you for review.