

CLIENT ALERT: COBRA Changes - March 17, 2021

The newest COVID federal legislation signed by President Biden on March 11, 2021 contains a smorgasbord of payments and benefits. It has also spawned a new acronym, namely ARPA, standing for the American Rescue Plan Act. Included in the legislation are new COBRA subsidies for eligible employees for 6 months.

What is the new COBRA subsidy?

From April 1, 2021 to September 30, 2021, “assistance eligible individuals” (AEIs) are entitled to a subsidy covering 100% of their COBRA premiums.

What health plans are affected?

Employer-sponsored group health plans and multiemployer plans that provide or pay for medical care and that are subject to either federal COBRA or a state law requiring commensurate continuation coverage are impacted by the new subsidy. The employer, plan (in the case of a multiemployer plan), or insurer (for fully insured coverage), must provide subsidized COBRA coverage and pay or incur the AEI’s COBRA premium.

What type of coverage is included?

During the subsidy period an AEI will pay no cost for monthly COBRA premiums for medical, dental, or vision coverage. Health flexible spending account plans, longterm care plans, and qualified small employer health reimbursement arrangements are not impacted by the ARPA provisions.

Who qualifies as an AEI?

To receive the subsidy, an individual must be eligible for COBRA continuation coverage as a result of their involuntary termination of employment or reduction of hours. They must elect COBRA coverage, and their COBRA coverage period must overlap with the subsidy period. An individual who qualifies for COBRA due to resignation, retirement, or death would not be considered an AEI.

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What are the categories of AEIs?

AEIs are sorted into three groups:

Preexisting AEIs: AEIs already enrolled in COBRA coverage on April 1, 2021.

Second Chance AEIs: AEIs who on April 1, 2021 were eligible for COBRA but did not enroll, either because they did not elect COBRA, or because they chose to enroll in COBRA and later discontinued it. AEIs in this group must elect or reelect COBRA during a special second-chance election period in order to become eligible for the subsidy. The second-chance election period begins on April 1, 2021 and ends 60 days after a supplemental notice of eligibility is provided to the AEI.

Newly eligible AEIs: AEIs who first become eligible for COBRA during the subsidy period and elect COBRA.

When does an AEI become *ineligible* for the subsidy?

An AEI is no longer entitled to the subsidy upon the earliest date of the individual becoming eligible for other group health plan coverage (that is not an excepted benefit) or Medicare or the end of the individual's maximum COBRA period. Individuals are required to notify the plan under which they are receiving a COBRA subsidy of such events and will be penalized if they fail to do so.

Does ARPA extend COBRA coverage?

No, the subsidy period does not extend the duration of an individual's COBRA coverage, it simply suspends the AEI's obligation to make COBRA premium payments for up to 6 months. For example, if an individual's COBRA period is scheduled to end on May 31, 2021, the individual would be eligible for the subsidy only in April and May. The individual's coverage will not extend past May 31, 2021.

What notice is an employer required to provide?

By May 30, 2021, employers' COBRA notices must include information about the availability of the subsidy, a notice of the extended election period for COBRA coverage, and a notice of the expiration of the subsidy. COBRA notices, either as amended or as a separate document, must include the forms necessary to establish eligibility for the COBRA premium assistance, contact information for the plan administrator (or other person) who maintains information relating to premium assistance, a description of the extended election period, and information about the option to enroll in different coverage that the employer may offer.

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In addition, employers must send a separate expiration notice to individuals between 45 and 15 days before their subsidy expires, and must provide notice if an individual's subsidy is scheduled to end prior to September 30, 2021 (unless the subsidy is ending due to the individual's eligibility for other coverage).

ARPA directs the Department of Labor (DOL) to publish model notices 30 days after enactment of the bill.

How are COBRA subsidies paid?

The subsidy is not paid to the AEI. Rather, the "person to whom the premiums are payable" must subsidize the COBRA coverage and pay or incur the AEI's COBRA premium cost. If an AEI pays their premiums, those premium payments must be refunded to them.

The federal government will reimburse the "person to whom the premiums are payable" for the cost of the subsidy, including COBRA administrative fees, via such person claiming a credit against its quarterly Medicare payroll tax liability. The credit can be advanced and is refundable. Therefore, such entity could claim a refund when they submit Form 941 (their quarterly tax return) if the subsidy paid exceeds the taxes due.

The "person to whom the premiums are payable" means, for a multiemployer plan, the plan itself; for a plan other than a multiemployer plan that is self-funded and is subject to federal COBRA, the employer; or for other plans subject to state COBRA, the insurance company providing coverage under the plan.

Note: Like many legal issues, COBRA compliance is complex and this Alert is intended as guidance and it is not intended to be a substitute for legal advice.