



# Frequently Asked Questions

## A look at the COBRA Subsidy

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## Eligibility

### What benefits are eligible?

There is a subsidy for 100% of premiums (including 2% administration fees) for the cost of Group Health Plans, including: Medical, Dental, Vision, and most HRAs. The subsidy is available for both fully insured and self-insured plans. Flexible Spending Accounts are not eligible for subsidy.

### What is the subsidy period? When will it end?

The subsidy period begins on April 1, 2021 through September 30, 2021. An individual will no longer be eligible for a subsidy if the individual becomes eligible for other group coverage or when the original COBRA coverage period is set to expire.

### Who is eligible for a subsidy?

A subsidy must be offered to all employees and dependents who experienced a loss of coverage due to involuntary termination or reduction of hours and are within their eligible COBRA period. Individuals who voluntarily terminated employment, who are eligible for Medicare or eligible for any other Group Health Plan are not eligible.

### Do plan sponsors need to offer a subsidy for terminations due to gross misconduct?

No. If an employer would not have otherwise offered COBRA, the Plan Sponsor is not required to offer the subsidy.

### Is continuous coverage required?

No. Anyone who meets the eligibility requirements and is within their eligible COBRA period (generally 18-months) is eligible for a second election period and may receive a subsidy. This includes:

- Individuals that enrolled in COBRA and paid premiums monthly.
- Individuals that enrolled in COBRA but either did not pay premiums or have since dropped COBRA coverage.
- Individuals that never elected COBRA.

### Are individuals eligible for subsidies if they only have dental or vision coverage (not medical)?

Subsidies are available for Medical, Dental and Vision coverage.

### Are there any income guidelines or restrictions for the COBRA subsidy?

No. Eligibility is not based on income.

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#### **Can people on other health insurance plans cancel their coverage and move to the subsidy?**

Individuals should wait until they receive an eligibility notice before they make any coverage changes. Note, individuals that are eligible for another group health plan will not be eligible for a subsidy.

#### **Does the subsidy apply to groups under 20 lives that are subject to State Continuation requirements?**

The subsidy is expected to be available for any mandated coverage, including state coverage.

#### **If my company had to offer COBRA, but the headcount is now too low to offer COBRA, do we have to offer the subsidy for those that would have been eligible?**

Generally, subsidies apply to employers with 20 or more employees who are (subject to federal COBRA) or who sponsor a self-funded health plan. Mini COBRA rules will apply for states who offer coverage to less than 20 employees based on state-level guidance. You may want to seek legal advice to confirm your specific situation.

#### **If a person is already receiving a subsidy from an employer, does it preclude them from receiving the COBRA government subsidy?**

The COBRA government subsidies are based on the amount the AEI is responsible for. If coverage is already being subsidized, it would not also receive a government subsidy. Employers should consider this when arranging future severance packages.

#### **Will all terminations until September receive the 100% subsidy?**

All involuntary terminations and any loss of coverage resulting from a reduction of hours should be reported as Assistance Eligible Individual (AEIs) and may be eligible for a subsidy. Additionally, qualified beneficiaries will have a form in which they can request treatment as an AEI.

#### **Does the subsidy cover family members too?**

The subsidy is based on the covered individuals at the time of the originally qualifying event. If the individuals were covered, they will be potentially eligible and covered through the subsidy.

#### **If an employee is eligible for Medicare, are they eligible for the COBRA subsidy?**

No.

#### **Is there a subsidy for a spouse of an employee who was recently divorced?**

No, divorce is a separate qualifying event reason and would not be defined as "involuntary termination".

#### **How many hours qualify for a reduction of hours?**

If the reduction of hours results in a loss of coverage, individuals will be eligible for the subsidy.

#### **If an individual has access to coverage through a spouse, but there is an additional charge, can they enroll through the subsidy?**

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Current guidance indicates that if an individual has access to another group plan, they would not be eligible for a subsidy.

#### **If an individual was given notice of a layoff but resigns prior, would that be considered a voluntary or involuntary term regarding the subsidy?**

There has not been clear guidance on the definition of voluntary vs. involuntary termination. Plan sponsors must use their best judgment when identifying assistance eligible individuals. If eligibility is in question, Plan Sponsors may want to take a cautious position and include the individual in the list of AEs.

#### **If someone is eligible for Medicare, will they be eligible for a subsidy for dental and vision coverage?**

At this time, individuals who are eligible for Medicare do not appear to be eligible for any subsidy.

#### **Are retirement incentive employees eligible to receive a subsidy under ARPA?**

Retirement is generally considered voluntary termination and the individual would not be eligible for a subsidy. However, additional guidance may be needed to clarify if an incentive could be viewed as involuntary termination.

#### **I am currently enrolled through the Individual Marketplace, but I am potentially an AEI. Can I switch to COBRA continuation coverage with premium assistance?**

Yes. Individuals can use the election period to change from the marketplace to COBRA continuation coverage.

#### **If someone was eligible back to 11/1/2019 and did not elect coverage when first eligible, can they go all the way back to 11/1/2019 for an effective date?**

An individual will need to be in their original election period (including the Pandemic Relief Periods) in order to have continuous coverage. Pandemic Relief Periods end the lesser of 12 months from the original effective date or 60 days following the end of the Pandemic period. Therefore, an individual effective on 11/1/2019, would no longer be eligible for continuous coverage.

#### **If an individual did not have health care before, are they eligible for the subsidy?**

Eligibility for the subsidy is based on the coverage that was in place at the time of the original qualifying event. If health coverage was not included, they are not able to elect it now.

#### **If an employee is on COBRA due to a leave, would they be eligible for a subsidy?**

A leave would generally fall under the reduction of hours provision and the individual would likely be eligible for the subsidy.



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## Notifications and Election Periods

### What types of notifications are required?

- **Model General Notice and COBRA Continuation Coverage Election Notice**
  - For use by group health plans for qualified beneficiaries who have qualifying events occurring from April 1, 2021 through September 30, 2021
  - A summary of the subsidy provisions is to be attached and includes a form for individuals to request to be treated as an AEI OR give notice of eligibility for other coverage.
- **Model Notice in Connection with Extended Election Period**
  - For use by group health plans for qualified beneficiaries currently enrolled in COBRA continuation coverage, due to a reduction in hours or involuntary termination (Assistance Eligible Individuals), as well as those who would currently be Assistance Eligible Individuals if they had elected and/or maintained COBRA continuation coverage
- **Model Notice of Expiration of Premium Assistance**
  - For use by group health plans to Assistance Eligible Individuals 15-45 days before their premium assistance expires

### Where can I access Model notices?

Model notices were published on April 7, 2021 and are available on the Department of Labor website at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

### When do Assistance Eligible Individuals (AEIs) need to be notified?

AEIs must be notified no later than May 31, 2021 of their right to coverage and will have 60 days to elect coverage.

### What is the second election period?

All Assistance Eligible Individuals (AEIs) will have a second election period in which they can elect coverage under the subsidy even if they did not originally enroll in coverage.

### Can individuals make a change to their coverage? Does that affect their subsidy?

If permitted by the plan sponsor, individuals can change their coverage as long as it doesn't exceed the cost of coverage set at the time of the original qualifying event.

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#### **How long do AEs have to elect a subsidy?**

AEs will have 60 days from notification to elect coverage under the subsidy. Coverage can be reinstated retroactively to April 1, 2021.

#### **Will existing COBRA participants need to elect coverage under the subsidy?**

AEs who are not currently enrolled in COBRA will be required to elect coverage through a Second Election Period. All AEs regardless of their current coverage status will need to formally attest to eligibility for the subsidy prior to the subsidy being applied.

#### **Is eligibility for the subsidy based on the honor system? How is anyone going to check if someone has access to other coverage?**

Individuals will be asked to attest to their eligibility. There will be a fine of \$250 or 110% of premiums for those who do not report other coverage and receive a subsidy.

#### **Do we need to notify qualified beneficiaries that are not AEs?**

No. Notifications are only required for AEs.

#### **If an individual is receiving a subsidy and later becomes eligible for other coverage, what do they need to do?**

COBRA participants would need to notify BRI of a termination of COBRA or a change in eligibility status.

## Premiums and Billing

#### **Do individuals need to pay premiums for periods prior to the effective date of the subsidy?**

If the individual intended to have continuous coverage, they would be responsible for any premiums incurred prior to April 1, 2021. If an individual intends for coverage to begin on April 1, 2021, no premiums will be due.

#### **Who receives the subsidy? Does anyone need to pay premiums?**

Plan sponsors are responsible for paying premiums to the carrier and will receive a tax credit against their quarterly payroll taxes. The specific process to claim these credits has not yet been released. However, when subsidies were offered under the Affordable Care Act, IRS Form 941 was made available for plan sponsors to claim this credit.



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#### **Should current COBRA participants continue to pay premiums?**

Yes. Until an individual is notified that they are eligible for a COBRA subsidy, active COBRA participants should pay premiums.

#### **What happens if a COBRA participant pays premiums and it is later determined that they are eligible for a subsidy?**

Active COBRA participants who have paid premiums will either receive a credit against future premium payments or receive a refund if no future premiums are due.

#### **How is billing and premium remittance impacted?**

Plan sponsors may be responsible for the 2% administration fees to Third Party Administrators. Since premiums are likely to be reduced during the subsidy period, plan sponsors may see a negative remittance amount or invoiced administrative fees.

#### **What is BRI charging for the administration of the change notices?**

COBRA subsidy notices and pandemic end periods are treated as Special Notices and will be charged at a rate of \$5 per notice (unless otherwise listed in service agreements).

#### **If an individual elects coverage effective April 1, 2021 under the subsidy, is the employer responsible for paying premiums back to the qualifying event?**

No. Due to the second election period allowed for the subsidy, there may be a gap in coverage and coverage would begin on April 1, 2021. Employers will not need to pay premiums for periods prior to the subsidy period.

#### **How do plan sponsors receive the tax credit for the subsidy?**

While the specific details and forms for claiming the subsidy have yet been provided, employers will be able to claim a tax credit against their quarterly payroll taxes.

#### **If a client is self-insured can they receive a reimbursement for the full amount of claims or does it have to be based on COBRA rates?**

The subsidy is based on the AEs payment responsibility, not claims or the plan sponsors responsibilities under the plan.

#### **If someone was involuntarily terminated and provides a severance agreement that covered the cost of premiums for 3 months, would they be eligible for the government subsidy in the 4<sup>th</sup> month?**

Yes. The government subsidy would be available when the employer subsidy ended.



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#### **What happens if we don't have enough payroll to receive the subsidy? Is there any other way of getting the credit other than payroll?**

You can visit [IRS.gov](https://www.irs.gov) for additional tax information: ARPA adds new Code Section 6432 that essentially reimburses the employer or the group health plan that furnishes the COBRA premium assistance by providing the employer or group health plan with a refundable tax credit that is claimed on the entity's quarterly Form 941 payroll tax return.

## Administrative Procedures and Actions

#### **What actions do plan sponsors need to take regarding the COBRA subsidies?**

Beginning April 23, Plan Sponsors will be able to download the Participant Lookback Report from the BRI COBRA portal and identify the Assistance Eligible Individuals on the report.

#### **When do employers need to provide the completed Participant Lookback Report?**

Employers should return the complete Participant Lookback Report by May 10 to ensure timely processing of the required notifications.

#### **How can we make sure employees correctly elect the COBRA subsidy?**

The election notices sent to AEIs will provide an attestation form in which individuals will confirm they meet the eligibility requirements for the subsidy.

#### **How much will BRI charge to send notifications?**

Notifications for the lookback period will be charged at a rate of \$5.00 per notice (unless otherwise identified on a client's service agreement). Ongoing notifications for newly eligible individuals will be included in ongoing administration fees were.

#### **What steps does an employer need to take that is currently sending in weekly file feeds?**

Due to the limited period of time of the subsidy, ongoing file feeds are not expected to be modified at this time. Specific procedures are recommendations are under review. Additional guidance will be forthcoming.



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## Other Special Considerations or Issues

### **Is the COBRA subsidy personally taxable?**

The COBRA subsidy is not taxable income to the qualified beneficiary.

### **How does the Health Care Tax Credit (HCTC) work with the subsidy?**

An individual cannot claim the HCTC while receiving the COBRA subsidy.

### **What is the penalty for non-compliance?**

Employers who violate COBRA rules (including the requirement to offer a COBRA election and subsidies under the ARPA) could be subject to penalties equal to \$100 per qualified beneficiary or \$200 per family for every day that the employer violates COBRA rules. If individuals believe that they have not received an offer of COBRA due to them, then they are advised to contact the Department of Labor.

### **What is the penalty for an individual that receives a subsidy when they were not eligible?**

There will be a fine of \$250 or 110% of premiums for those who do not report other coverage and receive a subsidy.

### **Where can I access additional information regarding the COBRA subsidies and Model Notices?**

The Department of Labor released a list of frequently asked questions and model notices on April 7, 2021. These can be accessed at:

<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>