

American Rescue Plan Act

Frequently Asked Questions (FAQ)

These FAQs are provided for general informational purposes only and are subject to change. They do not constitute legal advice and should not be relied upon as such. Please contact your own legal counsel for advice and assistance in meeting your regulatory obligations. Additionally, please note that regulators may issue additional guidance concerning implementation of the American Rescue Plan Act.

On March 11, 2021, President Biden signed the **American Rescue Plan Act (ARPA)** into law. Under this law, the federal government provides 100% premium subsidies for COBRA continuation coverage provided to “assistance eligible individuals” from April 1, 2021 through September 30, 2021.

For purposes of ARPA, COBRA coverage includes federal COBRA coverage applicable to group health plans of private sector and state and local government employers and state continuation coverage that is comparable to that provided under federal COBRA requirements. COBRA coverage does not include medical FSA coverage offered through a cafeteria plan.

How does an employer determine whether they are covered under federal COBRA or state continuation provisions?

In general, employers with 20 or more employees are subject to federal COBRA requirements. This is the case whether the employer is self-insured or purchases insurance. Certain church plans (as specifically defined under federal law) are an exception to the general rule – they are not subject to federal COBRA requirements, regardless of their size. Although employers with fewer than 20 employees and certain church plans are not subject to federal COBRA requirements, if they purchase health insurance they are generally subject to state continuation provisions.

To determine if COBRA’s small employer exception applies for a particular calendar year, an employer generally determines the number of employees it had on at least 50% of its typical business days during the preceding calendar year. Federal law provides detailed rules concerning how to count employees for COBRA purposes, including who is considered an employee for these purposes, how to count part-time employees, and how to address situations involving related and successor employers. Some additional information can be found in the “FAQs on COBRA Continuation Health Coverage for Employers and Advisers” and “An Employer’s Guide to Group Health Continuation Coverage Under COBRA,” both of which can be found through the Department of Labor’s Employee Benefits Security Administration’s website (referenced later in these FAQs).

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Employers who obtain insurance for their employees through an association health plan (AHP) or a professional employer organization (PEO) provide coverage through a large group insurance plan. Medica will not provide the ARPA subsidy or send out related notices for employers obtaining coverage through an AHP or a PEO, regardless of the size of the individual employer.

Determining whether federal COBRA requirements apply to your plan can be a complex inquiry. Please consult your attorney or other benefits advisor if you have questions as you make the determination concerning the application of COBRA and the ARPA to your plan.

Why is it important to determine whether an employer is subject to federal COBRA or only to state continuation coverage requirements?

The ARPA sets forth whether the employer or the insurer is responsible for providing the subsidy to individuals. It also delineates which entity is able to claim reimbursement for the subsidy as a credit on its payroll tax return. The obligation to provide the subsidy and related notices, and the right to claim reimbursement on tax returns, lie with the employer when the employer is subject to federal COBRA. This is the case even if the employer has a fully insured plan. However, for fully insured employers that are not subject to federal COBRA (generally employers with fewer than 20 employees and certain church plans), and are only subject to state continuation provisions, it is the insurer that will provide the subsidy, claim reimbursement for the subsidy, and issue individual notices concerning the subsidy (also referenced in these FAQs as administering the subsidy).

Will Medica administer the ARPA premium subsidy, if applicable, for employers that provide coverage through a Maximum Liability product?

No – maximum liability plans are self-insured. Under the ARPA, if applicable, the obligation to provide the subsidy and related notices, and the right to claim reimbursement on tax returns, lie with the employer when the employer's plan is self-insured. Employers with maximum liability plans should contact their own legal counsel if they have questions regarding whether their plan is subject to COBRA, whether the ARPA premium subsidy may therefore be available for their employees and, if so, their obligations under the ARPA.

Will Medica provide the ARPA premium subsidy and send out related notices for employers who provide coverage through an insured AHP or PEO plan?

No -- employers who obtain insurance for their employees through an association health plan (AHP) or a professional employer organization (PEO) provide coverage through a large group insurance plan. Medica will not provide the ARPA subsidy or send out related notices for employers obtaining coverage through an AHP or a PEO, regardless of the size of the individual employer.

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How much is the premium subsidy and how long will it last?

Under the ARPA, **assistance eligible individuals** (as further described below) may have 100% of their COBRA or state continuation premiums subsidized, for a period no longer than six months (April 1, 2021 through September 30, 2021). The period of subsidization may be shorter, however, as described elsewhere in these FAQs.

“Assistance Eligible Individuals” are eligible for the continuation coverage premium subsidy.

Who qualifies as an Assistance Eligible Individual (“AEI”)?

An “assistance eligible individual” is any **qualified beneficiary** who is eligible for COBRA continuation coverage on the basis of:

1. A reduction in hours or an involuntary termination of employment (excluding termination for gross misconduct)
2. They appropriately elect such coverage
3. They are not eligible for coverage under Medicare or another group health plan (other than coverage consisting of only excepted benefits (such as dental or vision plans), a health FSA, or a QSEHRA).

COBRA’s general rules concerning who can be considered a qualified beneficiary apply for purposes of the ARPA premium subsidy.

An individual receiving the subsidy will lose eligibility for the subsidy if he or she becomes eligible for coverage under Medicare or another group health plan (as described above). If that individual chooses to forego the opportunity to enroll in Medicare or the other group plan, he or she may remain enrolled in the continuation coverage through the applicable maximum continuation coverage period, but may need to pay 100% of his or her premiums, as the individual will no longer be eligible for the subsidy. Assistance eligible individuals are required to notify the employer providing continuation coverage if they become eligible for other coverage of the type that would make them ineligible for further subsidization of their continuation coverage premiums.

Additionally, an individual is not eligible for the subsidy once they have reached the end of their maximum continuation coverage period, which is measured from the date of employment termination or reduction in hours. Nothing in the ARPA extends the maximum period of continuation coverage that is required under applicable law.

How are “reduction in hours” and “involuntary termination of employment” defined? The IRS provides guidance concerning this in Notice 2021-31, entitled “Premium Assistance for COBRA Benefits.” The DOL also addresses this in their April 7, 2021 “FAQs About COBRA Premium Assistance Under the American Rescue Plan Act of 2021.”

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Who determines which individuals are “assistance eligible individuals”?

It is the employer’s responsibility to make this determination. Employers who are subject only to state continuation coverage requirements (generally fully insured employers with fewer than 20 employees and certain fully insured church plans) will need to communicate that determination (along with other necessary information) to Medica, in order for Medica to administer the premium subsidy. Similarly, if an assistance eligible individual notifies the employer that he or she has become eligible for other coverage of the type that would make them ineligible for further subsidization of their continuation coverage premiums; the employer must then contact Medica with that information, so the premium subsidy can be terminated as required by the ARPA.

What if an employer denies an individual’s request to be considered an assistance eligible individual?

FAQs issued by the U.S. Department of Labor on April 7, 2021 provide that individuals covered by a private sector employer’s group health plan may contact Employee Benefits Security Administration Benefits Advisors for assistance if they believe that their plan or employer has improperly denied their request for treatment as an AEI. Those FAQs also provide information concerning how individuals covered through a state or local government employer can receive more information concerning the premium subsidy.

When is the premium subsidy available?

The subsidy is available for continuation coverage periods beginning on April 1, 2021 and ending on September 30, 2021. Assistance eligible individuals who paid their full premium amount for April and perhaps a subsequent month, while the ARPA was being implemented, are entitled to a premium refund for the amounts they paid.

How does the ARPA subsidy apply to individuals who are currently enrolled in continuation coverage?

Individuals who are currently enrolled in continuation coverage and who also qualify as an assistance eligible individual are eligible to receive the 100% premium subsidy. The subsidy will be effective no sooner than April 1, 2021 - it is not retroactive to when the individual first elected continuation coverage.

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Do any additional election rights exist for individuals not currently enrolled in continuation coverage?

Yes, for certain assistance eligible individuals. Health plans subject to federal COBRA requirements (generally employers with 20 or more employees) must provide an additional election period to assistance eligible individuals who are still within their maximum continuation coverage period who either did not elect continuation coverage when they were initially eligible to do so or who had such coverage but lost it prior to April 1, 2021. The additional election period for subsidized COBRA coverage runs for 60 days from the date the notice describing the additional election right is provided to the individual. Subsidized COBRA coverage elected during this additional election period begins with the first period of coverage beginning on or after April 1, 2021. Individuals can begin their coverage prospectively from the date of their election, or, if an individual has a qualifying event on or before April 1, can choose to start their coverage as of April 1, even if the individual receives an election notice and makes a related election at a later date. COBRA coverage elected during such an additional election period will not extend beyond the period of COBRA coverage that would have been required if the coverage had been elected at the time of initial eligibility or had not been discontinued prior to April 1.

However, the ARPA does not change any state continuation coverage program requirements or time periods for election of such continuation coverage. Individuals entitled only to state continuation coverage (generally employees of fully insured employers with fewer than 20 employees or certain fully insured church plans) will not be provided an additional election opportunity at this time.

Will an individual be given the opportunity to change their coverage option based upon becoming an assistance eligible individual?

As described elsewhere in these FAQs, Medica will administer the premium subsidy for certain fully insured employers. In other words, Medica will provide the subsidy and related notices and claim the related tax credit. Consistent with the Master Group Contract, Medica will not provide an opportunity for a member to change his or her coverage option on the basis of becoming an assistance eligible individual. Changes in coverage options will only be allowed as set forth currently in the applicable Certificate of Coverage.

Assistance eligible individuals covered through an employer who is responsible for its own administration of the premium subsidy should contact their employer if they have questions about whether they may switch to a different plan design. The ARPA provides that an employer may elect to allow an assistance eligible individual to enroll in a different coverage option, so long as all of the following are met:

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- The premium for the new plan design selected does not exceed the premium for the coverage the assistance eligible individual was enrolled in at the time of the qualifying event;
- The new plan design selected is also offered to similarly situated active employees; and
- The new plan design selected is not a health FSA, a QSEHRA, or coverage that provides only excepted benefits.

How will Medica handle invoicing premium amounts due for assistance eligible individuals?

Invoices for groups with 20 or more employees will not change. Invoices for groups with fewer than 20 employees will show a charge for 100% of the continuation coverage premium and a corresponding downward adjustment for each assistance eligible individual. If assistance eligible individuals paid premiums for April and perhaps subsequent months, while the ARPA was being implemented, Medica will include downward adjustments on the invoice for those amounts as well. It is the employer's responsibility to provide related premium refunds to the assistance eligible individuals who paid those amounts.

Will Medica now be administering all aspects of my continuation coverage?

No. Medica will provide the ARPA premium subsidy and related notices concerning the availability of premium assistance for fully insured employers with fewer than 20 employees (and claim the related tax credit), but all other aspects of continuation coverage administration remain unchanged, and the responsibility of the employer. This includes determining eligibility for continuation coverage, providing required notices, collecting premium and remitting it to Medica, and determining when an individual has exhausted his or her right to continuation coverage.

Where can employers go for more information?

- The U.S. Department of Labor's Employee Benefits Security Administration has a Web page dedicated to providing information on ARPA's COBRA premium subsidy and related general information concerning COBRA requirements. This information can be found at <https://www.dol.gov/cobra-subsidy>.
- The IRS has issued Notice 2021-31, entitled "Premium Assistance for COBRA Benefits," which provides additional guidance on the ARPA continuation coverage subsidy.