

# ARPA's COBRA Premium Subsidies Continued: New Guidance Answers Outstanding Questions



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# COBRA Premium Subsidies: The Basics

- ▼ The American Rescue Plan Act of 2021 provides “assistance eligible individuals” with a **100%** subsidy for COBRA premiums and additional COBRA enrollment rights between **April 1, 2021 through September 30, 2021**
- ▼ Covers group health plans sponsored by private-sector employers subject to COBRA or by state or local governments subject to PHSA
  - ▼ Also covers group health insurance required under state continuation (mini-COBRA) laws
- ▼ Employer, insurer, or plan will pay the premiums and will be reimbursed via a credit against Medicare taxes
  - ▼ For self-insured plans and fully insured plans subject to federal COBRA, the **employer** is the responsible entity

# COBRA Premium Subsidies: The Basics

- ▼ AEs = A COBRA qualified beneficiary who has a loss of coverage due to an **involuntary termination of employment** or **reduction of hours**, who elects or has elected COBRA, and who has COBRA coverage during the Subsidy Period
  - ▼ This does not include individuals eligible for Medicare or eligible for other group health coverage
- ▼ Individuals already on COBRA as of 4/1/21
- ▼ Individuals newly-eligible for COBRA during the Subsidy Period
- ▼ Individuals that previously declined or dropped COBRA coverage and are still within their 18-month COBRA coverage period

# COBRA Premium Subsidies: The Basics

- ▼ ARPA also provides a new election period for individuals who *would be* AEIs if they had a COBRA election in place during the Subsidy Period
  - ▼ New election period of **60 days** from notice of the extended election period
- ▼ Under ARPA, employer may allow AEIs to elect to enroll in a different coverage option offered by the employer
  - ▼ **90 days** from notice of enrollment option to elect
- ▼ FAQs & Model Notices
  - ▼ Subsidy Availability & Extended Election (5/31/21)
    - ▼ Summary & Eligibility Forms
  - ▼ Plan Enrollment Option
  - ▼ Subsidy Expiration (between 45 and 15 days before expiration)

# IRS Notice 2021-31: Eligibility (Q/As 1 – 20)

- ▼ AEs can include the covered employee, spouse, and dependents if qualified beneficiaries
  - ▼ Covered under the plan on the day before the loss of coverage and lost coverage due to a reduction in hours or involuntary termination
- ▼ An AEI can be an AEI **more than once**
  - ▼ Due to successive losses of coverage under AEI's own plan or spouse's plan
- ▼ Subsidy is available to potential AEIs who were eligible for OGHC **before 4/1/21** but have not been permitted to enroll
  - ▼ Available until potential AEI is permitted to enroll in OGHC (including any waiting period)
- ▼ Subsidy is not available for those eligible for OGHC **after 4/1** who decline OGHC and remain on COBRA

# IRS Notice 2021-31: Eligibility

- ▼ AEI who is enrolled in individual coverage through an exchange is eligible to elect and receive subsidy
  - ▼ But AEI will not be eligible for the premium tax credit to help pay the cost for exchange coverage while enrolled in COBRA
- ▼ Subsidy is only available for qualifying events that are **reductions in hours** and **involuntary terminations** (other than gross misconduct)
  - ▼ If COBRA is based on a qualifying event other than a RIH or IT, a later RIH or IT will not cause a loss of coverage and the qualified beneficiary will not be an AEI
  - ▼ Subsidy is available for qualified beneficiaries who are on COBRA via an extended period (e.g., disability, second qualifying event, state extension) **if original qualifying event was RIH or IT**

# IRS Notice 2021-31: Eligibility

## ▼ Retiree Coverage

- ▼ If employer offers retiree coverage that is COBRA coverage or offers non-COBRA coverage under the same group health plan as COBRA coverage, the offer will have no effect on potential AEI's ability to receive subsidy (i.e., it will not operate as disqualifying OGHC)

## ▼ Late or unpaid premiums for retroactive COBRA coverage elected under the Outbreak Period extended deadlines will not affect eligibility for subsidy

- ▼ However, the AEI's retroactive coverage may not take effect or may be lost for months that premiums are not paid

## ▼ Employers may obtain employee eligibility attestations or self-certifications and rely on those for AEI determinations (and tax credit substantiation) absent actual knowledge to the contrary

# Notice 2021-31: Reduction in Hours (Q/As 21 – 23)

- ▼ Includes **voluntary** RIH
- ▼ Includes a work stoppage due to a lawful strike initiated by employees or a lockout initiated by employer as long as there is intent to maintain employment relationship
- ▼ Includes a furlough whether it was employer initiated or the employee voluntarily participated in a furlough process
  - ▼ A temporary loss of employment or complete reduction in hours with reasonable expectation to return to employment or resumption of hours such that employer and employee intend to maintain the relationship



# Notice 2021-31: Involuntary Termination (Q/As 24 – 34)

- ▼ “An involuntary termination of employment 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.”
- ▼ *Certain* employee-initiated terminations **can be IT**
  - ▼ Termination for good reason due to employer action that results in a material negative change in the employment relationship for the employee analogous to a constructive discharge

# Notice 2021-31: Involuntary Termination

- ▼ The determination of whether a termination is involuntary is based on the **facts and circumstances**
  - ▼ If a termination is designated as voluntary, but the facts and circumstances indicate that the employee was willing and able to continue performing services, so that, absent the voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary
- ▼ **No Call No Show?**

# Notice 2021-31: Involuntary Termination

## ▼ Examples of **Involuntary** Terminations\*

- ▼ Termination for cause (other than **gross misconduct**)
- ▼ Failure to renew a contract if employee is willing and able to continue working and execute a new contract\*
  - ▼ But voluntary if parties understood that the contract was for specified services over a set term and would not be renewed
- ▼ Termination while absent due to illness or disability
  - ▼ Employer takes action to terminate the individual's employment, if before the action there is a reasonable expectation that the employee will return to work after the illness or disability has subsided
- ▼ Voluntary participation in a termination severance window
- ▼ Resignation due to material change in location of employment
- ▼ Resignation due to involuntary material reduction in hours

# Notice 2021-31: Involuntary Termination

## ▼ Examples of **Voluntary** Terminations\*

- ▼ Death

- ▼ Departure due to personal circumstances

- ▼ Retirement\*

  - ▼ If employee had knowledge that the employer would have terminated the employee absent the retirement, and the employee was willing and able to continue, can be involuntary

- ▼ Resignation over general safety concerns\*

  - ▼ E.g., COVID-19, health conditions

  - ▼ If employee can demonstrate that the employer's actions or inactions resulted in a material change in the employment relationship, can be involuntary

- ▼ Termination/resignation because child is unable to attend school or access childcare due to COVID-19

# **Notice 2021-31: Eligible Coverage (Q/As 35 – 42)**

- ▼ **Subsidy is available for the following group health plans:**
  - ▼ Major medical, dental, and vision plans
  - ▼ Includes dental-only and vision-only plans
  - ▼ Retiree coverage
  - ▼ HRAs (including individual coverage HRAs)
- ▼ **Subsidy is not available for:**
  - ▼ Health FSAs
  - ▼ QSEHRAs
  - ▼ Continuation coverage offered for non-health benefits that are not subject to federal COBRA (e.g., group life insurance)
- ▼ **What if the Employer no longer offers the AEI's health plan?**
  - ▼ AEI must be offered the opportunity to elect the plan that similarly situated active employees are offered that is most similar to the AEI's previous plan

## Notice 2021-31: Subsidy Period (Q/As 43 – 50)

- ▼ AEs entitled to subsidy as of the **first** applicable period of coverage **on or after 4/1/21**
  - ▼ Period of Coverage = Monthly or shorter period with respect to which premiums are normally charged by the plan or issuer
  - ▼ Example: Plan requires premiums to be paid on a biweekly basis for a two-week period of coverage
    - ▼ For March, the last two-week period is from 3/28 through 4/10 followed by 4/11 through 4/24
    - ▼ Subsidy would apply for the premium due for the period of coverage beginning 4/11

# Notice 2021-31: Subsidy Period

- ▼ AEs can elect COBRA **after 9/30/21** and receive subsidy for periods of coverage occurring during Subsidy Period
  - ▼ Only if AEI makes election within the 60-day election period
  - ▼ If an AEI makes the election after 9/30 but within 60 days, the AEI is entitled to the subsidy through the earlier of:
    - ▼ the last period of coverage beginning on or before 9/30, or
    - ▼ the date that the AEI's COBRA coverage expires
- ▼ Subsidy will continue until the earliest of:
  - ▼ The first date the AEI becomes eligible for OGHC or Medicare;
  - ▼ The date the AEI ceases to be eligible for COBRA; or
  - ▼ The end of the last period of coverage beginning on or before 9/30

# Notice 2021-31: Extended Election Period (Q/As 51 – 55)

- ▼ Only applies to group health plans subject to **federal COBRA**
  - ▼ There is no extended election period available to AEs whose continuation coverage is provided under state law
- ▼ AEs who can elect COBRA under the extended election period can elect coverage retroactive to qualifying event date, beginning on 4/1, or prospectively from election date
  - ▼ Subsidy is only available for periods of coverage during Subsidy Period
- ▼ If AEI previously elected only certain lines of COBRA, the AEI can elect COBRA (and receive subsidy) for other lines through the extended election period



# Notice 2021-31: Outbreak Period Extension (Q/As 56 – 59)

- ▼ Outbreak Period extended deadlines do not apply to ARPA's notice deadlines or election periods
- ▼ If eligible for ARPA's extended election period, qualified beneficiaries will have to make that election within ARPA's 60-day election period or they cannot receive the subsidy
  - ▼ If eligible qualified beneficiaries do not elect COBRA during ARPA's extended election period, they may still be eligible for *(prospective)* COBRA coverage under the Outbreak Period extended deadlines and can elect COBRA coverage later (but they will not be eligible to receive the subsidy)
- ▼ So what's new here?

# Notice 2021-31: Outbreak Period Extension

- ▼ If an AEI declines retroactive coverage when he elects COBRA and the subsidy under ARPA's extended election period, the AEI does not get another opportunity to elect **retroactive COBRA coverage**, even if the Outbreak Period extended deadlines would have otherwise permitted a later election
  - ▼ Qualified beneficiaries who are AEIs must decide within the 60-day election period whether to begin COBRA coverage retroactively, on April 1, 2021, or prospectively from date of election
  - ▼ If the AEI does not elect COBRA (retroactive or prospective) and the subsidy during the 60-day extended election period, but the Outbreak Period extended deadlines permit a later COBRA election, the AEI can still elect COBRA later pursuant to those deadlines, but the **AEI would miss the subsidy and could only elect COBRA coverage prospectively**

# Notice 2021-31: Outbreak Period Extension

- ▼ **Outbreak Period extended deadlines for COBRA premium payments remain available for retroactive periods of coverage for AEIs**
  - ▼ If AEI elects retroactive coverage, employer can require AEI to pay premiums for that period of coverage under the Outbreak Period extended deadlines
  - ▼ If AEI fails to pay by the deadline, employer can treat the AEI as having not elected COBRA until 4/1
- ▼ **Example:**
  - ▼ AEI becomes qualified beneficiary on 11/1/20
  - ▼ On 5/31/21, AEI elects retroactive COBRA effective on 11/1/20 and the subsidy effective on 4/1/21
  - ▼ AEI pays premiums for only the first 3 months
  - ▼ Plan can treat AEI as having COBRA only for November, December, and January and then April through September 2021

## Notice 2021-31: Tax Credit (Q/As 63 – 86)

- ▼ The amount of the credit is the premium that would have been charged to an AEI absent the COBRA subsidy
- ▼ Tax credit does not include any subsidized COBRA premium amount the employer would have otherwise provided (**e.g., severance**)
  - ▼ If employer subsidizes \$800 of a \$1,000 monthly COBRA premium for 3 months during Subsidy Period, the credit for the employer for those 3 months is \$200 per month. After those 3 months, employer is eligible for full credit (\$1,000 per month) for remainder of Subsidy Period (assuming AEI remains eligible)
- ▼ No credit is available for any months in which the employer **fully subsidizes** the COBRA premium as a severance benefit or otherwise
  - ▼ Eligible for full credit for any months in which AEI receives COBRA subsidy after employer-provided subsidy ends

# Notice 2021-31: Tax Credit

- ▼ “Premium Payee” claims the credit
- ▼ Premium Payee entitled to credit when it receives the AEI’s COBRA election
  - ▼ Entitled to credit for premiums not paid by AEI for periods of coverage that began before the date of receipt and then each subsequent period of coverage during the Subsidy Period where AEI does not pay the premium due to subsidy eligibility
- ▼ Example:
  - ▼ Employer receives the AEI’s COBRA/subsidy election on 6/17 for coverage effective 4/1
  - ▼ As of 6/17, employer entitled to credit for premiums not paid by AEI from 4/1 through June 2021
  - ▼ Then, as of 7/1, employer entitled to credit for premiums not paid by AEI for July

# Notice 2021-31: Tax Credit

- ▼ Premium Payee claims the credit by reporting the credit and the number of AEIs receiving the subsidy on its quarterly **Form 941** employment tax return
  - ▼ Previous example: Employer would report credit for April through June on Form 941 for the second quarter of 2021
- ▼ Premium Payees remain entitled to credit for periods of coverage where AEI failed to provide notice that he or she was no longer eligible for subsidy unless employer had actual knowledge of AEI's ineligibility
  - ▼ Once the Premium Payee learns of ineligibility, it is not entitled to credit from that point forward
- ▼ Credit is gross income to the Premium Payee

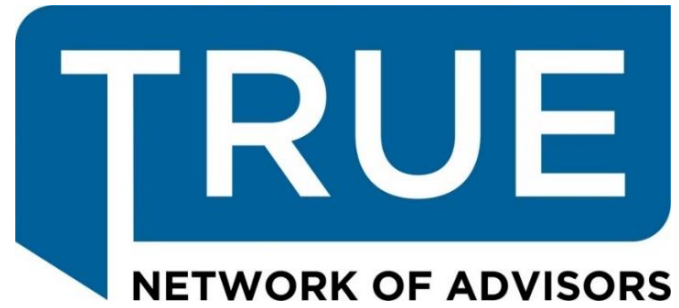
# Notice 2021-31: Tax Credit

- ▼ Premium Payee may not claim the credit for an AEI if it is claiming a tax credit for the AEI under the FFCRA for the same time
- ▼ If AEI pays premiums for periods of coverage covered by the subsidy, Premium Payee must reimburse the AEI for that amount
  - ▼ Premium Payee is not entitled to credit until the date of reimbursement
- ▼ If Premium Payee uses a third-party payer to report and pay employment taxes on its behalf, the Premium Payee can still receive the credit
  - ▼ Third-party payer is only entitled to the credit when it is a “Premium Payee”

# Notice 2021-31: Miscellaneous

- ▼ **Payments to Insurers under federal COBRA**
  - ▼ If insurer agrees to collect premiums from AEIs directly, it must treat AEIs as having paid full premium
  - ▼ Employer still must pay subsidized premiums to insurer
- ▼ **State Continuation Coverage (Mini-COBRA)**
  - ▼ Extended election period not available for state mini-COBRA programs unless the state law provides for a similar extended election right
  - ▼ Employer not eligible to receive the credit directly even if it pays the premium to the insurer; **insurer receives the credit**
- ▼ Subsidy amount is **excluded** from AEI's gross income





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