



## **THE AMERICAN RESCUE PLAN ACT REQUIRES COBRA PREMIUM SUBSIDY**

On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA). The law provides certain benefits to assist workers affected by the COVID-19 pandemic including a new COBRA premium subsidy that pays for 100 percent of the applicable COBRA premium for eligible individuals with respect to coverage periods between April 1, 2021 and Sept. 30, 2021.

**COVERAGE** - The premium subsidy generally applies to group health plans subject to the Employee Retirement Income Security Act of 1974 (ERISA).

**ENTITLEMENT TO SUBSIDY** - Individuals entitled to the premium subsidy are referred to as assistance eligible individuals ("AEIs"). To be an AEI, an individual must: (1) be eligible for COBRA coverage due to the covered employee's involuntary termination of employment (excluding termination for gross misconduct) or due to a reduction of hours that resulted in the loss of group health plan coverage; and (2) must elect COBRA coverage. Generally, employees and covered dependents that qualify to be an AEI will be eligible to receive the COBRA premium subsidy if (i) they are already enrolled in COBRA, (ii) did not elect COBRA when it initially became available to them, or (iii) elected COBRA initially but let the coverage lapse, **as long as their maximum COBRA period has not expired by April 1, 2021.**

The COBRA subsidy has not been extended to employees who voluntarily terminate their employment, nor their dependents, or to AEI's eligible to receive other group health plan coverage or Medicare. AEIs that are initially entitled to the subsidy but, prior to September 30, 2021, become eligible to other group health plan coverage or to Medicare will lose the right to receive the COBRA premium subsidy. Notably, ARPA imposes on these AEIs the duty to notify the plan administrator of their eligibility for such other coverage or Medicare. Failure to provide this notice will result in the imposition of a penalty equal to the greater of \$250 or 110% of the premium subsidy amount paid after they became eligible to Medicare or the other group health plan coverage.

An AEI must be eligible to receive COBRA coverage during the period beginning on April 1, 2021 and ending Sept. 30, 2021.

**COBRA SUBSIDY PERIOD** - The 6-month COBRA subsidy period runs from April 1 to September 30, 2021. The subsidy period does not extend the maximum COBRA coverage period. The ARPA COBRA subsidy is available only to those whose initial COBRA period ends (or would have ended if COBRA had been elected/did not lapse) either during or after this six-month period.

**SPECIAL ENROLLMENT PERIOD** - COBRA beneficiaries who have elected COBRA and are covered under COBRA on April 1, 2021 do not need to enroll to receive the subsidy. They will receive it automatically. Similarly, for future qualifying events, the subsidy will apply upon an AEI's timely COBRA election. However, for those AEI's who did not initially elect COBRA or whose COBRA coverage was discontinued, there will be a special 60-day new enrollment period that will begin on April 1, 2021 and

will end 60 days after the plan administrator provides notice of the right to elect COBRA. Plan administrators must provide this notice within 60 days of April 1, 2021.

**NOTICE REQUIREMENTS** - For individuals who first become entitled to elect COBRA coverage between April 1, 2021 and Sept. 30, 2021, the plan administrator must provide a written notification regarding the availability of the COBRA premium subsidy and the option to enroll in an alternative plan coverage option, if permitted by the employer.

Notice of the premium subsidy must also be provided to AEIs who became entitled to elect COBRA before April 1, 2021 and to individuals who did not have a COBRA election in effect on April 1, 2021 but who would be an AEI if they had elected COBRA, or who previously elected COBRA and discontinued coverage before April 1, 2021.

ARPA also requires the plan administrator to send an additional notice to inform AEI's of the expiration of the COBRA premium subsidy prior to the end of the subsidy period applicable to each AEI. Specifically, this notice must be provided during the period that is not more than 45 days nor less than 15 days prior to the expiration of the subsidy period. This notice must also inform AEIs that they may be eligible for COBRA coverage or to coverage under another group health plan, but without the subsidy. Plan administrators do not have to send this notice to AEIs that will lose subsidized COBRA coverage due to eligibility for coverage under another group health plan or Medicare.

**MODEL NOTICES** - The Department of Labor must issue a model notice regarding the premium subsidy and the special COBRA election period within 30 days of April 1, 2021, and a model notice regarding the expiration of an AEI's premium subsidy period must be issued within 45 days of April 1, 2021. The model notices have not been issued yet.

**EMPLOYER REIMBURSEMENT** - ARPA provides for the reimbursement of the total cost of COBRA premiums not paid by AEIs, including the applicable administrative fees, through a new tax credit against the employer's share of the Medicare hospital insurance tax. Only the entity to whom premiums are payable can request the credit. If the group health plan is partially or completely self-insured, the employer can request the credit. In the case of a fully insured group health plan, only the insurance company can request the tax credit. To the extent that the credit amount exceeds the employer's Medicare hospital insurance payroll tax, the excess amount shall be treated as an overpayment that shall be refunded under the applicable Medicare tax provisions of the United States Internal Revenue Code of 1986, as amended.

**EMPLOYER OBLIGATIONS** - Employers and plan administrators must be aware of their obligations under ARPA, including identifying premium subsidy-eligible individuals, contacting previously terminated employees (or employees who lost coverage due to a reduction in hours) not currently enrolled in COBRA but who are eligible for the premium subsidy to inform them about the new benefit and the special enrollment period, revising or supplementing existing COBRA notices, and satisfying new notice requirements.

If you have any questions or concerns, please **Contact us**

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