

American Rescue Plan Act – COBRA and State Continuation Subsidy Frequently Asked Questions

June 1, 2021



Background

The American Rescue Plan Act of 2021 (ARP) creates a temporary subsidy for certain individuals with federal COBRA. The subsidy is also available for individuals who are not eligible for federal COBRA but are eligible for state continuation coverage that is comparable to federal COBRA (mini COBRA). The Frequently Asked Questions (FAQ) below reflect the COBRA and state continuation coverage subsidy requirements. The answers may change if federal agencies issue further guidelines. These FAQs provide information only. You should seek your own legal and tax advice.

Employer groups that have questions regarding their own responsibilities under this new law, including notification requirements, should contact their legal counsel or the Department of Labor.

What is the COBRA/state continuation (mini COBRA) coverage premium subsidy?

Under ARP, the federal government will pay 100% of COBRA or state continuation coverage premium for certain individuals (referred to as "assistance eligible individuals" or AEIs). Among other requirements, the qualifying event that made the AEI eligible for COBRA or state continuation coverage must be the "involuntary termination" of employment or reduction of work hours sufficient to make the individual no longer eligible for coverage under the group plan. Other types of events, such as divorce or dependent aging out of coverage, may qualify for COBRA/state continuation, but they do not trigger the ARP subsidy.

What Groups are covered by federal COBRA?

The law generally applies to group health plans maintained by private-sector employers with 20 or more employees, or by state or local governments. The law does not apply to plans sponsored by churches and certain church-related organizations. If you have questions about whether your plan is subject to COBRA regulations or state continuance, please consult with your tax and/or legal advisor.

What COBRA benefits are eligible for the ARP subsidy?

At this time, only COBRA/state continuation (mini COBRA) for a group health plan is eligible for the ARP subsidy. This may include group coverage for Dental, Vision, Gap and EAP. Group Life (MN) is not eligible for the subsidy. Hospital Indemnity is not a COBRA eligible coverage or eligible for the ARP subsidy.

What states require continuation of coverage for dental, vision and/or gap?

Employers based in California, Colorado, Maine, Minnesota, New Hampshire, Rhode Island, South Dakota, Utah, West Virginia and Vermont, who have the applicable products, are subject to state requirements to allow continuation (mini COBRA) of group Dental, Vision and/or Gap coverage (in Vermont, Dental and Gap only) even where federal COBRA does not apply (under 20 lives or certain church groups).

What is considered an "involuntary termination"?

The ARP subsidy is similar to a COBRA subsidy enacted in 2009. According to the IRS Notice 2009-27, the following are examples of "involuntary termination" of employment (see the IRS Notice for more information and examples):

- Employee is fired (but note that if the termination is for gross misconduct, the termination is not a qualifying event, and the employee and any covered dependents are not eligible for COBRA/state continuation).
- Employee is laid off.
- Employee placed on furlough (reduction to zero hours).
- Employee resigns, but the employee knows that the employer will terminate employment if the employee does not resign.
- Employee resigns because employer requires a material change in the geographic location of employment.
- Employee quits due to an employer-imposed reduction in work hours that is a material negative change in the employment relationship for the employee.
- Employee's employment contract was not renewed by employer 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.
- Employee is terminated for absence from work due to illness or disability.
- Employee is terminated for cause (but note that if the termination is for gross misconduct, the termination is not a qualifying event, and the employee and any covered dependents are not eligible for COBRA/state continuation).

The following are not considered "involuntary termination" of employment:

- Employee voluntarily quits job
- Termination for gross misconduct
- Employee retires (except that it is an involuntary termination if, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated)
- Employee is absent from work due to illness or disability
- Death
- Divorce
- Dependent is overage (reached limiting age)

Who is eligible for the subsidy?

Any AEI whose group coverage is being continued or becomes eligible for continuation coverage during the period from April 1, 2021 to September 30, 2021 due to involuntary termination or reduction of hours is eligible for the ARP subsidy.

If I am eligible for COBRA/state continuation (mini COBRA), am I automatically eligible for the ARP subsidy?

No, an individual must have been terminated involuntarily, or have had a reduction in hours to be eligible for the subsidy. For state continuation, an individual is only eligible if involuntarily terminated or hours are reduced, and there is no gap in coverage.

Is someone with Individual Dental coverage who was involuntarily terminated from his or her job eligible for the subsidy?

No, the subsidy only applies to group coverage.

What about dependents?

An AEI (subsidy eligible individual) may continue their dependent coverage with the subsidy.

In addition, covered dependents will also be considered AEIs and eligible for a subsidy if they experience a second qualifying event during the subsidy period. For example, if a subsidy-eligible former employee divorces a spouse during the subsidy period, the divorced spouse will be independently eligible for COBRA/state continuation with a subsidy.

What if someone had been eligible for COBRA/state continuation (mini COBRA) in 2020 but did not elect it or let it lapse before April 1, 2021?

ARP includes a second chance enrollment for individuals previously eligible for federal COBRA. Any qualified beneficiary who would have qualified as an AEI if they had elected federal COBRA coverage prior to April 1, 2021 is eligible to elect to begin or restart their federal COBRA coverage April 1, 2021.

Note that under ARP, the second chance enrollment only applies to continuation under federal COBRA (generally groups with 20 or more eligible employees). Individuals who are eligible for continuation (mini COBRA) of coverage provided under State law (select states and generally less than 20 eligible employees) are **NOT** be eligible for the second chance enrollment under ARP. We will continue to monitor applicable state law to see if a similar enrollment is offered under state law.

When does subsidy begin?

This subsidy is effective April 1, 2021.

How will the employer know if the beneficiary becomes eligible for other coverage?

AEIs must notify the employer in writing if they become eligible for coverage under another group health plan or Medicare. If an individual fails to provide such notice they may be required to pay up to \$250 plus 110% of the subsidy amount.

How long will the subsidy last?

For AEIs, the subsidy will continue until the first of the following occurs:

1. September 30, 2021
2. The maximum period of continuation coverage required under COBRA or comparable state continuation coverage (mini COBRA) expires.
3. The AEI becomes eligible for coverage under another group health plan (with limited exceptions) or Medicare.

Can the subsidy be used for Dental, Vision and/or Gap continuation coverage?

For AEIs, the subsidy will apply to continuation coverage under federal COBRA including group dental, vision and/or gap plans. Since only the states listed above require continuation of Dental, Vision and/or Gap coverage under state continuation law (mini COBRA), the subsidy for Dental, Vision and/or Gap coverage would only be available in those states.

How will the subsidy be handled for groups subject to federal COBRA (generally 20 or more eligible employees)?

For these groups, the employer (or the group health plan in the case of an ERISA multi-employer plan) advances the subsidy, pays Sun Life the entire COBRA premium, and will be reimbursed for the subsidy through a payroll tax credit. The employer is responsible for applying for the payroll tax credit.

How will the subsidy be handled for groups that are not subject to federal COBRA but are subject to comparable state continuation coverage (mini COBRA) (select states and generally less than 20 eligible employees)?

For coverage in the select states listed above, no premium will be due for employees who have requested treatment as an Assistance Eligible Individual (AEI), and that request has been approved by Sun Life. Employees must submit a request for treatment as an AEI. Sun Life will require the employer to verify some information.

Does the subsidy apply to "voluntary" benefit plans where the employee pays a portion or 100% of the cost of the plan?

Under voluntary/employee-paid plans, employees pay a portion or 100% of the premium. To the extent that such programs are subject to COBRA/continuation (mini COBRA), they would still be eligible for the subsidy. For Groups with 20 or more eligible employees, employers would still have to pay the premiums and then obtain a credit for the subsidy through their payroll taxes. For continuation under state law (mini COBRA), once Sun Life gets sufficient information to identify an individual as an AEI, no premium will be due. Employees must submit a request for treatment as an Assistance Eligible Individual (AEI).

How do I enroll a former employee who is eligible for federal COBRA, but did not elect COBRA (gap in coverage)?

The employer should notify Sun Life of the individual electing COBRA by emailing Customer.Advocacy@sunlife.com and provide information including policy number, employee name, any dependents, date of termination, date for COBRA to start/end, and coverages elected. We will enroll them accordingly and add them to the next premium statement. The employer should pay the COBRA premium due to Sun Life. The employer is also responsible for applying for the payroll tax credit. Only individuals eligible under federal COBRA may have a gap in coverage. Please note that you will not be able to use Sun Life Connect to re-enroll a member for COBRA.

How does an employer request or obtain the payroll tax credit (federal COBRA)?

As guidance is continuing to become available, please consult with your tax and/or legal advisor for guidance on obtaining the payroll tax credit.

How will eligible individuals be notified of their right to the subsidy?

Under ARP, employers must provide modified election notices or provide separate supplemental notices to all persons who became entitled to elect federal COBRA continuation coverage. A carrier may assist in the notification of those eligible for state continuance/ARP from April 1, 2021 through September 30, 2021.

Where can employer groups or administrators get model notices to inform people about the new (secondary) election periods (federal COBRA only)?

The model notices are available on the following Department of Labor Web site.
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

Will Sun Life notify those eligible for federal COBRA or state continuance (mini COBRA)?

Because Sun Life does not have all of the information necessary to send notices directly to employees, Sun Life is notifying employers who may have employees eligible under continuance/mini COBRA, and providing forms that employers can use. Sun Life will not be sending correspondence to former employees. Employers should notify former employees who may be eligible for premium credits under continuance/mini-COBRA.

Individuals seeking waiver of mini-COBRA premiums must submit the form requesting treatment as an Assistance Eligible Individual (AEI).

All notices about who is eligible for the subsidy for Federal COBRA would be the responsibility of the employer.

I have an additional question. Where can I send my question(s)?

For employers with federal COBRA eligible plans – customer.advocacy@sunlife.com

For employers with COBRA eligible plans under state continuance (mini COBRA) (California, Colorado, Maine, Minnesota, New Hampshire, Rhode Island, South Dakota, Utah, West Virginia and Vermont) –
group.premium.inquiries@sunlife.com

Group insurance policies are underwritten by Sun Life Assurance Company of Canada (SLOC) (Wellesley Hills, MA) or by Union Security Insurance Company (USIC) (Kansas City, MO) and administered by SLOC in all states, except New York. Prepaid dental products are provided and administered by SLOC, and provided by prepaid dental companies affiliated with SLOC in certain states except New York. In New York, group insurance policies are underwritten by Sun Life and Health Insurance Company (U.S.) (SLHIC) (Lansing, MI). Group Hospital Confinement Indemnity “Gap” insurance is underwritten by Fidelity Security Life Insurance Company (Kansas City, MO), and is administered by Sun Life Assurance Company of Canada (Wellesley Hills, MA).