

The American Rescue Plan Act COBRA Provisions



On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (“ARPA”), which is the latest round of federal economic stimulus legislation in response to the ongoing COVID-19 pandemic. The ARPA has several benefits-related provisions, the most notable of which is the COBRA premium subsidy and its related election period extension and notice requirements. As discussed in more detail below, these COBRA provisions, which apply to both fully insured and self-insured group health plans subject to COBRA, take effect as soon as April 1, 2021, which means that employers have a limited window of time to get familiar with and implement these provisions in order to avoid costly penalties for COBRA non-compliance.

COBRA Subsidy

The ARPA provides “assistance eligible individuals” with a 100% premium subsidy. Assistance eligible individuals generally include employees or dependents who lose group health plan coverage due to an *involuntary termination of employment or reduction in hours*. Notably, individuals who must be offered COBRA for other qualifying events (such as voluntary termination) are *not* eligible for the premium subsidy.

Length of Subsidy

The premium subsidy applies to COBRA coverage provided between April 1, 2021 and September 30, 2021. However, the subsidy will end earlier if the individual becomes eligible for other group health coverage or Medicare or if the individual’s maximum COBRA coverage period ends prior to September 30, 2021. Individuals can be fined under the ARPA for not notifying their employer/former employer of any change to their COBRA eligibility.

Notice Requirements

Employers must provide written notice to assistance eligible individuals within 60 days of April 1, 2021. The notice must contain specific information as prescribed by the ARPA including information on the individual’s right to a subsidy, how long the subsidy will last, and information on enrollment, including how long the individual has to enroll. A model notice is required to be released by the requisite government agencies within 30 days of the ARPA’s enactment.

Payment of Subsidy

The entity to whom premiums are payable (the employer for self-funded plans and the insurer for fully insured plans) is eligible to be reimbursed for the premiums paid via a quarterly payroll tax credit. In certain cases, if the tax credit is greater than the payroll tax liability, the ARPA allows for the tax credit to be refunded.

Special Election Period

Any assistance eligible individual who was eligible for but did not elect COBRA coverage or who dropped COBRA coverage prior to April 1, 2021, must be offered a special election period (i.e. a second chance to elect COBRA) under the ARPA. Specifically, these individuals have 60 days after receiving the required employer notice to elect COBRA. Such COBRA coverage would then be provided prospectively from this new election date (not retroactively to the date of the initial COBRA qualifying event).

Changing Plan Coverage

Employers may also allow assistance eligible individuals to change their coverage option when enrolling in COBRA coverage. Previously, COBRA-eligible individuals could only elect the same plan coverage they had as their prior active coverage and changes to plan options could only be made during Open Enrollment. However, under the ARPA, if certain requirements are met, employers *may* allow these individuals to change to a lower cost plan option within 90 days of the individual receiving their required notice.