

Employers Need to Be Aware of their Obligations Related to the COBRA Subsidy Under the New Federal Stimulus Legislation

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On March 11, 2021, President Biden signed the \$1.9 trillion dollar stimulus package, known as the American Rescue Plan Act of 2021 (ARPA), into law. In order to assist employees with the cost of health coverage, ARPA includes a six-month COBRA premium subsidy whereby the federal government subsidizes 100% of the COBRA premium during the period of April 1, 2021 through September 30, 2021.

Eligibility for the subsidy

The subsidy will be available to any employees (and their family members) who experience a loss of their health coverage due to their job loss or reduction in hours. However, the subsidy will not be available if the employee voluntarily terminates employment or is terminated for gross misconduct. An eligible individual would need to be:

- Enrolled in COBRA, or become eligible for COBRA, on or after April 1, 2021, and before the subsidy ends on September 30, 2021; or
- Became eligible for COBRA prior to April 1, 2021, and their 18-month COBRA period includes any month between April and September of 2021, even if the employee did not elect COBRA when it was initially offered or elected COBRA but discontinued it before April 1, 2021. This individual would need to elect COBRA within 60 days of April 1, 2021 in order to be eligible for the subsidy.

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Length of the subsidy

The subsidy lasts for up to six months unless the individual's maximum COBRA coverage period ends before September 2021. The subsidy could also end earlier if the individual becomes eligible for coverage under another group health plan or Medicare. Individuals are required to notify their group health plan if they become eligible for such coverage or face penalties for failing to do so. Eligibility for excepted benefits, such as limited-scope dental or vision coverage or a health flexible spending arrangement, would not terminate subsidy eligibility.

Plan enrollment option

Under ARPA, employers have the option to give subsidy-eligible employees up to 90 days (following notice of this new enrollment option) to elect to enroll in a different group health plan offered by their employer. If the employer elects to implement this option, the following restrictions apply:

- The premium for the alternative coverage choice cannot be higher than the premium for the plan in which the employee had been enrolled at the time of the qualifying event.
- The different coverage in which the individual elects to enroll is coverage that is also offered to similarly-situated, active employees of the employer at the time at which such election is made; and
- The different coverage in which the individual elects to enroll is not coverage that only provides excepted benefits, a qualified small employer health reimbursement arrangement or a health flexible spending arrangement.

New notice requirements for employers

ARPA requires group health plans to provide an election notice which includes an additional notification about the availability of the new subsidy to any individual who becomes eligible to elect COBRA between April 1, 2021 and September 30, 2021. This notice would also have to include information about the plan enrollment option if implemented by the employer. Additionally, employers will be required to provide a revised COBRA election notice to anyone eligible for a subsidy who incurred a loss of coverage prior to April 1, 2021. This notice will be due within 60 days of April 1, 2021. To assist with this obligation, the Department of Labor (DOL) will issue model notices within 30 days of ARPA's enactment.

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Group health plans also must notify individuals if their subsidy will terminate before September 30, 2021. This notice must be provided between 15 to 45 days before the termination of the subsidy. This notice would not be required if the subsidy will terminate due to the individual's eligibility for other coverage. Again, the DOL will issue a model notice for this requirement within 45 days of ARPA's enactment.

Paying for the subsidy

In general, the subsidy will be paid to the insurance provider, multiemployer plan or self-insured plan sponsor as a credit against quarterly payroll taxes. Governmental plans are eligible to receive the credit too. If the credit exceeds the amount of payroll taxes due, the credit would be refundable and treated as an overpayment. The credit may also be advanced under future rules established by the Treasury Department.

Action items for employers

While waiting for the model notices from the DOL, plan sponsors should consider the following action steps:

- Compile a list of all individuals who would be eligible for at least one month of the COBRA subsidy. This list will include anyone whose COBRA coverage period would have begun as early as November 2019 because the 18-month COBRA period would include April 2021.
- Decide if your company will offer subsidy-eligible individuals the option to enroll in different health coverage.
- Coordinate efforts with applicable third-party COBRA administrators and payroll vendors so that the new election notices are provided in a timely fashion and any applicable payroll tax credit is accurately calculated.
- Be mindful of the extended deadline to elect COBRA under guidance issued by federal regulating agencies. Specifically, those individuals who are eligible for delayed COBRA election deadlines will also be covered by the COBRA subsidy.
- Once the model notices are issued, plan sponsors should coordinate with their COBRA vendors to customize and send such notices to all the individuals determined by the plan sponsor to be eligible for the subsidy.