

e-Alert

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COBRA Impacted by American Rescue Plan Act

Background

On March 11, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law. The sweeping \$1.9 trillion package contains a significant range of policies to provide additional pandemic relief. This includes direct assistance in the form of \$1,400 checks, funding for the COVID-19 public health response, extended unemployment benefits, extended paid sick leave, funding for states and schools, housing assistance, and much more.

Summary

Among the provisions of the most interest to employers, ARPA provides for a 100% COBRA subsidy for up to six months for anyone who lost health coverage because of involuntary termination or involuntary reduction in hours. ARPA also provides a “second chance” election for those who did not initially elect COBRA or who let their COBRA coverage lapse.

ARPA creates a six-month subsidy period from April 1, 2021, to September 30, 2021, during

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which certain “assistance eligible individuals” (AEI's) may qualify for a 100% subsidy for COBRA coverage. Qualified individuals would pay no cost for monthly COBRA premiums for medical, dental, or vision coverage if they are eligible for COBRA coverage during the subsidy period. The subsidy period does not extend the maximum COBRA coverage period; it simply suspends the eligible individual's obligation to make COBRA premium payments for up to six months.

These rules are not optional for employer-sponsored group health plans. All group health plans subject to COBRA, except FSAs and HRAs, must provide the subsidized coverage.

What You Need to Know About COBRA Subsidies Under ARPA:

- AEI's and family members who currently have COBRA coverage will be eligible for a 100% subsidy of their premiums for up to six months (April 1, 2021 through September 30, 2021). The employer will offset the cost by claiming credit against Medicare payroll taxes.
- AEI's and family members who lost coverage because of an involuntary termination or reduction in hours after November 1, 2019, but who did not elect COBRA or let their COBRA lapse, will have until 60 days after receipt of the notice to elect COBRA (The DOL will release the Model notice by April 11) . Any election for these participants allows coverage to begin April 1 (prospective election), and not retroactive to the date coverage was lost. It is unclear currently whether these election deadlines will supersede the previous Department of Labor (DOL) extensions for COBRA elections. This offering applies to employers subject to Federal COBRA only.
- Employers or their COBRA Administrators will need to determine which employees/dependents lost health plan coverage within the past 18 months, on or after November 1, 2019, because of an involuntary termination or reduction in hours.
- Employers and group health plans will be required to provide several new notices to those who become eligible for COBRA continuation coverage. The notices will address the availability of the new subsidies; the option to enroll in different coverage, if available; the extended period to enroll in COBRA coverage; and the expiration of premium assistance. **The DOL is expected to issue model notices by April 11, 2021.** Many third-party COBRA administrators have advised that they will handle these notice requirements for their clients.
- Only those qualified beneficiaries who trigger COBRA coverage because of an involuntary termination of employment or a reduction in hours and whose current

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COBRA continuation coverage period would cover some or all of the subsidy period are considered eligible for the subsidy.

- The ARPA subsidy does not extend COBRA coverage — coverage will still expire 18 months after coverage was lost, even if that is in the middle of the subsidy period. Coverage can be extended for a second qualifying event (up to a total of 36 months), but it is unclear if the subsidy could apply during that period.
- Any AEI or family member who is or becomes eligible for other group health coverage or Medicare is not eligible for the subsidy. The individual is required to notify the employer if he or she is not eligible or loses eligibility. Individuals who fail to notify the employer that they are no longer eligible for the COBRA subsidy (because, say, they are eligible for other group coverage) may face financial penalties.
- Employers may (but are not required to) allow employees to enroll in other health plan options they offer (rather than the option the employee was enrolled in prior to the loss of coverage) if that option is less expensive.
- There is no income limit for the subsidy.
- An employer may recover the cost of subsidized COBRA coverage from the federal government by claiming a credit against its quarterly Medicare payroll tax liability. The credit can be advanced and is refundable, meaning an employer can claim a refund if the subsidy paid exceeds the taxes due.

Practical Considerations for Employers

- If you rely on a COBRA administrator, confirm that they will send the new required notices and provide you with the information you need to claim the payroll tax credit.
- In 2009, Congress adopted a COBRA subsidy that was originally scheduled to last for nine months, and was later extended to 15 months. Be prepared for the ARPA COBRA subsidy to be extended if the economy does not recover quickly.
- The subsidy will make it much more likely that employees will elect COBRA for the subsidy period, potentially leading to higher claims. There may be an impact on your insurance or stop-loss insurance renewal.

Employer Next Steps

- If you have further questions regarding this e-Alert, please contact our [Benefits Team](#).

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