

Benefits BULLETIN



IRS Releases Guidance on COBRA Premium Assistance under ARPA

● May 19, 2021 ●

On May 18, the Internal Revenue Service (IRS) released [Notice 2021-31](#) (the Notice), providing much-anticipated guidance regarding the COBRA premium assistance and tax credit provisions of the American Rescue Plan Act of 2021 (ARPA). Under ARPA, group health plans subject to COBRA – including state continuation coverage laws – are required to provide free continuation coverage and expanded enrollment rights to those who qualify as assistance eligible individuals. To offset these costs, tax credits will be made available.

Though the effective date of ARPA's COBRA provisions was April 1, 2021, the Notice is the first detailed instruction that addresses many of the practical issues encountered by employers. The Notice covers 86 questions and answers on various aspects of the law. Some highlights of the Notice include:

Eligibility for Premium Assistance

- An assistance eligible individual is any individual who is a COBRA qualified beneficiary due to a *reduction in hours or involuntary termination of employment* **and** is eligible for COBRA for *some or all of the period beginning April 1 through September 30, 2021*. This includes spouses and dependents of employees.
- Employers may, but are *not required* to, have *individuals self-certify or attest* that they are eligible for COBRA premium assistance, and may also have individuals self-certify or attest as to their eligibility for other disqualifying coverage.
- While self-certification is not required, employers are *required to retain records* that establish an individual's eligibility for premium assistance in order to claim the tax credit.
- Premium assistance is available to individuals who have elected and remained on

COBRA for an extended period due to a disability determination, a second qualifying event, or an extension under a state continuation coverage law so long as the *original qualifying event was a reduction in hours or involuntary termination* of employment.

Involuntary Terminations

- A termination of employment is considered involuntary where the termination occurs as a result of the *unilateral authority of the employer*.
- Involuntary terminations *include* terminations made while an individual is absent from work due to *illness or disability*, resignations made as a result of a material change in the *geographic location of employment*, and terminations *for cause, unless due to gross misconduct*.
- Involuntary terminations *generally do not include retirement*, resignations due to an employee's concerns about *workplace safety*, or resignations due to an employee's child's inability to return to *school or childcare due to a COVID-19 closure*.

Applicable Coverage

- Premium assistance is available for COBRA continuation under *any group health plan with the exception of a Health Flexible Spending Arrangement (FSA)* offered under a Sec. 125 Cafeteria Plan.
- Group health plans include *medical, dental, and vision plans, as well as Health Reimbursement Arrangements (HRAs), Individual Coverage HRAs, and retiree coverage* that is offered under the same health plan as active-employee coverage.
- Where an eligible individual elects continuation coverage but the *employer no longer offers the health plan that the individual was previously covered by*, the employer must offer an opportunity to enroll in similar coverage; this other coverage is eligible for premium assistance regardless of the premium cost for that coverage.

Extended Election Period

- Spouses and dependent children are *also eligible* for the COBRA premium assistance under the ARPA extended election period, even when an *assistance*

eligible employee already elected self-only COBRA continuation coverage.

- The ARPA extended election period *applies only to plans subject to Federal COBRA* and is not available to an individual if the COBRA coverage is provided under a state continuation program.

Tax Credits

- The amount of the credit is equal to the *premium amount* charged for COBRA coverage for other similarly situated employees, and includes the *additional 2% for administrative costs*.
- Where the *employer subsidizes the COBRA premium costs for similarly situated employees who are not assistance eligible individuals*, the amount of the credit does not include any portion of the subsidy that the employer would otherwise have provided absent ARPA's requirement.
- Where COBRA coverage is provided under a *state continuation* coverage program, the credit applies only to those individuals who would be considered qualified beneficiaries under federal COBRA.
- Employer-sponsors of *insured and self-insured plans* that are subject to Federal COBRA, and employer-sponsors of self-insured plans not subject to Federal COBRA, are eligible to claim the tax credit.
- Where a plan is *insured* and not subject to Federal COBRA, the insurer is eligible to claim the tax credit.

The COBRA provisions under ARPA will remain in effect until September 30, 2021. Employer-sponsors should therefore undertake a careful review of their policies and procedures to ensure compliance according to the Notice.

Additionally, employers should continue to be mindful of separate COBRA obligations imposed by the Department of Labor in response to COVID-19, which extend certain election and premium payment deadlines beyond the September 30 expiration of ARPA's provisions. In light of these various (temporary) COBRA modifications that employers face, ongoing coordination with COBRA third-party administrators, insurance carriers, and stop-loss carriers will be critical.

ADDITIONAL RESOURCES

[IRS Notice 2021-31](#)

[March 12 Benefits Bulletin, The American Rescue Plan Act](#)

[March 1 Benefits Bulletin, Modifications Announced to COVID-19 Relief for Group Health Plan Deadline Extensions](#)

[April 21 Webinar Recording, The American Rescue Plan Act: What We Know Now and What's Coming Next](#)