



AMERICAN RESCUE PLAN ACT OF 2021

COBRA PREMIUM SUBSIDY AND ENROLLMENT PERIOD ADVISORY AND FAQ

Summary

The American Rescue Plan Act (ARPA), signed into law on March 11, 2021, requires in part, employers to provide free COBRA coverage to employees (and family members) who qualify for COBRA due to an involuntary termination of employment or reduction in hours. Employers are required to offer free COBRA coverage between April 1 and September 30, 2021 (the “Subsidy Period”).

Key Terms and Dates

Subsidy Period	April 1 – September 30, 2021
End of Subsidy Period	September 30, 2021 or 18 months from qualifying event – whichever is earliest
Special Election Period	April 1, 2021 until 60 days after election notice is provided
DOL issues Model Notice of Subsidy and Election Period	Published April 7, 2021
Deadline to provide Special Notice of Subsidy and Election Period	May 31, 2021
AEI	Assistance Eligible Individual
QB	Qualified Beneficiary

Vimly is adopting the DOL new model COBRA Election Notices and communications regarding this subsidy and will send required notices to all employees that experienced a termination or reduction in hours prior to and within the Subsidy Period; and to all employees that are still within their COBRA coverage period (generally from November 1, 2019). **Vimly will only provide notices for clients/employers in which Vimly is the current COBRA Administrator.**

What are Vimly’s Plans?

1. Vimly will send required notices to:
 - all QBs that experienced a COBRA qualifying event and are, or would be, still in their election coverage period, (generally QBs with a qualifying event since November 2019); and
 - all QBs that are still within their COBRA coverage period (generally from November 1, 2019) for clients/employers where Vimly is the current COBRA Administrator.
2. Vimly anticipates notices will begin going out by May 1, 2021.
3. Vimly will process all COBRA elections and document/track eligible AEIs as forms are received.
4. Upon receipt of the COBRA election and request for subsidy assistance from the member, Vimly will contact the employer for confirmation of the member’s termination reason.
5. Vimly will track all COBRA premiums paid or due during the Subsidy Period. To help determine reimbursements and tax credits, Vimly can provide reporting of the paid premiums.
6. Process refund if AEI paid premiums for any month within the Subsidy Period.
7. Provide subsidy expiration notices for AEI’s in the event their coverage is expiring due to other group health coverage or they become Medicare eligible.



How Long Does the Subsidy Last?

The Subsidy Period is April 1, 2021 – September 30, 2021.

When are notices due?

Notices must be provided to all potential AEIs by May 31, 2021.

Who Must Offer Free COBRA Coverage?

Any employer who is subject to COBRA or state continuation (mini-COBRA) must comply with these requirements and includes all group health plans, including self-funded plans, subject to COBRA continuation coverage requirements (medical, dental, and vision plans). The subsidy does not apply to health care flexible spending arrangements.

Who is Eligible for Subsidized COBRA?

An Assistance Eligible Individual (AEI) is a former employee who experienced a COBRA qualifying event due to a reduction of hours (either voluntarily or involuntarily) or an involuntary termination and who are NOT eligible for other coverage such as a spouse's health plan, a new employer's plan or Medicare. The QB must also fall into one of the following categories:

1. The QB experienced a COBRA qualifying event as of or during the Subsidy Period and makes an election for COBRA coverage to be in place during the Subsidy Period.
2. The QB experienced a COBRA qualifying event prior to April 1, 2021 and either did not elect COBRA or elected COBRA but discontinued it prior to the Subsidy Period. This QB is subject to a special election period and is granted 60 days after the notice of election opportunity is provided by Plan.

Does the involuntary termination requirement apply only to COVID-related terminations/reduction in hours?

No. This applies to all involuntary terminations and reductions in hours (for any reason) and do not need to be COVID related.

Individuals who experience involuntary termination due to gross misconduct are not eligible for COBRA, and thus not considered an AEI. Vimly recommends seeking legal advice before denying COBRA due to gross misconduct.

What if a qualified beneficiary had family but did not elect COBRA at the time of the qualifying event? Can the family members elect COBRA and take advantage of the subsidy?

Yes. Each COBRA qualified beneficiary may independently elect COBRA coverage as long as the employee's termination was due to involuntary termination or reduction of hours. Depending on the rules of your plan, Domestic Partners may not be considered COBRA qualified beneficiaries and would not be eligible for the subsidy.

Spouses and/or dependents who are eligible for COBRA due to divorce do not qualify for the subsidy.

Do I have to offer COBRA if the terminated employee is currently working for another employer?

Maybe. If the former employee is working but not eligible for coverage under new employer, then he or she would still be eligible for the COBRA subsidy. It is the employee's responsibility to notify the COBRA Administrator if they become eligible for coverage under another group health plan or Medicare.

What if a terminated employee has exhausted federal COBRA? Does the subsidy apply?

If the exhaustion of COBRA benefits occurs prior to April 1, 2021, the subsidy will not apply.



Who is Eligible for the Special COBRA Election Period?

Qualified beneficiaries who experienced a qualifying COBRA event prior to the Subsidy Period and either did not elect COBRA or discontinued COBRA prior to the Subsidy Period must be granted a second opportunity to elect COBRA coverage and take advantage of the free COBRA coverage during the Subsidy Period.

AEI's who elect COBRA during the special election period will begin COBRA coverage on April 1, 2021 but only extend 18 months from the date they originally became eligible for COBRA. Because COBRA coverage under the special election period starts April 1, 2021 AEI's will NOT have to pay retroactive premiums back to the date they originally lost coverage and became eligible for COBRA.

Example: A former employee was offered COBRA due to an involuntary termination in July 2020 but did not elect. This employee will be offered a second special election period for COBRA coverage to start as of April 1, 2021. The employee would not need to pay premiums back to July 2020 and is allowed the gap in coverage. The COBRA end date would be 18 months from July 2020.

Can an AEI Make an Alternative Coverage Election Within the Health Plan?

Yes if the Plan permits. Employers or Plans may permit AEI's to change their coverage election to an option different from the one in effect when they first became eligible for COBRA as long as the following conditions are met: (1) the premium for the other coverage option must be equal to or less than the premium for the prior coverage; (2) the alternative coverage is also offered to similarly situated employees; and (3) the alternative coverage includes more than "excepted benefits" like dental and vision benefits.

Are AEI's automatically enrolled in COBRA as of April 1?

No. AEI's must elect COBRA coverage to receive the subsidy. An attestation form for the employee to complete will be provided with their election notice. The employee will need to return both forms before they can be considered an AEI and enrolled on COBRA.

Are AEI's able to add dependents that were not enrolled at the time of the COBRA qualifying event?

No. Only dependents who were enrolled at the time of the COBRA qualifying event may enroll in and receive subsidized coverage. AEI's may only make changes to enrolled dependents if they experience a qualified life event.

Who Pays for Premiums?

Employers that sponsor group health plans for their employees must pay **up to 102%** of the plan's cost to provide the coverage – that is 100% of the monthly COBRA premiums for any Premium Assistance Eligible Individual plus 2% plan administration cost. Employers must pay or advance the premiums for AEI's. Employer CANNOT ask or require the AEI to pay premiums and then reimburse them. Employers will be entitled to reimbursement (on a dollar-for-dollar basis) through a refundable payroll tax credit against employer-paid Medicare taxes. The tax credit will be applied on a quarterly basis, with any credits above Medicare taxes to be treated, generally, as an overpayment that may be refundable.

IMPORTANT. Due to the absence of DOL and IRS guidance, it is not clear who must pay the premiums for coverage in all situations and types of plans. Some Trusts and Multi-employer plans are choosing to pay the premiums and collect from the employers. Others are working with their carriers to ensure that coverage is not denied or discontinued during this period. Vimly will work with each of its clients to determine the best course of action with regard to premium payments and advises that you contact your carriers to discuss their plans as



they relate to the premium Subsidy Period. Further, we are working on processes to ensure that AEI's who declare themselves premium assistance eligible and/or elect this COBRA coverage are tracked and necessary reports are sent to employers in order to claim payroll tax credits.

Can I require AEI's to pay the premiums for coverage and then reimburse them?

No. AEI's are to be treated as if they have paid the full amount of their premiums during the Subsidy Period. Plans and issuers are not permitted to collect premium payments from AEI's and subsequently require them to seek reimbursement assistance.

Does the subsidy include the 2% COBRA administration fee?

Yes. This should be included when calculating the anticipated cost of coverage.

What if an AEI makes a premium payment during the Subsidy Period?

If an AEI makes a premium payment within the Subsidy Period, the premium payments should be refunded to the employee. Vimly can assist with tracking these payments and report to employers any employee who has made premium payments during the Subsidy Period and whether or not they returned forms declaring themselves premium assistance eligible. Employers should consider what process they need to put in place to process and track refunds for premium assistance.

Does the subsidy include the cost of coverage for employees and their family members?

Yes. The subsidy covers the entire cost of COBRA for both the assistance eligible individual and any family members enrolled in COBRA coverage. Depending on the rules of your plan, Domestic Partners may not be considered COBRA qualified beneficiaries and would not be eligible for the subsidy.

How does the Tax Credit Work?

Tax credits will be claimed under Internal Revenue Code Section 3111(b) the Medicare tax. The IRS has not yet issued guidance or outlined how these are to be filed or how refunds will be processed.