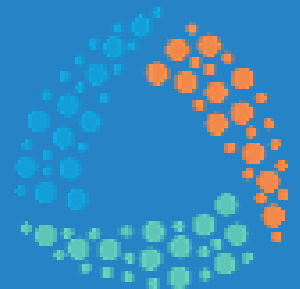




American Rescue Plan Act of 2021

And how it impacts COBRA Administration





And then came ARPA...

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was signed into law. ARPA establishes a 100% COBRA premium subsidy for eligible individuals during the period beginning on April 1, 2021 and ending on September 30, 2021. Although the ARPA COBRA subsidy is similar in many aspects to the 2009 ARRA subsidy, it is also very different. Much needed guidance is needed from the DOL/IRS to help answer many unknown questions. Consequently, OCA – like many in the industry – continue to digest the rules – looking to the 2009 ARRA guidance to help find clarity as we anticipate guidance from the IRS in the near future.



Today's agenda is to answer all the ARPA questions that we can!



ARPA COBRA Subsidy FAQs

Who is eligible for the COBRA premium subsidy?

Eligible individuals are those who had an involuntary termination or had a reduction in hours and are not eligible for other group health plan coverage (other than excepted benefits such as dental or vision) or Medicare. There is \$250 penalty imposed on the QB who fails to notify the plan of eligibility for other coverage.

Can an eligible individual who either did not previously elect COBRA or elected but let their coverage lapse still qualify for the COBRA subsidy?

Yes. The subsidy is available to individuals who did not elect COBRA coverage during their original election period, as well as those who initially elected COBRA but let their coverage lapse. These individuals must be offered an additional window of at least 60 days to **prospectively** elect COBRA coverage effective April 1, 2021 (**for the remainder of the 18-month cobra period, not in addition**). The extended special election does NOT apply to state continuation by virtue of the statute. It will only affect state continuation folks going forward.



ARPA COBRA Subsidy FAQs

For purposes of ARPA, how is “involuntary termination and reduction of hours” defined?

An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer’s failure to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services.

Does involuntary termination include an employer’s action to end an individual’s employment while the individual is absent from work due to illness or disability?

Yes. Involuntary termination occurs when the employer takes action to end the individual’s employment status (but mere absence from work due to illness or disability before the employer has taken action to end the individual’s employment status is not an involuntary termination).



ARPA COBRA Subsidy FAQs

What group health plans are subject to the premium subsidy?

Eligible individuals can receive 100% subsidy for the “COBRA premium” for all group health plans other than Health FSAs. The COBRA premium includes medical, dental, vision, HRAs, and the standard 2% COBRA administration fee.

Does the ARPA subsidy apply to State Continuation?

Yes, the premium subsidy is applicable in states that have a state continuation law. In most states, the premium subsidy assistance would be applicable to only the fully insured medical plan.



ARPA COBRA Subsidy FAQs

How is the government paying the ARPA Subsidy?

COBRA premiums are “advanced” by the employer (or in some cases the insurance carrier) who is then reimbursed by the Federal government through a refundable FICA tax credit. The credit will include the entire COBRA premium, including the 2% administrative fee. Further guidance from the DOL and IRS would be helpful.

Covering entity (referred to in the statute as the entity to whom the premium is payable)?

- If Multi-employer plan—the Plan itself.
- If the plan is subject to Federal COBRA or is self-funded plan subject to state continuation—the employer maintaining the plan;
- If neither of the above apply, the insurer will receive the tax credit
 - This will be fully insured statute continuation coverage

ARPA COBRA Subsidy FAQs



Does the subsidy apply to the terminated employee only or also their dependents?

Yes. The subsidy will apply to any qualified beneficiary (QB) who loses coverage as a result of the covered employee's involuntary termination of employment or reduction in hours and who otherwise meets the eligibility criteria is eligible for the subsidy. Consequently, if a covered employee does not elect COBRA but the QB spouse does, the spouse would be eligible for the subsidy (assuming the spouse is not eligible for other group health coverage or Medicare).

What if the involuntarily terminated employee is now eligible for other group health plan coverage. Can their dependent still qualify for the subsidy?

It is possible. Each situation would need to be examined to determine subsidy eligibility. The subsidy eligibility is tied to each QB who loses coverage due to the covered employee's involuntary termination or reduction in hours. In most cases, if the termed employee is eligible/enrolled in other coverage, the QB spouse/children are typically eligible but that will not ALWAYS be the case. Also, if the employee previously elected self only COBRA, the QB spouse/children that didn't elect COBRA will now appear get a second bite at the apple too, if they are not eligible for other coverage.



ARPA COBRA Subsidy FAQs

Will additional notices need to be sent to Qualified Beneficiaries and COBRA participants regarding the subsidy?

Yes! ARPA calls for the Department of Labor to issue model notices within 30 days of the enactment (Est. 4/10/21). OCA will wait for the DOL to issue the model notice before mailing out the Special Election Notice to eligible individuals.

When does the special election notice need to be issued?

ARPA states that the Special Election Notice must go out within 60 days of April 1st. Eligible individuals will then have 60 days after the date on which the special notice is provided to elect, with the subsidy going back to April 1st. An additional "Subsidy Expiration" model notice will be issued (within 45 days of ARPA enactment date). A fine will be imposed for failure to provide required notices.

Time for OCA's Operational Update... oca125.com/subsidyfaqs/



Impact on COBRA Administration

OCA plans to begin emailing each employer the list of their potentially eligible AEs. **This will begin the week of April 5th.**

Thousands of clients will need to be notified so we expect the communication to be completed no later than April 15th. The email will include an excel attachment listing each employers potentially eligible AEs. Clients will be asked to update the file by validate the AEs "termination type".

- OCA will be mailing out a Special Election Notice to eligible individuals. Eligible individuals will have 60 days to elect coverage after receipt of the Special Notice with the subsidy available beginning April 1, 2021.
- This also has to work together with the outbreak period rules, which will give may assistance eligible individuals the opportunity to elect unsubsidized coverage back to the date of the qualifying event.