

FAQs ON AMERICAN RESCUE PLAN COBRA AND STATE CONTINUATION SUBSIDIES

AMERICAN RESCUE PLAN DEFINITION OF ASSISTANCE ELIGIBLE INDIVIDUAL:

1. Individuals eligible for COBRA due to involuntary termination or reduction in hours that occurs between April 1 and September 30, 2021.
2. Individuals who were previously offered COBRA due to involuntary termination or reduction in hours, declined COBRA, and would still be in their COBRA continuation period.
3. Individuals who dropped or lost their COBRA coverage prior to April 1.

In addition to the covered employee, also eligible are the covered employee's federally recognized spouse and the covered employee's dependent child(ren) as defined by the terms of the group health plan.

Question	Federal COBRA <ul style="list-style-type: none"> · LG ASO and Insured · SG ASO and Insured (more than 20 employees) · State/Local Governments · Multiemployer plans (union, Taft Hartley groups) 	State Continuation <ul style="list-style-type: none"> · SG Insured (fewer than 20 employees) 	Either COBRA or state continuation <ul style="list-style-type: none"> · Association and MEWA groups
Is subsidized coverage available if I meet the first definition of an Assistance Eligible Individual? (Individuals eligible for COBRA due to involuntary termination or reduction in hours that occurs between April 1 and September 30, 2021).	Yes.	Yes, if state continuation law permits it.	If the Association or MEWA is the sponsor of the group health plan, then COBRA will apply to the entire arrangement. If the Association or MEWA is NOT the plan sponsor, then look to the size of the underlying employer group to determine whether COBRA or state continuation applies to each individual group.

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<p>Which law applies for the <u>second</u> and <u>third</u> definitions of Assistance Eligible Individuals?</p> <p>(2. Individuals who were previously offered COBRA due to involuntary termination or reduction in hours, declined COBRA, and would still be in their COBRA continuation period; and,</p> <p>3. Individuals who dropped or lost their COBRA coverage prior to April 1.)</p>	Federal COBRA applies.	State continuation law probably does not apply, but it depends on the particular state law.	<p>If the Association or MEWA is the sponsor of the group health plan, then COBRA will apply to the entire arrangement.</p> <p>If the Association or MEWA is NOT the plan sponsor, then look to the size of the underlying employer group to determine whether COBRA or state continuation applies.</p>
<p>Are the subsidies available for vision and dental benefits?</p>	Yes, if the member is enrolled in dental or vision at the time of involuntary termination of reduction in hours.	No, unless the state continuation law applies to dental or vision.	<p>First determine whether federal or state law applies (see rows above).</p> <p>If the Association or MEWA falls under COBRA, then yes, so long as the member is enrolled in dental or vision at the time of involuntary termination.</p> <p>If the Association or MEWA falls under state continuation, it depends on whether the particular state continuation law applies to dental or vision.</p>
<p>Must the subsidy and other ARP notices be issued?</p>	Yes.	Yes.	<p>Yes, if the Association or MEWA falls under COBRA.</p> <p>If the Association or MEWA falls under state continuation, then it depends on what state law says.</p>
<p>Who issues ARP subsidy notices?</p>	The employer or its COBRA administrator must furnish the new ARP subsidy notices.	If state continuation law applies, then the employer is to furnish the new ARP subsidy notices.	<p>First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row).</p> <p>If COBRA applies, then the employer or its COBRA administrator is to furnish the new ARP subsidy notices.</p> <p>If state continuation law applies, then the employer is to furnish the new ARP subsidy notices.</p>

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<p>Can an additional fee be charged to defray the cost of issuing the additional subsidy notices?</p> <p>(Note: The usual 2% COBRA administrative fee will be fully covered by the amount of the subsidy.)</p>	<p>No additional administrative fees may be charged to <u>employees</u>. However, an additional <u>employer</u> fee may apply if your COBRA administration contract does not contemplate or cover the costs for preparing/issuing these subsidy notices. Check with your COBRA administrator.</p>	<p>If state continuation law applies, then no additional administrative fees may be charged to employees.</p>	<p>First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row).</p> <p>For Associations or MEWAs subject to COBRA, no additional administrative fees may be charged to employees. However, an additional employer fee may apply if your COBRA administration contract does not contemplate or cover the costs for preparing/issuing these subsidy notices. Check with your COBRA administrator.</p> <p>If the Association or MEWA falls under state continuation, then no additional administrative fees may be charged to employees.</p>

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<p>Which model subsidy notice should be used?</p>	<p>The Department of Labor released two model notices that employers or COBRA administrators can use depending on the category of Assistance Eligible Individual:</p> <ul style="list-style-type: none"> · General Notice and Election Notice is to be sent to individuals who fall into the first category of Assistance Eligible Individual. · Notice for Extended Election Period is to be sent to individuals falling into the second or third categories of Assistance Eligible Individuals. This requirement does not include those individuals whose maximum COBRA continuation coverage period, if COBRA had been elected or not discontinued, would have ended before April 1, 2021 (generally, those with applicable qualifying events before October 1, 2019). <p>This notice must be provided before May 31, 2021.</p> <p><i>This summary must be included with both notices: Summary of the COBRA Premium Assistance Provisions.</i></p>	<p>The Alternative Notice is to be used by employers or insurers (depending on state law) to give notice to Assistance Eligible Individuals of employers subject to state continuation laws.</p>	<p>First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row).</p> <p>The Department of Labor released two model notices that employers or COBRA administrators can use depending on the category of Assistance Eligible Individual:</p> <ul style="list-style-type: none"> · General Notice and Election Notice is to be sent to individuals who fall into the first category of Assistance Eligible Individual. · Notice for Extended Election Period is to be sent to individuals falling into the second or third categories of Assistance Eligible Individuals. This requirement does not include those individuals whose maximum COBRA continuation coverage period, if COBRA had been elected or not discontinued, would have ended before April 1, 2021 (generally, those with applicable qualifying events before October 1, 2019). <p>This notice must be provided before May 31, 2021.</p> <p><i>This summary must be included with both notices: Summary of the COBRA Premium Assistance Provisions.</i></p> <p>If the Association or MEWA falls under state continuation, then check with local counsel.</p>
<p>Which model subsidy notice must be used to inform continuation enrollees that their subsidy is ending?</p>	<p>Notice of Expiration of Premium Assistance</p>	<p>Notice of Expiration of Premium Assistance.</p>	<p>Notice of Expiration of Premium Assistance</p>

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Do individuals directly receive the subsidy?	No. Assistance Eligible Individuals do not have to pay any of the subsidized COBRA premium for the period of coverage from April 1, 2021 through September 30, 2021. The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance credit.	No. Assistance Eligible Individuals do not have to pay any of the subsidized premium for the period of coverage from April 1, 2021 through September 30, 2021. The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance credit.	No. Assistance Eligible Individuals do not have to pay any of the subsidized COBRA (or state continuation) premium for the period of coverage from April 1, 2021 through September 30, 2021. The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance credit.
Who is responsible for premium payments for continuation coverage after the individual elects the subsidized continuation coverage?	The employer will pay the premium.	If state continuation law applies, the insurer will likely be responsible. But depending on state law, the state may require the employer to pay the premium instead.	First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row). If COBRA applies, then the plan sponsor will pay the premium. If state continuation applies, then the insurer or individual employer (depending on the state law) will pay the premium.
Which entity recoups the premium payment?	The employer will recoup the premium payment from the federal government. The IRS recently issued guidance on the process for employers to do that – either via quarterly employment tax filings, or as an advance.	If state continuation law applies, the insurer recoups (method TBD by IRS). Or the state may determine that the employer recoups. The IRS recently issued guidance on the process for employers to do that – either via quarterly employment tax filings, or as an advance.	First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row). If COBRA applies, then the plan sponsor will recoup the premium (method TBD by the IRS). If state continuation applies, then the individual employer will recoup the premium. The IRS recently issued guidance on the process for employers to do that – either via quarterly employment tax filings, or as an advance.

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How does someone lose subsidized continuation coverage?	An individual loses eligibility to receive the subsidy when their maximum COBRA (or state) continuation period expires, or when they become eligible for the following types of coverage: <ul style="list-style-type: none"> · Any other group health plan coverage (unless comprised of excepted benefits) · A Flexible Spending Account (FSA) · A Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) · Medicare 	An individual loses eligibility to receive the subsidy when their maximum COBRA (or state) continuation period expires, or when they become eligible for the following types of coverage: <ul style="list-style-type: none"> · Any other group health plan coverage (unless comprised of excepted benefits) · A Flexible Spending Account (FSA) · A Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) · Medicare 	An individual loses eligibility to receive the subsidy when their maximum COBRA (or state) continuation period expires, or when they become eligible for the following types of coverage: <ul style="list-style-type: none"> · Any other group health plan coverage (unless comprised of excepted benefits) · A Flexible Spending Account (FSA) · A Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) · Medicare
Are Assistance Eligible Individuals required to notify their COBRA administrator if they lose eligibility for subsidized coverage?	Yes. If they do not provide timely notice they may have to pay a tax penalty equal to the greater of: (1) \$250, or; (2) 110 percent of the subsidy provided, unless there is reasonable cause for the notification failure.	If state continuation law applies, then yes, continuation enrollees must notify their COBRA administrator if they lose eligibility for subsidized coverage. If they do not provide timely notice they may have to pay a tax penalty equal to the greater of: (1) \$250, or; (2) 110 percent of the subsidy provided.	Yes. If they do not provide timely notice they may have to pay a tax penalty equal to the greater of: (1) \$250, or; (2) 110 percent of the subsidy provided, unless there is reasonable cause for the notification failure.
Will Empire require premium payment to keep coverage in force if the employer or plan has not yet recouped premium for Assistance Eligible Individuals?	Yes, Empire will require premium payment even if the employer has not yet recouped payments or advance payments.	If state continuation applies, then either the insurer or the employer may be responsible to pay premiums for the subsidized individuals. States may issue guidance on this point.	First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row). Yes, for plans subject to federal COBRA Empire will require premium payment even if the employer has not yet recouped payments or advance payments. If subject to state continuation, then either the insurer or the employer may be responsible to pay premiums for the subsidized individuals. States may issue guidance on this point.
Can an employer extend the length of time that a member can be enrolled in continuation coverage?	No.	No.	No.

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What are the coverage options after the subsidy period ends?	<p>If the individual is still within their COBRA continuation period, they may choose to pay for COBRA themselves.</p> <p>It is possible that CMS may establish a special enrollment period for the individual to enroll in individual market coverage. CMS hasn't made this decision yet.</p>	<p>This depends on the state continuation law. States may issue guidance on this topic.</p>	<p>First determine whether the Association or MEWA is, or is not, the plan sponsor to determine whether federal or state law applies (see first row).</p> <p>If COBRA applies, then if the individual is still within their COBRA continuation period, they may choose to pay for COBRA themselves. It is possible that CMS may establish a special enrollment period for the individual to enroll in individual market coverage. CMS hasn't made this decision yet.</p> <p>If state continuation applies, then this depends on the state continuation law. States may issue guidance on this topic.</p>
Can I reenroll in subsidized coverage if I terminate it?	<p>No. Voluntary termination disqualifies an enrollee from being an Assistance Eligible Individual.</p>	<p>No. Voluntary termination disqualifies an enrollee from being an Assistance Eligible Individual.</p>	<p>No. Voluntary termination disqualifies an enrollee from being an Assistance Eligible Individual.</p>
is the amount of the subsidy income to the individual who elects to take the subsidy?	<p>No.</p>	<p>No.</p>	<p>No.</p>

Where can I find additional federal guidance and information?

The U.S. Department of Labor posted the following:

COBRA Premium Assistance under the American Rescue Plan Act of 2021

- **COBRA Premium Subsidy dedicated page**, available at <https://www.dol.gov/COBRA-subsidy>
- **FAQs**, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>
- **Model Notices:**
 - **General Notice and Election Notice**, available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-general-and-election-notice.pdf> — is to be furnished to individuals who had qualifying events from April 1 through September 30, 2021
 - **Notice in Connection with Extended Election Period**, available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-extended-election-periods-notice.pdf> — is to be used to inform individuals currently enrolled in COBRA continuation coverage, due to a reduction in hours or involuntary termination, as well as those who would currently be assistance-eligible individuals had they elected and/or maintained COBRA continuation coverage;
 - **Alternative Notice**, available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/model-alternative-election-notice.pdf> — is to be used by insurers (or employers, depending on state law) to give notice to assistance eligible individuals of employers subject to state continuation requirements
 - **Notice of Expiration of Premium Assistance**, available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/notice-of-premium-assistance-expiration-premium.pdf> — must be given to assistance eligible individuals 15-45 days before their COBRA subsidy expires.
 - **Summary of the COBRA Premium Assistance Provisions**, available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.pdf> — this must be furnished along with the General Notice/Election Notice and the Notice in Connection with Extended Election Period. It also contains a form that individuals who think they are assistance eligible can complete to claim the subsidy.

IRS Notice 2021-24 regarding employer recoupment of COBRA premiums through quarterly employment tax filings

- <https://www.irs.gov/pub/irs-drop/n-21-24.pdf>