

ARPA COBRA Subsidy

Frequently Asked Compliance Questions

April 2, 2021

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Background

1. What is ARPA?

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law. Intended as another stimulus bill in the wake of the COVID-19 pandemic, ARPA includes important provisions impacting employers who sponsor health and welfare benefits. Those provisions include temporary COBRA subsidies, which are highlighted in these FAQs.

Subsidy Provisions and Eligibility

2. How much is the subsidy?

The ARPA subsidy is 100% of the cost of coverage. Employers sponsoring group health plans may be reimbursed for the 100% COBRA premium subsidy via credits against certain payroll taxes. The reimbursement also includes a 2% administrative fee.

3. Who is eligible to obtain tax credits for providing subsidized coverage?

The tax credit is available to private employers and non-federal governmental employers subject to COBRA. If the plan is a multi-employer plan, the plan receives the tax credit. If the plan is an employer-sponsored fully insured or self-insured benefit, the employer receives the tax credit. For all other plans, the insurer receives the tax credit.

4. Do the COBRA subsidy requirements apply to employers of all sizes?

Applicability of the ARPA COBRA subsidy requirements is not based on employer size, except to the extent that the employer size dictates whether federal and/or state continuation rules apply.

5. Are plans sponsored by non-federal government employers subject to the requirement to provide COBRA premium assistance under ARPA?

Yes. The ARPA COBRA premium assistance provisions apply to group health plans sponsored by both private and non-federal government employers. Non-federal governmental employers may also apply for payroll tax credits to offset the cost of COBRA premium assistance.



6. Do the COBRA subsidy requirements apply to self-insured plans?

Yes. The ARPA COBRA subsidy rules apply to all plans that are subject to federal COBRA or comparable state continuation coverage laws (mini-COBRA). It generally applies to self-insured groups that are subject to COBRA.

7. What type of coverage is subject to the subsidy?

The subsidy provisions are not limited to medical coverage and include all health benefits subject to COBRA continuation or state “mini-COBRA” continuation, including health benefits such as dental, vision, and employee assistance program (EAP) benefits, but not health flexible spending accounts (FSAs). Health FSAs are specifically excluded.

8. Is the subsidy only available for medical coverage?

Coverage that is eligible for the subsidy includes all lines of health coverage for which COBRA must generally be provided with the exception of health flexible spending accounts (FSA). This most typically includes major medical, dental and vision.

9. Active employees pay the full cost of dental and vision coverage under our plans. Is an employee entitled to subsidized COBRA for dental and vision in the event the employee loses coverage due to an involuntary termination or reduction in hours?

Yes. An individual’s eligibility for COBRA premium assistance under ARPA is not tied to whether the employer contributes to the cost of coverage for non-COBRA participants. Absent additional guidance to the contrary, an individual would still be entitled to subsidized COBRA during the subsidy period even though the employer did not contribute to the cost of that coverage while the employee was active, so long as the individual otherwise meets the subsidy eligibility criteria.

10. Does the subsidy apply to coverage provided through a “mini-COBRA” state continuation requirement?

Yes. The premium subsidy is available for assistance eligible individuals who elect coverage under a State mandated coverage continuation law that is comparable to the coverage provided under COBRA (i.e., a right to substantially similar coverage as was provided under the group health plan at a cost that is based on a specified percentage of the group health plan premium).

11. Can employers choose to subsidize less than 100% of the cost of COBRA for assistance eligible individuals?

No, employers are required to subsidize 100% of COBRA premiums (plus the 2% administrative fee if applicable) and are not permitted to subsidize a smaller amount.

12. Who is eligible for subsidized COBRA continuation coverage?

The following individuals who are or become qualified beneficiaries (employees plus affected spouses and children) as the result of an involuntary termination of employment or reduction in hours (thus excluding voluntary termination of employment) may be eligible for the subsidy:

- Individuals who were previously eligible for COBRA continuation coverage, but who did not elect COBRA and have coverage that would have extended into the subsidy period (e.g., an individual involuntarily terminated on October 1, 2020 who did not elect COBRA)
- Individuals who were previously eligible for COBRA continuation coverage, elected, but dropped, coverage, and have coverage that would have extended into the subsidy period (e.g., an individual involuntarily terminated on October 1, 2020, who elected COBRA, but did not pay premiums after December 31, 2020)
- Individuals who become eligible during the subsidy period (e.g., an individual involuntarily terminated on May 1, 2021)

13. Are the ARPA COBRA subsidies limited to those employees (and dependents) who lost group health plan coverage due to an involuntary termination or reduction in hours as a direct result of COVID-19?

No. ARPA does not require the individual's involuntary termination or reduction in hours to be related to COVID-19 in any way. Employees terminated involuntarily due to layoffs associated with the pandemic, as well as those terminated involuntarily due to other reasons unrelated to the pandemic (for example, terminations in connection with a merger or acquisition, or terminations for cause) may be assistance eligible individuals, assuming they otherwise qualify for the COBRA premium subsidy.

14. Are spouses and dependents eligible for the subsidy?

Yes. The subsidy is available to any qualified beneficiary associated with an involuntarily terminated employee or an employee who loses coverage due to a reduction in hours. This includes spouses or dependent children who independently elect COBRA even when the former employee declines the coverage.

15. If a former employee who was terminated involuntarily is eligible for coverage under a spouse's group health plan, is the former employee eligible for the COBRA premium subsidy?

No. An individual will lose subsidy eligibility as of the first date such individual is eligible for coverage under any other group health plan (that is not an excepted benefit, health FSA, or qualified small employer health reimbursement arrangement (QSEHRA)) or Medicare. The law does not define what eligibility for coverage under any group health plan means. As written, eligibility for coverage under any group health plan includes coverage under a spouse's employer's group health plan. Therefore, an individual who is eligible for coverage under a spouse's plan after the loss of coverage under their own employer's plan would not be eligible for the COBRA premium subsidy.

16. An employee was let go voluntarily, and elected COBRA for himself and his spouse instead of enrolling in his spouse's employer's plan. Since the spouse would need a qualifying event to enroll in the spouse's employer's coverage, would that coverage make them ineligible for the subsidy?

The text of the ARPA statute seems to make it clear that assistance-eligible individuals who become *eligible* for other group health coverage while they are already in the subsidy period will have their subsidy period end early, as of the first month that eligibility for the other coverage becomes available. However, the statute doesn't define what it means to "be eligible" for other group coverage.

Note that, under the outbreak period relief rules, the spouse has one year from the date of the original HIPAA special enrollment request deadline would have ended to make a request for special enrollment in connection with the employee's loss of coverage (or, if earlier, 60 days after the announced end of the National Emergency). Thus, depending on when the termination occurred, the spouse can probably still request the special enrollment for both under the spouse's employer's group plan, which could make the employee "eligible" for other group coverage and disqualify that employee from subsidy eligibility.

17. Our plan includes eligibility for part-time employees. Are part-time employees who lost group health plan coverage due to an involuntary termination or reduction in hours eligible for the COBRA premium subsidy?

Yes. The COBRA premium subsidy is not limited to full-time employees. To the extent that part-time employees who were eligible for group health plan coverage lost that coverage due to an involuntary termination of employment or reduction in hours, and

are not currently eligible for other group health plan coverage or Medicare, they will be eligible for the COBRA premium subsidy.

18. If a former employee was terminated involuntarily for cause, is the former employee eligible for the COBRA premium subsidy?

Yes, based on the text of the statute. ARPA does not define an involuntary termination or reduction in hours. There is no exception in the law for individuals who were terminated involuntarily for cause or for other reasons unrelated to COVID-19. As a result, employees who were terminated involuntarily, for cause or otherwise, are eligible for the COBRA premium subsidy.

19. Are employees who were terminated involuntarily due to gross misconduct entitled to the COBRA premium subsidy?

No. While ARPA provides a COBRA premium subsidy for those who were involuntarily terminated, including involuntary terminations for cause, no qualifying event occurs when that involuntary termination is due to gross misconduct. In other words, employees who are terminated involuntarily due to gross misconduct are not entitled to COBRA premium assistance. However, plan sponsors should use caution when withholding an offer of COBRA due to gross misconduct. There is no uniform definition of gross misconduct contained in the regulations and withholding an offer of COBRA due to gross misconduct generally requires conduct that is more flagrant and egregious than conduct triggering a termination for cause. The potential access to COBRA premium assistance may lead former employees to challenge the denial of COBRA coverage. Decisions to deny such coverage on the basis of gross misconduct may result in a higher risk of litigation for the plan. Plan sponsors should consult with legal counsel prior to denying an offer of COBRA on the basis of gross misconduct.

20. What events would not be considered an involuntary termination of employment?

ARPA's statutory language does not define "involuntary termination of coverage." However, it is clear that involuntary termination of employment does not include other COBRA qualifying event such as divorce, death of the employee, or a dependent child ceasing to meet the definition of a dependent under the terms of the plan.

21. If a former employee accepted an early retirement or severance package as an alternative to being laid off, is the former employee eligible for COBRA premium assistance?

Unfortunately, ARPA does not provide an answer to this question. On one hand, acceptance of the early retirement or severance package could be viewed as voluntary – the employee was offered a choice between voluntarily accepting the package or taking a risk that their position would be eliminated. On the other hand, if the employer communicated to the employee that the employee could resign and take the package or be laid off, the termination may be viewed as involuntary.

22. An employee was terminated involuntarily in 2020. The employee is eligible for group health plan coverage through another employer, but the plan the new employer offers does not meet minimum value and only offers coverage for preventive care. Is the employee eligible for COBRA premium assistance?

Under the terms of ARPA, eligibility for premium assistance ends on the first date that an individual becomes eligible for coverage under another group health plan, other than coverage consisting of only excepted benefits. Group health plans that are minimum essential coverage (MEC), but that do not provide minimum value (MV), are group health plans and are not excepted benefits. As a result, an individual who is eligible for another employer's group health plan that is MEC but does not provide MV would no longer be eligible for COBRA premium assistance, even if the new employer's group health plan contains significant coverage exclusions.

23. If an individual was involuntarily terminated and purchased individual coverage from the Marketplace, is that individual eligible for a COBRA subsidy?

Individuals who had an involuntary termination and are enrolled in Marketplace coverage would be still eligible for the COBRA subsidy if they're not eligible for other group coverage or Medicare, and if they otherwise satisfy the requirements for eligibility.

24. We are an Applicable Large Employer (ALE) subject to the ACA's Employer Shared Responsibility provisions. Employees who experience an involuntary reduction of hours but who are considered full time and in a stability period do not lose eligibility for medical coverage under the terms of our plan. Does ARPA require employers to provide COBRA premium assistance for

employees who have had a reduction in hours but no corresponding loss in eligibility?

No, ARPA does not require employers to provide COBRA premium assistance for employees who have had an involuntary reduction in hours but no corresponding loss of coverage. For a COBRA qualifying event to occur, a loss of coverage must be caused by certain triggering events. Here, the employer is an ALE and has structured its plan eligibility such that employees who have measured as full time and are in a stability period do not lose eligibility for coverage if they experience a reduction in hours. In general, COBRA would not be offered for an employee who experiences a reduction in hours during a stability period until eligibility for coverage is lost, either due to the expiration of the stability period at which time the employee is no longer considered full time, or the utilization of the special rule for employees who have been continuously offered coverage, and experience a reduction in hours during the stability period. If a loss of coverage due to the reduction in hours occurs and COBRA would be offered during the subsidy period from April 1, 2021 to September 30, 2021, the employee would be entitled to COBRA premium assistance for the months of their maximum coverage period that fall within the subsidy period.

If the employer has amended its Section 125 cafeteria plan to allow employees who experience a reduction in hours, but remain eligible for coverage, to revoke their elections voluntarily, no offer of COBRA (and no COBRA premium assistance) would be provided. Here, the employee's loss of coverage was caused by the employee's voluntary decision to revoke a cafeteria election and not by a loss of eligibility due to the reduction in hours. As a result, the employee is not entitled to an offer of COBRA.

25. If a qualified beneficiary is in a disability extension during the subsidy period, is the individual entitled to premium assistance for the months of the disability extension that overlap with the subsidy period?

ARPA does not specifically address whether the subsidy would apply during an 11-month disability extension of COBRA continuation. However, premium assistance appears to be intended to apply only during the 18-month max coverage period associated with involuntary term/reduction in hours. If that is extended due to disability extension, coverage during the extension does not appear to be subsidized.



Duration

26. How long does the ARPA COBRA subsidy last?

The COBRA subsidy is intended to cover the period of April 1, through September 30, 2021. However, the subsidy will end earlier if one of the following occurs: (a) the individual becomes eligible under any other group health plan (that is not an excepted benefit, health FSA, or qualified small employer health reimbursement arrangement (QSEHRA)) or Medicare (not necessarily actually enrolled but just eligible); or (b) the individual reaches the maximum period of coverage required under COBRA.

27. Does an assistance eligible individual lose eligibility for the subsidy if that individual becomes eligible for coverage under a spouse's plan?

Yes. Eligibility for the subsidy ends on the first date that such individual is eligible for "any other group health plan" (other than coverage consisting only of excepted benefits, a health FSA, or a qualified small employer health reimbursement arrangement (QSEHRA)).

28. How are we supposed to know when a former qualified beneficiary is eligible for coverage under a new group health plan? We don't keep track of former employees and where they get new jobs.

Assistance eligible individuals have the sole obligation to notify their former employers in writing if they become eligible for coverage under another group health plan (that is not an excepted benefit, health FSA or qualified small employer health reimbursement arrangement (QSEHRA)) or Medicare. Individuals who fail to do so may be fined. In the case of any such failure that is fraudulent, such person shall pay a penalty equal to the greater of — (1) \$250 or (2) 110 percent of the premium assistance provided under ARPA after termination of eligibility. However, there is a reasonable cause exception for individuals who can show that their failure to notify was due to reasonable cause and not to willful neglect.

29. Does ARPA extend the maximum coverage period during which COBRA is available?

No. ARPA does not extend the length of COBRA coverage beyond the existing maximum coverage periods. For example, if a qualified beneficiary's maximum coverage period due to termination of employment would end on May 31, 2021, the qualified beneficiary would only be entitled to subsidized COBRA for the months of April and May, after which the right to COBRA would terminate due to the expiration of the



18-month maximum coverage period associated with an involuntary termination of employment or reduction in hours.

30. How far back does an employer need to go to determine who is eligible for the subsidy?

Generally, a self-insured client subject to federal COBRA should look back 18 months from 4/1/2021. A fully-insured client may be required to look back longer if state COBRA rules (such as those in New York, Connecticut, and California) extend the maximum coverage period for terminations of employment or reductions in hours.

31. Is a COBRA qualified beneficiary required to elect COBRA retroactively to the date of their qualifying event to obtain COBRA premium assistance under ARPA?

No. COBRA qualified beneficiaries eligible for COBRA premium assistance may elect subsidized COBRA beginning April 1, 2021. A COBRA qualified beneficiary is not required to elect and pay for COBRA coverage retroactively in order to access subsidized COBRA for the period of April 1, 2021 through September 30, 2021.

32. An individual experienced an involuntary termination of employment in early 2019. The individual's maximum coverage period would have expired prior to April 1, 2020, but the individual qualified for the disability extension. Due to the disability extension, the individual's maximum coverage period will extend into the subsidy period. Is the individual entitled to COBRA premium assistance due to the disability extension?

No. Because the individual's 18-month maximum coverage period ended prior to the start of the subsidy period on April 1, 2021, the individual would not be entitled to COBRA premium assistance for the portion of the disability extension occurring between April 1, 2021 and September 30, 2021. The individual could continue COBRA during the disability extension, but would be responsible for paying for the cost of COBRA coverage, up to 150% of the applicable premium.

33. If an employee was terminated during the outbreak period and is still within the timeframe to elect continuation coverage, can that individual elect COBRA retroactive to the date of the qualifying event, and pay premiums until the start of the subsidy?

Yes. If and when the former employee elects COBRA during the otherwise applicable election period, coverage would be retroactive to the date of the qualifying event and



premium payments would be due, but the premium payment deadlines would also be extended under the outbreak period relief rules. See Gallagher's article, [Outbreak Period Relief Examples and Illustrations](#) for more information.

The individual would be eligible for the subsidy (unless eligible for other group health plan coverage or Medicare), and the employer would need to provide a notice with the opportunity to elect subsidized COBRA for the period of April 1 through September 30, 2021. The subsidized coverage will be available regardless of whether the employee elects and pays premiums for any prior months.

34. If someone hasn't paid COBRA premiums for a number of months, do they have to pay for the prior months to get the subsidized coverage from April 1 through September 30, 2021?

No. Assuming this individual experienced an involuntary termination or reduction in hours, the statute requires the plan to offer a new election opportunity for the period of subsidized coverage (April 1 - September 30, 2021), and the individual is not required to pay for months of premiums prior to April 1, 2021 in order to elect coverage during that period.

Funding and Other Financial Matters

35. Who pays for the subsidy?

The federal government will pay for the subsidy. Depending on the circumstances, the plan, the employer, or the insurer will be responsible to fund the 100% premium subsidy upfront and then take a credit on certain payroll taxes for the payment. If the employer is subject to federal COBRA, then the employer will provide the subsidy and receive the credit. For plans subject only to a State continuation law, the insurer will provide the subsidy and receive the credit. If the assistance eligible individual is covered under a multi-employer plan maintained pursuant to a collective bargaining agreement, it is the plan that will provide the subsidy and receive the credit.

36. How does an employer actually pay the premium for the COBRA subsidy?

Employers should consult with their COBRA vendors, insurers, or third-party administrators (TPAs) (as applicable) on the logistics of how premiums must be paid.

37. How do entities obtain reimbursement for subsidized premiums?

Similar to the tax credit available to employers who provide paid leave and health coverage as required under the Families First Coronavirus Response Act (FFCRA),



employers sponsoring group health plans may be reimbursed for the 100% COBRA premium subsidy via credits against certain payroll taxes. The tax credit is available to private employers and non-federal governmental employers subject to COBRA. Additional rules governing the coordination of this credit with credits under the FFCRA will apply (e.g., no double counting). The Secretary of the Treasury is directed to provide forms and instructions for employers and group health plans and to provide additional guidance for multiemployer plans and Professional Employer Organizations.

Notices

38. Are there any new or updated required notices due to the ARPA COBRA subsidy?

Yes. ARPA will require notification to assistance eligible individuals in three forms: notice of the availability of premium assistance; an extended election notice; and notice of expiration of the subsidy.

39. What must be included in the Notice of Availability of Premium Assistance?

Group health plans are required to provide a general COBRA notice that includes information about the availability of the COBRA subsidy. Plans are permitted to modify existing notices to include the additional language or, alternatively, to provide the additional information in a separate notice. ARPA instructs the Secretary of Labor (Secretary), in consultation with the Secretary of Health and Human Services and the Secretary of the Treasury, to provide a model notice within 30 days after enactment of ARPA. Employers may use the new model, or as in the past, use their own notices as long as the content requirements are satisfied.

Contents of the new general notice (or the separate COBRA subsidy notice) include:

- Forms needed to establish eligibility for premium assistance
- The name, address, and telephone number of the plan administrator and any other entity maintaining relevant information in connection with the subsidy (e.g., COBRA administrator)
- A description of the additional election period
- A description of the individual's responsibility to notify the plan of eligibility for other group health plan coverage or Medicare, including information about the penalty for failure to do so
- A prominently displayed description of the individual's right to the COBRA subsidy
- If the employer has decided to permit medical plan option changes, a description of the available option(s)



40. What is the Notice of Extended Election Period?

A new COBRA election notice must be sent to individuals who are eligible for the new 60-day election period – i.e., individuals who were eligible previously but did not elect and those who elected but discontinued COBRA coverage. Similar to the general COBRA notice, the Secretary is required to provide a new model election notice within 30 days after enactment of ARPA.

41. When must the Notice of Extended Election Period be sent to impacted qualified beneficiaries?

The Notice of Extended Election Period must be provided within 60 days after the subsidy period begins (i.e., 60 days from April 1, 2021, which is May 31, 2021).

42. What is the Notice of Expiration of Subsidy?

ARPA adds one new COBRA notice – a notice advising an individual who is receiving a COBRA subsidy about the expiration of the subsidy if the subsidy terminates before September 30, 2021. This notice must be sent within a 30-day time period that begins 45 days before, and ends 15 days before, the date on which the COBRA subsidy will expire. The notice must advise the individual that the individual's COBRA subsidy will be ending soon and must include the actual expiration date. It must also include a statement that the qualified beneficiary may be eligible for continued coverage without the COBRA subsidy. The notice is not required if the individual is losing eligibility for the subsidy as the result of becoming eligible for coverage under another group health plan or Medicare. ARPA requires the Secretary to provide a model notice within 45 days after enactment of ARPA.

New Election Period

43. Are assistance eligible individuals entitled to a new 60-day COBRA election period?

Yes. ARPA provides a new 60-day election period for assistance eligible individuals.

44. When does the new 60-day election period start?

The new 60-day election period will start on the day an updated notice is provided to the qualified beneficiary.



Coverage during the Subsidy Period

45. A COBRA qualified beneficiary who lost coverage due to an involuntary termination of employment has submitted a request to enroll a spouse during open enrollment. However, the spouse is not a qualified beneficiary because the spouse was not covered under the plan when the qualifying event occurred. Is the former employee entitled to COBRA premium assistance to cover the cost of coverage for the spouse, who is not a qualified beneficiary?

No. In this scenario, the former employee would be entitled to COBRA premium assistance for the former employee's own coverage, but the spouse would not receive COBRA premium assistance because the spouse is not an assistance eligible individual. ARPA provides for the provision of premium assistance, in the form of subsidized COBRA coverage, for assistance eligible individuals. To be an assistance eligible individual, the individual must be a qualified beneficiary and meet other requirements. The former employee who lost coverage due to an involuntary termination of employment is a COBRA qualified beneficiary and an assistance eligible individual. However, the former employee's spouse, who was not enrolled in coverage at the time of the involuntary termination, is not an assistance eligible individual because the spouse is not a qualified beneficiary. As a result, although the former employee is entitled to enroll the spouse during open enrollment, COBRA coverage for the former employee's spouse will not be subsidized, and the former employee will be responsible for paying the full cost of coverage (plus any applicable administrative fees) for the spouse.

46. Our plan's open enrollment period and renewal will occur during the subsidy period. Do assistance eligible individuals receiving COBRA premium assistance have the ability to change plans and add or remove dependents during open enrollment?

In general, COBRA qualified beneficiaries are offered the same coverage that was in effect at the time the qualifying event occurred. COBRA qualified beneficiaries also have the same rights to change plan options, or add or remove dependents, during open enrollment just as active employees do. ARPA does not contain any provisions that would restrict a COBRA qualified beneficiary who is also receiving COBRA premium assistance from changing plan options or adding or removing dependents at open enrollment.

Unless guidance is issued that indicates a different outcome, COBRA qualified beneficiaries receiving subsidized COBRA should receive the same or similar open



enrollment communications as active employees, and should be provided with the ability to change plan options or add or remove dependents from the plan. However, COBRA premium assistance may not be available for coverage for individuals added to the plan during open enrollment who are not qualified beneficiaries.

47. Are employees able to switch to a different medical plan when electing for the COBRA coverage?

Maybe. ARPA allows employers to permit changes to different plan options (but this is not required). If the employer permits, an individual eligible for subsidized coverage can switch to a different option that is not an excepted benefit if the premium is the same or less, and the new option is offered to similarly situated employees. Separately, if the employer's open enrollment period occurs during the subsidy period, it appears that a COBRA qualified beneficiary can make any changes to elections at open enrollment that an active employee can make (as applicable under normal COBRA rules).

48. Can a former employee elect a different plan than the one enrolled in?

At the option of the employer, a group health plan may offer assistance eligible individuals the opportunity to switch to coverage that is equal to or less in cost if that coverage is currently available to active employees. If the employee elects different coverage under this option, that coverage is considered COBRA continuation coverage. The assistance eligible individual must elect this option within 90 days of being notified of its availability. Different coverage that provides only excepted benefits, a health flexible spending account, or a qualified small employer health reimbursement arrangement (QSEHRA) would not qualify for this option.

49. Does an individual's COBRA coverage terminate when the subsidy terminates?

Not necessarily. The COBRA coverage time period is measured separately from the subsidy time period. Because the maximum subsidy period is set for a specific period of time (April 1 through September 30, 2021), individuals who have COBRA coverage remaining after the subsidy is exhausted would revert to paying the full premium after the subsidy ends.

Effective Date

50. When does the subsidy apply?

The subsidy is effective for the period between April 1 and September 30, 2021. Assistance eligible individuals may elect coverage retroactively to April 1st.



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