

American Rescue Plan Act Brings Back COBRA Subsidies, Prompt Action Needed

March 19, 2021

The American Rescue Plan Act of 2021 (the "ARPA") brings back COBRA subsidies (previously available in modified form under the American Recovery and Reinvestment Act of 2009) starting April 1, 2021, and requires employers and health plan administrators to take prompt action to comply with strict notice requirements. In summary, the ARPA provides a tax-free 100% subsidy of COBRA premiums for assistance eligible individuals ("AEI") from April 1, 2021 through September 30, 2021 (the "Subsidy Period"). During the Subsidy Period, COBRA premiums for AEIs will generally be paid by the federal government to employers or plan administrators through credits against Medicare taxes.

Who is eligible for the subsidy?

The subsidy is available to an AEI. An AEI is a qualified beneficiary who (1) is eligible for COBRA coverage, during all or a part of the Subsidy Period, due to either involuntary termination of employment (for reasons other than gross misconduct) or a reduction in hours, and (2) elects COBRA coverage during the Subsidy Period or is already enrolled in COBRA coverage on April 1, 2021. Additionally, the ARPA provides an individual who would otherwise qualify as an AEI but fails to qualify due to either their failure to timely elect coverage or his or her discontinuation of COBRA coverage (prior to April 1, 2021) with a time-limited opportunity to elect COBRA coverage to take advantage of the subsidy. Further, the group health plan may, but is not required to, offer an AEI an option to switch from one group health plan to another under certain circumstances.

While the subsidy is available during the Subsidy Period, the ARPA does not provide for an extension of an individual's COBRA coverage period. An individual ceases to be an AEI upon the earliest of the following dates: (1) the date the individual becomes eligible for another group health plan (other than excepted benefits, flexible spending accounts, or qualified small employer health reimbursement arrangements) or Medicare; or (2) the date following the expiration of the individual's COBRA coverage period measured in connection with the original qualifying event. An AEI is required to notify the group health plan when he or she is no longer eligible for a subsidy due to becoming eligible for another group health plan or Medicare.

What are the notice requirements for plan administrators?

The ARPA imposes a number of new notice requirements on plan administrators:

- *Election Notice.* For AEIs who (1) previously failed to elect COBRA, (2) discontinued COBRA coverage, or (3) have yet to elect COBRA coverage but still remain eligible to do so under the usual COBRA rules, a COBRA election notice must be sent with specific detailed information about the subsidy within 60 days of April 1, 2021.
- *Premium Assistance Notice.* For AEIs who become entitled to elect COBRA during the Subsidy Period, a COBRA election notice must be sent with specific detailed information about the subsidy. Model notices are required to be provided by the DOL within 30 days of enactment of the ARPA.
- *Subsidy Termination Notice.* The plan administrator must provide notice alerting an individual that the Subsidy Period is ending. This notice is not required if the subsidy will terminate due to the individual's eligibility for other

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coverage. Model notices are required to be provided by the DOL within 45 days of enactment of the ARPA.

How are the subsidized COBRA premiums funded?

Quarterly payroll tax credits will ultimately be available to employers or administrators (as applicable) to fund the subsidies. If the credit exceeds the amount of payroll taxes due, the credit is refundable. The credit can also be advanced under rules to be issued in the future.

What should employers and plan administrators do now?

Employers and plan administrators should promptly begin preparations for compliance with the ARPA COBRA subsidy provisions. This may include actions such as: (1) identifying individuals entitled to receive a notice regarding the new subsidy; (2) deciding whether to permit individuals to enroll in a different plan option than the one in which they were enrolled when coverage was lost; and (3) updating internal processes such as those related to termination of COBRA coverage for nonpayment of premiums. Penalties apply if the required notices are not timely provided, so employers and plan administrators should be diligent in ensuring the notices are timely provided and include the requisite information.

The IRS and DOL are expected to issue guidance in the near future further clarifying implementation procedures. Your Miller Canfield attorneys are available if you have questions or require any assistance regarding COBRA benefit changes and notice requirements under the ARPA.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.