



## COBRA Subsidy 2021 FAQ

This Compliance *FAQ* provides answers to some questions you may have about the new COVID COBRA subsidy rules and how they work.

This *FAQ* reflects HPI's current understanding of the new temporary COBRA subsidy rules and incorporates all guidance provided by the Department of Labor (DOL) to date.

HPI will continue to provide updates as any new guidance is issued.

### Q 1. Which plans are eligible for the subsidy?

- A. All group health plans sponsored by an employer which are subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA), including medical, dental and vision coverage.

### Q 2. Who is eligible for the subsidy?

- A. "Assistance Eligible Individuals (AEIs)" are entitled to the subsidy and are defined as employees and covered family members who lose health coverage due to the employee's:

- Reduction in hours,

*or*

- Involuntary termination of employment

*and who fall into one of the three categories below:*

- Are currently enrolled in COBRA, *or*
- Become eligible for COBRA on or after April 1, 2021 and before September 30, 2021, *or*
- Became eligible for COBRA before April 1, 2021 and are still within their maximum 18 month COBRA period even if they did not previously elect COBRA,

*and*

- Are **not** eligible for coverage under either another group health plan (such as a spouse's, parent's or new employer's plan) or Medicare

**During its April 26, 2021 webinar, the DOL reiterated that a reduction in hours that qualifies an employee for the subsidy includes such voluntary actions as changing from full-time to part-time or taking an approved leave of absence, provided these actions result in a loss of coverage under the Plan.**

<sup>1</sup> The subsidy applies to federally recognized dependents, i.e., spouses, children, step children. If other family members, such as domestic partners, are covered under the Plan, there may be some premium due. For example, if an employee covered only herself and her domestic partner, and the Plan's coverage levels were self-only and family, the subsidy would be the value of self-only coverage and the additional premium due would be the difference between self-only and family coverage. But, using the same coverage levels, if an employee had family coverage that included her children and domestic partner, the subsidy would cover 100% of the cost of the family premium since including the domestic partner does not affect the amount of the total family premium.

### Q 3. What does “involuntary” mean in the context of the pandemic?

- A. Involuntary termination includes employment termination initiated by employer action, such as layoffs and firing (except firing for gross misconduct). However, during its April 26, 2021 webinar, the DOL indicated that both the IRS and the DOL may review whether the definition might be more expansive. HPI understands that the DOL and IRS have been receiving many questions about terminations initiated by employees who may have left work for COVID-specific reasons such as caring for a child whose day care or school closed, or being at high risk for contracting the virus. Again, HPI will provide updates if and when additional guidance is issued.

### Q 4. How will eligibility for the subsidy be confirmed?

- A. Employers will identify AEIs as those employees whose hours were reduced or who were involuntarily terminated from employment and lost coverage under their plans as a result. HPI will work directly with our COBRA administration clients on this process and will provide lists of all COBRA-eligible individuals on which the clients can indicate which are AEIs.

Members who believe that they are eligible for the subsidy must apply using a form called *Request for Treatment as an Assistance Eligible Individual* which also requires that they attest that they and their covered dependents meet the eligibility criteria listed in Q 2 above.

### Q 5. What if an employer incorrectly categorizes an employee’s status?

- A. There are potential tax consequences under the IRS rules, as well as potential liability under the COBRA regulations:
- If an employer incorrectly provides a subsidy and submits for a payroll tax credit (see Q 11) for a person determined by the IRS not to be eligible, the IRS may determine that the employer failed to pay required payroll taxes.
  - If an employer incorrectly denies a subsidy to an employee found by the DOL to have been eligible, the DOL may find that the employer violated the employee’s rights under COBRA.

### Q 6. Are there penalties for individuals who fail to notify their Plan or COBRA Administrator about eligibility for other coverage?

- A. Yes. The penalty is \$250 or, if the failure to notify is intentional, 110% of the subsidy provided.

### Q 7. What happens if an AEI loses eligibility due to becoming eligible for another group health plan or Medicare?

- A. The AEI must submit a *Participant Notification* form to let the Plan and COBRA Administrator know about their eligibility for other coverage. These forms are part of the notification packages that will be provided with the forms to apply for the subsidy.

### Q 8. When does the subsidy begin?

A. On the *later* of:

- The first day of the AEI's COBRA coverage period, or
- April 1, 2021.

### Q 9. When does the subsidy end?

A. On the *earlier* of:

- The last day of the AEI's COBRA coverage period, or
- September 30, 2021.

### Q 10. What does the subsidy cover?

- A. The subsidy covers 100% of the COBRA premium for each AEI.

### Q 11. How long do AEIs have to apply for the subsidy using their *Request for Treatment as an Assistance Eligible Individual* form?

- A. Applicants for the subsidy must submit their *Request for Treatment as an Assistance Eligible Individual* form to HPI no more than 60 days after the form is mailed to them.

### Q 12. How is the subsidy funded?

- A. The cost is fully funded by the federal government. Employers first absorb the cost of the subsidized COBRA premiums and then work with their tax advisors to recover the subsidy amounts from the IRS with filings against quarterly payroll taxes due for Medicare health Insurance.

### Q 13. Will there be additional charges from HPI to issue the required notices and process applications related to the COBRA subsidy?

- A. No. These services will be covered by HPI's current COBRA administration fees.

The information in this *FAQ* is intended to provide a summary of HPI's understanding of recent regulatory developments which may affect our clients' plans. It should not be construed as specific legal advice or legal opinion.