



Charming the Snake: Administering the COBRA Premium Subsidy

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- Overview of COBRA Premium Assistance
- COBRA Premium Assistance Details: Q&As
 - Affected Plans
 - Definition of Assistance Eligible Individual (AEI)
 - Involuntary Termination
 - Duration of Premium Assistance Period
 - Elections
 - Premium Tax Credit (PTC)
 - Notices
- Special Topics and Examples

- Specific application to Health Reimbursement Arrangements (HRAs) (see IRS Notice 2021-31, FAQs 37-40, 54, 70)
- Details about specific issues raised when COBRA coverage period is other than monthly (see IRS Notice 2021, FAQs 43, 44, 46-48)
- Details about claiming the PTC (see IRS Notice 2021-31, FAQs 71-86)
- Detailed information about application of the guidance to state continuation law (mini-COBRA)



Overview of COBRA Premium Assistance (aka ARPA Subsidy)



Overview of ARPA Subsidy

- American Rescue Plan Act of 2021 (ARPA)
 - Latest federal legislation relating to COVID-19 relief and employee benefits
 - COBRA premium assistance included along with increased benefits for childcare, employer dependent care assistance programs, sick leave credits, and pension funding relief
 - Subsidy applies to COBRA under ERISA plans, governmental plans, and mini-COBRA laws

Overview of ARPA Subsidy (*cont.*)

- ARPA COBRA Subsidy Guidance:
 - DOL issued FAQ guidance and model notices on April 7, 2021
 - IRS issued FAQ guidance in IRS Notice 2021-37 on May 18, 2021 (86 FAQs)
 - Possible future guidance?

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Overview of ARPA Subsidy (*cont.*)

- Qualified beneficiaries (QBs) who are AEIs pay 0% of their COBRA premiums during the assistance period (free COBRA)
 - “Premium Assistance Period” = April 1, 2021 through September 30, 2021
- Premium payments are reimbursed to employers or insurers using a payroll tax credit
- COBRA QBs who did not previously elect coverage have an extended election period
- Plan administrators required to provide election notices to QBs who may be AEIs

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Overview of ARPA Subsidy (cont.)

- Sound familiar? You might remember the 2009 ARRA subsidy...

	2021 ARPA	2009 ARRA
Subsidy Percentage	100%	65%
Assistance Period	April 1, 2021 through September 30, 2021	Periods of coverage after February 17, 2009
COBRA event qualifying period	Any date that would provide COBRA eligibility during Premium Assistance Period	September 1, 2008 through May 31, 2010
Duration of assistance	Six months	Fifteen months

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Prior Relevant COVID Relief

- Emergency relief (Outbreak Period Guidance) extended certain timeframes and deadlines, including the regular COBRA 60-day election period, the date for making COBRA premium payments, and HIPAA special enrollment periods
- Disregard certain periods from March 1, 2020 until earlier of:
 1. 1 year from date the applicable person was first eligible for relief
 2. 60 days after the announced end of the national emergency (whenever that may be)
- Generally not applicable to government plans

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COBRA Premium Assistance: Q&As



Which Plans Are Affected?

- Group health plans (GHPs) subject to federal continuation requirements under the Internal Revenue Code, ERISA or PHSAs, or state continuation requirements (aka mini-COBRA)
- Includes:
 - Major medical plans, dental, vision, EAPs, HRAs
 - Insured and self-funded
- Subsidy is not available for:
 - Health flexible spending accounts
 - Church plans (not subject to COBRA)
 - Most participants in retiree-only plans
 - QSEHRAs

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Who Are AEIs?

QBs who meet four requirements:

1. Eligible for COBRA at any time during the Premium Assistance Period (April 1, 2021 and September 30, 2021).^{*} This includes:
 - QBs already on COBRA coverage as of April 1, 2021
 - QBs who are not on COBRA coverage but have the right to elect COBRA for any part of the Premium Assistance Period

^{}Special rules apply when COBRA coverage period runs other than on a monthly basis*

Who Are AEIs? (cont.)

QBs who meet four requirements:

2. Elect or elected COBRA coverage:
 - During their original COBRA election period,
 - During the extended election period (which delays deadline for original COBRA election period if it occurs on or after March 1, 2020, up to one year), or
 - During the special ARPA COBRA election period

Who Are AEIs? (cont.)

QBs who meet four requirements:

3. Have an original qualifying event (QE) due to:
 - Involuntary termination of employment, or
 - Reduction in hours (either voluntary or involuntary)

COBRA “gross misconduct” exception still applies
Other QEs do not qualify (i.e., death, divorce, dependent child losing eligibility)

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Who Are AEIs? (cont.)

QBs who meet four requirements:

4. Not eligible for or enrolled in Medicare or another GHP
 - Many QBs may be eligible to enroll in other GHPs because of Outbreak Period Guidance (delays deadlines for HIPAA special enrollment)
 - Eligibility for or enrollment in Medicaid or individual health insurance does not disqualify QB from being an AEI
 - Does enrollment/eligibility in Medicare or another major medical plan preclude QB from being AEI for dental or vision insurance?

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COBRA Premium Assistance Example

Example 1: Eligibility for Other Group Health Coverage

- Employee is an AEI receiving premium assistance effective April 1, 2021.
- Spouse starts a new job and can enroll self and employee in health coverage effective July 1, 2021. Spouse chooses not to enroll the employee.
- Employee loses AEI status and subsidy eligibility effective July 1, 2021, even though employee is not enrolled in other health coverage.

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COBRA Premium Assistance Example

Example 2: Eligibility for Other Group Health Coverage

- Employee involuntarily terminates and loses health coverage October 1, 2020.
- Can enroll on spouse's health coverage due to HIPAA special enrollment effective October 1, 2020.
- Normal enrollment deadline is November 1, 2020. Employee chooses not to enroll.
- Under Outbreak Period Guidance, extended deadline for HIPAA special enrollment is extended to the earlier of 60 days after end of emergency period, or November 1, 2021.
- Employee is not an AEI.

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COBRA Premium Assistance Example

Example 3: Eligibility for Other Group Health Coverage

- Employee involuntarily terminates and loses health coverage October 1, 2020.
- Enrolled on spouse's health coverage due to HIPAA special enrollment effective October 1, 2020.
- Spouse removed employee from coverage during open enrollment. Coverage for employee ended December 31, 2020.
- Employee has not been eligible for any other health coverage or Medicare during 2021.
- Employee is an AEI.

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COBRA Premium Assistance Example

Example: Eligibility for Individual Health Coverage

- Employee involuntarily terminates and loses health coverage October 1, 2020.
- Employee purchases individual coverage through an exchange effective October 1, 2020 and is currently covered by an individual policy.
- Employee has not been eligible for any group health coverage or Medicare during 2021.
- Employee is an AEI.

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Who Are AEIs? (cont.)

- Any individual who loses coverage due to a QE that is an involuntary termination of employment, or a reduction in hours
 - Employees
 - Covered spouses
 - Covered dependent children
- Can become AEI more than once
- Employers can require self-certification or attestation that the individual is an AEI (see later slide)
- May require division of premium to apply subsidy if one or more members within a COBRA-covered family do not qualify as AEIs

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Who Is a QB?

- Under COBRA, a QB is an individual who:
 - Was covered under the plan on the day before the event
 - Loses eligibility for coverage due to the event
 - Was either the employee or the employee's spouse or child
- Domestic partners, and dependents who are added by an existing COBRA-covered QB, are not themselves QBs
- May require division of premium to apply subsidy if one or more members within a COBRA-covered family do not qualify as QBs

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What Is Involuntary Termination?

“[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.**”

This is based on facts and circumstances—employers need to analyze circumstances attendant to individual employees to make a determination.

What Is Involuntary Termination? (cont.)

Involuntary	It Depends...		Voluntary
<p>Independent exercise of the unilateral authority of the employer to terminate the employment, where the employee was willing and able to continue performing services</p> <p>Includes:</p> <ul style="list-style-type: none"> For cause termination Constructive discharge Resignation as the result of a material change by employer in the geographic location of employment 	<ul style="list-style-type: none"> Employment contract ends; employee is able and willing to continue Termination while absent from work due to illness or disability <p>Resignation:</p> <ul style="list-style-type: none"> With knowledge employee would be terminated During a “window” severance program to avoid termination Due to material reduction in hours 	<ul style="list-style-type: none"> Employment contract ends; contract was for a set term and was never intended to be renewed <p>Resignation due to:</p> <ul style="list-style-type: none"> Retirement General concerns about workplace safety Personal circumstances unrelated to action or inaction of the employer (health condition of the employee or a family member, or inability to locate daycare) 	<p>Severance due to an employee’s implicit or explicit request, where employee is not willing or able to continue performing services</p>

What Is the Duration of the Subsidy?

- April 1, 2021 and September 30, 2021 (maximum of six months)
- Will end earlier due to:
 - Expiration of COBRA period (e.g., 18, 29, or 36 months)
 - AEI becomes eligible for or is enrolled in Medicare
 - AEI becomes eligible for or is enrolled in other major medical GHP coverage
 - AEI otherwise ceases to be eligible for COBRA
- AEI is required to notify GHP if they become eligible for or enrolled in Medicare or another GHP
- Does not extend maximum COBRA period (e.g., 18, 29, or 36 months), but could apply during an extension

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COBRA Premium Assistance Example

Example: Starting Subsidized Coverage

- Employee became QB on October 1, 2020 due to involuntary termination and received regular 60-day COBRA election notice that same day.
- QB enrolls in coverage through the exchange effective November 1, 2020.
- QB receives ARPA subsidy election notice May 1, 2021.
- QB can elect COBRA coverage:
 - Retroactive to October 1, 2020, or
 - Prospectively.
- QB elects COBRA coverage from June 1, 2021 and cancels individual exchange policy on May 31, 2021.
- QB is an AEI as of June 1, 2021.

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What Happens When the Subsidy Ends?

- ARPA subsidy ends September 30, 2021
- GHP must provide notice 15-45 days before COBRA premium assistance expires (September 30, 2021 or end of maximum COBRA period, if earlier)
- Coverage presumed to continue after premium assistance ends if the maximum COBRA period has not expired, subject to plan's regular payment rules
 - Still may have extended period to make payment for COBRA coverage after free COBRA ends

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How Do Elections Work?

Three possible election periods:

1. Regular 60-day election period
 - Applies to QBs who recently lost coverage (e.g., QB involuntarily terminated and lost coverage June 30 has 60 days from June 30 to elect COBRA coverage effective July 1)
2. Extended election period*
 - Applies to QBs with a regular 60-day election period that includes a disregarded period
 - Extension adds up to one year to 60-day election period
 - Rolling expiration as one-year limit expires

**Federal COBRA only; generally not applicable to government plans*

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How Do Elections Work? (cont.)

Three possible election periods:

3. Special ARPA election period*
 - Begins April 1, 2021 and ends 60 days after special ARPA election notice is sent to the AEI
 - QBs who elected COBRA coverage prior to April 1, 2021, but had COBRA coverage terminated
 - QBs who did not elect COBRA prior to April 1, 2021 but whose maximum COBRA coverage period would not have expired
 - May result in second election for QBs who previously declined COBRA coverage

**Federal COBRA only*

COBRA Premium Assistance Example

Example: Three Election Periods

- Employee fired on July 15, 2020 became QB on August 1, 2020
 - Regular 60-day COBRA election period ended on September 29, 2020.
 - Extended COBRA election period ends September 29, 2021.
 - Special ARPA election notice sent May 28, 2021.
 - Special ARPA COBRA election period ends July 27, 2021.
- QB is an AEI and may now elect COBRA coverage effective:
 - August 1, 2020 based on extended regular election period; must pay for coverage from August 1, 2020 to March 31, 2021, free coverage from April 1, 2021 to September 2021, pay for coverage from October 2021 to January 2022.
 - April 1, 2021 with waiver of coverage for the period from August 1, 2020 to March 31, 2021; pay to continue coverage for period starting October 1, 2021.

COBRA Premium Assistance Example

Example: Three Election Periods *(cont.)*

- Same facts as prior slide, with QB electing retroactive COBRA coverage beginning August 1, 2020 and free COBRA coverage beginning April 1, 2021. The AEI only pays premiums for three months of retroactive COBRA coverage within the applicable payment deadlines.
- The AEI only has COBRA coverage for August 2020, September 2020, and October 2020. No retroactive COBRA coverage from November 1, 2020 through March 31, 2021 (no premiums paid).
- Because the AEI also elected free COBRA coverage for the first period of coverage beginning on or after April 1, 2021, the AEI has free COBRA coverage beginning on April 1, 2021 through the end of September 30, 2021.

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COBRA Premium Assistance Example

Example: Maximum Coverage Period

- Employee involuntarily terminated February 15, 2020 became QB on March 1, 2020
 - Regular 60-day COBRA election period ended on April 29, 2020.
 - Extended COBRA election period ended on April 29, 2021.
 - Special ARPA election notice sent May 28, 2021.
 - Special ARPA COBRA election period ends July 27, 2021.
- QB is an AEI and may elect COBRA coverage effective April 1, 2021 through August 31, 2021 (end of maximum 18-month COBRA coverage period).

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How Does the Tax Credit Work?

- Tax credit is available against Medicare tax in the amount of premium subsidy provided to AEIs
 - Self-insured plans = Employer gets the credit
 - Insured plans subject to federal COBRA = Employer gets the credit
 - Insured plans not subject to COBRA = Insurer gets the credit (e.g., mini-COBRA credit)
- Tax credit amount is taxable income to employer

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What Are Other Tax Impacts?

- For AEIs, COBRA premium assistance subsidy is excluded from gross income
- If purported AEI fails to notify the GHP of eligibility for or enrollment in other coverage, they can be subject to an individual tax penalty of \$250
 - Can increase to greater of \$250 or 110% of COBRA premium assistance improperly received if due to intentional failure
- Reasonable cause exception applies

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What Are Other Tax Impacts? (cont.)

- AEs are not eligible for a premium tax credit through an exchange for any month in which the individual is enrolled in COBRA coverage
- AEs cannot use the Health Coverage Tax Credit (HCTC) for individual health insurance in any month in which they receive an ARPA subsidy

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How Does Subsidy Work for Retirees?

- Employer may treat coverage under retiree medical plan as “COBRA” for purposes of the ARPA subsidy if retiree medical coverage is provided in same plan as medical coverage for active employees
 - Not a common plan design due to ACA: most retiree health plans are designed as separate plans
- If retiree is enrolled in or eligible for retiree health plan, and retiree health plan is a separate plan, retiree is not an AEI

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What Notices Are Required?

- DOL released guidance and model notices:
 - A model general notice and election notice
 - A model notice in connection with the extended election period
 - A model alternative notice (for state mini-COBRA)
 - A model notice of termination of ARPA subsidy
- Notice deadline for QEs before April 1, 2021:
May 31, 2021 per DOL guidance
 - Not extended by IRS guidance

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What Notices Are Required? (cont.)

- Regular election notices during period of ARPA subsidy and special ARPA election notices must contain:
 - Forms necessary to establish eligibility for subsidy (included in DOL summary)
 - Name, address, and telephone number of plan administrator or other contact person
 - Description of special ARPA election period
 - Description of AEI's obligation to notify plan/insurer of eligibility for another GHP or Medicare and penalty for not doing so
 - Description of ARPA subsidy and when it applies
 - Option to enroll in cheaper alternative coverage, if offered

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What Notices Are Required? (cont.)

- Notice of Termination of Subsidy
 - DOL model ARPA subsidy termination notice
 - Notice must inform AEI when subsidy will expire, availability of alternative coverage
 - Notice must be sent between 15 and 45 days prior to the expiration of the subsidy
 - No notice required for AEI whose coverage ends due to eligibility for other GHP or Medicare
 - No notice required if reach maximum period of COBRA coverage (18/29/36 months)

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What Notices Are Required? (cont.)

- In addition to notices, the DOL provided a summary of the COBRA premium assistance with a “Request for Treatment as an Assistance Eligible Individual” form
 - Provides for individual attestation
 - Model election forms provide for inclusion of summary and related form
- Employers who claim the tax credit must retain in their records either a self-certification or other documentation to substantiate ARPA subsidy eligibility

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Special Topics & Examples

What Is the Amount of the PTC?

- If employer subsidizes COBRA premium, the amount of the PTC is amount that the AEI pays

Example:
Employer-
subsidized
COBRA

- Full COBRA premium is \$1,000 per month, but employer only charges \$400 per month.
- PTC = \$400 per month.

What Is the Amount of the PTC? (cont.)

- If employer provides taxable lump sum (such as a severance payment) to AEI, the PTC is not affected

Example:
Employer
Lump-sum
Subsidy

- Full COBRA premium is \$1,000 per month.
- Employer provides \$700 a month taxable severance payment or \$5,000 lump-sum severance payment.
- PTC = \$1,000 per month.

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What Is the Amount of the PTC? (cont.)

- If employer provides free or reduced premium health coverage to AEI, and then provides COBRA coverage thereafter, employer receives PTC only for the months considered to be in the 18-month COBRA coverage period

Example:
Medical
Coverage as
Severance

- Company's severance plan gives six months of free medical plan coverage to terminated employees, after which ex-employees may elect 18 months of COBRA coverage. Employee is terminated on December 10, 2020 with active employee coverage ending December 31, 2020.
- No PTC for April, May, or June 2021 (not in COBRA coverage period).
- PTC available for July, August, September (first three months of COBRA coverage period).

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What Is the Amount of the PTC? (cont.)

- Family coverage (two or more persons) in which one or more of the COBRA participants are not AEIs
 - Premium amounts are first allocated to AEIs, and rest of COBRA premium is allocated to non-AEIs

Example: Family with Non-AEIs

- QB with self-only coverage is terminated September 2020, and elects COBRA effective October 1, 2020.
- COBRA-covered QB enrolls spouse and child in COBRA coverage during open enrollment for calendar year 2021 (spouse and child are not QBs and thus are not AEIs).
- COBRA premium for one person is \$600 per month.
- COBRA premium for family (more than one person) is \$1,000 per month.
- PTC = \$600 per month.

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What Is the Amount of the PTC? (cont.)

- Change of GHPs since QE
 - General rule: PTC amount is the amount of COBRA premium for the new GHP, if COBRA regulations give QB the right to switch to a new GHP

Example: Change in Health Plan

- Employee is enrolled in HMO. Employee's hours are reduced in 2020, employee loses coverage and becomes QB, and employee elects COBRA from HMO paying \$500 a month in COBRA premium. At open enrollment for 2021, employee switches to PPO plan, paying \$700 a month in COBRA premium.
- Since COBRA regulations give QB the right to switch health plans during HIPAA special enrollment periods and during open enrollment if active employees are allowed to do so, PTC = \$700 a month.

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What Is the Amount of the PTC? (cont.)

- Change of GHPs since QE
 - However, if QB is not given the right to switch to second health plan under COBRA regulations but employer allows a switch to a second GHP, amount of PTC is COBRA premium for the second GHP **if the COBRA premium for second GHP is equal to or less than original COBRA premium**. If the COBRA premium for the second GHP is higher than first GHP, **PTC is zero**.

Example: Change in Health Plan

- Same facts as previous slide, except employer allows QB to switch from HMO to PPO at a time that the QB does not have the right to switch plans under COBRA regulations (including switch allowed by ARPA Section 9501 (a)(1)(B)).
- Since the COBRA premium for the second plan option (PPO) (\$700) is higher than COBRA premium for HMO (\$500), the PTC = \$0.

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What Is the Amount of the PTC? (cont.)

- Elimination of prior GHP option

If prior GHP is not available when AEI elects COBRA for Premium Assistance Period, PTC = amount of COBRA premium for plan most similar to plan the AEI had at QE

Example: Elimination of Health Plan

- QB is fired in 2020 while participating in HMO. COBRA premium for HMO is \$500 a month. QB does not elect COBRA coverage when fired.
- QB is AEI and elects COBRA coverage for Premium Assistance Period in 2021.
- Employer does not offer HMO during 2021, only PPO with COBRA premium of \$1,000 per month.
- AEI has right to elect COBRA coverage from PPO.
- PTC = \$1,000 per month (it does not matter if the COBRA premium for the PPO is higher in this instance).

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What Is the Amount of the PTC? *(cont.)*

- Change in COBRA premium
- Employers have the right to change the COBRA premiums once a year in compliance with COBRA regulations (including notice requirements), and if employer does so, PTC = new COBRA premium

Example:
Change in
COBRA
Premium

- Employer X set COBRA premium for 2020 at \$500 per month.
- In compliance with COBRA regulations, employer X set COBRA premium for 2021 at \$600 per month.
- PTC = \$600 per month.

- DOL ARPA COBRA Premium Subsidy Webpage
 - <https://www.dol.gov/COBRA-subsidy>
- DOL General COBRA Webpage
 - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>
- IRS Notice 2021-31
 - <https://www.irs.gov/pub/irs-drop/n-21-31.pdf>

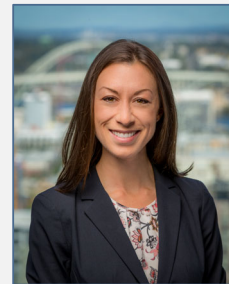
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