



## Frequently Asked Questions: Benefits Compliance & the American Rescue Plan Act of 2021

Last updated April 8, 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law, which includes important updates to certain benefits laws in response to the ongoing pandemic. The below questions and answers are intended to help clarify application of the ARPA and its impact on benefits administration with the guidance that is currently available.

### Table of Contents

#### *COBRA Subsidies, New Election Period and Change Coverage to Other Plan Options*

1. What COBRA subsidies are provided by the ARPA? [≥](#)
2. Which plans are subject to these rules? [≥](#)
3. Who is eligible for a COBRA subsidy? [≥](#)
4. Does “involuntary termination” include former employees who voluntarily terminated employment for reasons related to COVID-19 (e.g., to care for an elderly family member)? [≥](#)
5. How do qualified beneficiaries apply for the COBRA subsidy? [≥](#)
6. What is the special COBRA election period? [≥](#)
7. How long is the special COBRA election period? [≥](#)
8. Does the special COBRA election period extend the maximum COBRA coverage period? [≥](#)
9. If a qualified beneficiary elects COBRA during the new COBRA election period, is coverage retroactive back to initial eligibility (or the date COBRA coverage was dropped)? [≥](#)
10. If a qualified beneficiary pays for COBRA in error during the period from April 1, 2021, through September 30, 2021, will they be reimbursed? [≥](#)
11. Does the ARPA allow qualified beneficiaries to change coverage to another plan option? [≥](#)
12. Is the expiration of the COBRA subsidy a qualifying event to permit an individual to enroll in group health plan coverage or an individual plan in the health insurance exchange? [≥](#)
13. How are the COBRA subsidy credits administered? [≥](#)
14. Are there employer notice requirements associated with the COBRA subsidies, new election period and opportunity to change plan options? [≥](#)
15. Who is required to provide the employer notices? [≥](#)
16. Can the notices be distributed via email? [≥](#)
17. Do participants have any notice responsibility? [≥](#)

#### *FFCRA: Emergency Paid Sick Leave and Expanded FMLA*

18. Is the Emergency Paid Sick Leave and Expanded FMLA provided initially by the FFCRA extended? [≥](#)
19. Does the ARPA expand eligibility for EPSL or expanded FMLA? [≥](#)
20. Does the ARPA provide additional benefits under EPSL or expanded FMLA? [≥](#)

#### *Dependent Care FSA (DCAP): Increased Exclusion*

21. Does the ARPA increase the participant’s DCAP reimbursement amount? [≥](#)
22. Are participants able to contribute up to \$10,500 to their DCAP due to the increase in DCAP exclusion? [≥](#)
23. If an employer chooses to increase the DCAP contribution limit to \$10,500 and also permits a carryover, are amounts used over \$10,500 subject to taxation? [≥](#)

## **COBRA: Subsidies, New Election Period and Change Coverage to Other Plan Options**

### **Q1: What COBRA subsidies are provided by the ARPA? [^](#)**

**A1:** The ARPA provides a premium subsidy for qualified beneficiaries who elect continuation coverage through COBRA, including state continuation programs. This subsidy covers the entire cost of COBRA premiums and applies to COBRA premiums paid for coverage periods between April 1, 2021, and September 30, 2021 (or when the qualified beneficiary becomes eligible for other group medical or Medicare coverage, whichever comes first).

### **Q2: Which plans are subject to these rules? [^](#)**

**A2:** The ARPA applies to all group health plans, fully insured and self-insured, providing major medical benefits that are subject to federal or state continuation coverage requirements. This includes major medical, dental and vision. However, healthcare flexible spending arrangements (health FSAs) are not subject to these provisions. Further, it appears that health reimbursement arrangements (HRAs) are subject to these provisions, as HRAs are group health plans.

### **Q3: Who is eligible for a COBRA subsidy? [^](#)**

**A3:** A qualified beneficiary must have experienced a reduction of hours or employer-initiated (i.e., involuntary) termination of their employment (other than by reason of such employee's gross misconduct) to obtain this subsidy and must also not be eligible for other group health coverage or Medicare. Reduction of hours or termination does not have to be related to COVID-19. In addition, an individual appears to qualify for a premium subsidy if they experience a voluntary or involuntary reduction of hours. Examples of a "reduction of hours" include any temporary leaves of absence, an individual's participation in a lawful labor strike, and medical leave (that does not result in the termination of the individual's employment). Further, individuals who are eligible for COBRA due to voluntarily termination, or other qualifying events such as divorce or losing dependent status, are not eligible for the COBRA subsidy.

This includes anyone who could still be in their COBRA maximum coverage period during the applicable timeframe (April 1, 2021, through September 30, 2021), even if the employer-initiated termination or reduction in hours occurred before April 1, 2021. As a reminder, dependents will also have an independent election right to continue their COBRA if the employee was terminated or had their hours reduced.

### **Q4: Does "involuntary termination" include former employees who voluntarily terminated employment for reasons related to COVID-19 (e.g., to care for an elderly family member)? [^](#)**

**A4:** It is unclear how "involuntary" termination of employment will be defined. However, an individual who must voluntarily terminate employment to care for a family member is likely not going to be eligible as it would presumably be seen as employee-initiated termination (not employer-initiated). Similarly, employees who experience other voluntary terminations due to a leave or separation agreement would likely not be eligible (although it would depend heavily on the facts and circumstances of the situation).

### **Q5: How do qualified beneficiaries apply for the COBRA subsidy? [^](#)**

**A5:** Eligible qualified beneficiaries should not be charged the full premium when enrolled in COBRA during the COBRA subsidy coverage period (April 1, 2021, through September 30, 2021). It appears that qualified beneficiaries must submit a "Request for Treatment as an Assistance Eligible Individual" along with their Election Form (or separately, if they are currently enrolled in COBRA coverage). Then, the COBRA subsidy should be available to them automatically (they should receive a notice stating such, as described further below). For reference, model notices are available here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>. (The "Request for Treatment as an Assistance Eligible Individual" form is included in the Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021 resource).

Practically speaking, COBRA administrators will not know whether reduction of hours or employer-initiated termination is the reason for COBRA eligibility. That said, employers should coordinate with their COBRA administrators to determine who is eligible for the ARPA COBRA subsidy. Employers may need to review COBRA triggering events back to October 2019 to determine ARPA COBRA subsidy eligible individuals.

### **Q6: What is the special COBRA election period? [^](#)**

**A6:** The ARPA provides an additional COBRA election period for certain qualified beneficiaries. This includes those individuals who would qualify for the premium subsidy and are either (1) still within their 18-month coverage period but declined COBRA coverage, or (2) dropped COBRA coverage before the maximum coverage period expired.

**Q7: How long is the special COBRA election period? [^](#)**

**A7:** This election period starts on the date the qualified beneficiary receives a new COBRA election notice and lasts for 60 days. However, if an election is made within the new 60-day election period, continuation coverage will be retroactive back to April 1, 2021.

**Q8: Does the special COBRA election period extend the maximum COBRA coverage period? [^](#)**

**A8:** No. The new election period does not extend the maximum coverage period for any qualified beneficiary who elects COBRA coverage under these circumstances. For example, if an individual only had one month left in their coverage period as of April 1, 2021 – as calculated from the date of the loss of coverage and qualifying event, such as employment termination – then they would not gain additional months of coverage if they elected COBRA coverage during this new election period (and would only receive one month of the COBRA subsidy, if eligible).

**Q9: If a qualified beneficiary elects COBRA during the special COBRA election period, is coverage retroactive back to initial eligibility (or the date COBRA coverage was dropped)? [^](#)**

**A9:** No. An election during the new election period is prospective in nature. This means that coverage is not retroactive back to initial eligibility (or date COBRA coverage was dropped), and the individual is only entitled to continuation coverage prospectively for the remainder of their COBRA maximum duration period. However, if an election is made within the special 60-day election period, continuation coverage will be retroactive back to April 1, 2021.

**Q10: If a qualified beneficiary pays for COBRA in error during the period from April 1, 2021, through September 30, 2021, will they be reimbursed? [^](#)**

**A10:** Yes. Any eligible individual that is already on COBRA due to reduction of hours or involuntary termination will be due a refund if they accidentally pay for coverage in April – September. It is unclear who would refund the qualified beneficiary, but it is likely that the entity that obtains the tax credit for the subsidized payment will be responsible for the refund.

**Q11: Does the ARPA allow qualified beneficiaries to change coverage to another plan option? [^](#)**

**A11:** Yes. Employers have the option of allowing qualified beneficiaries who are eligible for the ARPA COBRA premium subsidy to change coverage to other plan options. Normally, qualified beneficiaries must be covered by the same plan that covered them on the day before the date of the qualifying event (although they can change coverage if an open enrollment period occurs during their period of COBRA coverage). However, if the employer allows it, then it must provide qualified beneficiaries with notice and give them 90 days from the date of the notice to make a change. The qualified beneficiaries who have this choice can only choose coverage that costs the same or less than the coverage they already have.

**Q12: Is the expiration of the COBRA subsidy a qualifying event to permit an individual to enroll in group health plan coverage or an individual plan in the health insurance exchange? [^](#)**

**A12:** Without further guidance, the end of a COBRA subsidy is not an IRS-permitted qualifying event to enroll in group health plan coverage. However, it will qualify them for a Special Enrollment Period in the exchange as the end of an "employer provided" subsidy opens an SEP.

**Q13: How are the COBRA subsidy credits administered? [^](#)**

**A13:** The premium subsidy is paid through a refundable FICA tax credit to the employer, carrier or plan, as applicable. The credit is claimed by the employer for fully insured plans that are subject to federal COBRA and all self-insured plans; the carrier for fully insured plans that are not subject to federal COBRA (i.e., state continuation only); and the plan for a multiemployer plan. The process is similar to the FFCRA tax credit process — through the employer's (or carrier's) quarterly tax return.

Further, the tax credit that pays for these subsidies can include administrative fees (so the understanding is that the additional 2% of the cost of COBRA and any additional fees paid by employers to implement this law will be recoverable through tax credits).

**Q14: Are there employer notice requirements associated with the COBRA subsidies, special election period and opportunity to change plan options? [^](#)**

**A14:** Yes. Employers must provide notice of the subsidy and (if the employer chooses) the option to change coverage to those qualified beneficiaries who are potentially affected by these changes. Qualified beneficiaries potentially affected by these changes are those who qualify for the subsidy (even if they are already covered by COBRA) and those who qualify for the special election period, as described above. Practically speaking, COBRA administrators will not know whether reduction of hours or employer-initiated termination is the reason for COBRA eligibility. That said, employers should coordinate with their COBRA administrators to determine who is eligible for the ARPA COBRA subsidy. Employers may need to review COBRA triggering events back to October 2019 to determine ARPA COBRA subsidy eligible individuals.

Employers must provide this notice by May 31, 2021. (As a practical matter, May 31, 2021 is Memorial Day. As such, employers should plan to send the notice by May 28, 2021, the last business day prior to the deadline). Employers can either provide new notices or supplement current notices by including the new information in a separate document with the current notice. The DOL has provided model notices that includes:

- The forms that are necessary for establishing eligibility for the subsidy described above.
- The name, address and telephone number necessary to contact the plan administrator and any other individual maintaining relevant information in connection with such premium assistance.
- A description of the extended election period described above.
- A description of the obligation of the qualified beneficiary to let the plan know when they have become eligible for coverage under another group medical plan or become eligible for Medicare benefits and the penalty for failing to do so.
- A description, displayed in a prominent manner, of the qualified beneficiary's right to a subsidized premium and any conditions on entitlement to the subsidized premium.
- A description of the option of the qualified beneficiary to enroll in different coverage (if the employer chooses this option).

In addition, employers are required to provide notice of the expiration of the premium subsidy to those qualified beneficiaries who are benefiting from the ARPA COBRA subsidy. Employers must provide this notice between 15 and 45 days before the date the subsidies end. The notice must also state that the qualified beneficiary will continue to be covered by COBRA for the remainder of the qualified beneficiary's coverage period (but without the subsidy) or by other group health plan coverage, if applicable.

Note that if the qualified beneficiary notified the plan that they had become eligible for another group medical plan or Medicare benefits, then the employer is not required to provide this notice. The DOL has produced a model notice for the expiration of the premium subsidy.

For reference, model notices are available here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>.

**Q15: Who is required to provide the employer notices? [^](#)**

**A15:** The notices are an obligation of the plan administrator, which is typically the employer plan sponsor. The administrator should be identified in the plan's summary plan document (SPD). The employer may contract with another party, such as a COBRA vendor, to perform the duty on their behalf, but the employer is ultimately responsible for compliance. Employers who utilize a COBRA vendor should confirm if these COBRA notices will be sent by the COBRA vendor. Failure to comply with the notice requirement would be considered a COBRA failure subject to penalty.

**Q16: Can the notices be distributed via email? [^](#)**

**A16:** Generally, no. The default is to send COBRA notices via first-class mail to the last known address of the qualified beneficiaries. Practically speaking, sending COBRA-related notices via email cannot be administered unless the former employee provided a personal email address (or the qualified beneficiary is still employed with a work email address but receiving COBRA due to a reduction of hours). In addition, since dependents will also need to receive these notices, sending notices to them via email may not be possible.

**Q17: Do participants have any notice responsibility? [^](#)**

**A17:** Yes. If a participant becomes eligible for other group health plan coverage or Medicare, they are required to notify the plan accordingly. If such a participant fails to notify the plan, they could be subject to monetary penalties (however, no penalty will be assessed if the failure is due to reasonable cause and not willful neglect).

**FFCRA: Emergency Paid Sick Leave and Expanded FMLA**

**Q18: Is the Emergency Paid Sick Leave and expanded FMLA provided initially by the FFCRA extended? [^](#)**

**A18:** Yes. Employers can opt to extend emergency paid sick leave (EPSL) or expanded FMLA to its employees through September 30, 2021, an extension of the March 31, 2021, deadline provided by the Consolidated Appropriations Act (CAA). If employers choose to do this, then they can receive payroll tax credits to offset the costs of providing that leave.

**Q19: Does the ARPA expand eligibility for EPSL or expanded FMLA? [^](#)**

**A19:** Yes. As a reminder, FFCRA required employers to provide up to 80 hours of paid sick time to employees who are unable to work (including telework) due to one of the following reasons:

- Subject to a federal, state or local quarantine or isolation order related to COVID-19
- Advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis
- Providing care to an individual who is subject to a federal, state or local quarantine order related to COVID-19 or who has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
- Caring for a child if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions
- Experiencing any other substantially similar conditions specified by HHS (in consultation with the DOL and Treasury)

Per the ARPA, reasons for granting emergency paid sick leave now also include time taken when “the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employee’s employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization.” In addition, reasons for taking expanded FMLA now include *any* reason for leave allowed under EPSL, including the new reason.

**Q20: Does the ARPA provide additional benefits under EPSL or expanded FMLA? [^](#)**

**A20:** Yes. The ARPA appears to grant an additional 80 hours of sick leave under EPSL effective after the first quarter of 2021. In addition, the first ten days of expanded FMLA appear to no longer be unpaid and the maximum leave provided under this provision is increased from \$10,000 in the aggregate to \$12,000. That said, if an employer opts to extend EPSL or expanded FMLA, then employees appear to be entitled to these additional benefits.

**Dependent Care FSA (DCAP): Increased Exclusion**

**Q21: Does the ARPA increase a participant’s DCAP reimbursement amount? [^](#)**

**A21:** Yes, but only for the calendar year 2021. A participant’s DCAP reimbursement amount in a calendar year is generally limited to \$5,000 if the employee is married and filing a joint return or if the employee is a single parent (or \$2,500 if the employee is married filing separately). However, the ARPA provides a temporary increase for this exclusion to \$10,500 (or \$5,250 if the employee is married filing separately) for taxable years beginning after December 31, 2020, and before January 1, 2022. Accordingly, amounts over \$5,000 that are reimbursed through a DCAP in the 2021 taxable year will not be treated as taxable income for participants.



**Q22: Can participants contribute up to \$10,500 to their DCAP due to the increase in DCAP exclusion? [^](#)**

**A22:** Possibly. The law seems to imply that an employer can permit employees to increase their 2021 DCAP election up to \$10,500. As such, if an employer chooses to permit DCAP contributions up to \$10,500 and permits mid-year election changes pursuant to the CAA, it appears that participants can contribute up to \$10,500 for the 2021 calendar year. Note that the plan must be amended to permit the increased contribution amount. The ARPA provides that retroactive plan amendments are allowed if the plan is amended no later than the last day of the plan year in which the amendment is effective and the plan is operated consistent with the terms of the amendment.

**Q23: If an employer chooses to increase the DCAP contribution limit to \$10,500 and also permits a carryover or grace period, are amounts used over \$10,500 in a calendar year subject to taxation? [^](#)**

**A23:** Yes. The ARPA temporarily increases the excludable amount for DCAPs to \$10,500 (as described above). Any amounts used in 2021 over \$10,500 will be treated as taxable income for participants.

For example, an employee has \$1,000 in unused DCAP contributions for 2020. His employer chose to adopt a carryover feature for the DCAP permitting the total unused account balance to be carried over into the following plan year. His employer also chose to increase the DCAP contribution amount for 2021 to \$10,500 (as described in Q22). For 2021, the employee elects \$10,500 in DCAP salary reductions. During 2021, the employee incurs and is reimbursed for \$11,500 in DCAP expenses. When the employee files his tax return, he is only able to exclude from taxable income a maximum of \$10,500 in DCAP expenses. The other \$1,000 used will be treated as taxable income.

*This information has been provided as an informational resource for NFP clients and business partners. It is intended to provide general guidance, and is not intended to address specific risk scenarios. Regarding insurance coverage questions, each specific policy must be reviewed in its entirety to determine the extent, if any, of coverage available for the impact of the Coronavirus. If you have questions, please reach out to your NFP contact.*