

THE AMERICAN RESCUE PLAN ACT INCLUDES FULLY SUBSIDIZED COBRA COVERAGE

Insights
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The recently enacted American Rescue Plan Act of 2021 (ARPA) provides for 100% premium assistance to certain qualified beneficiaries for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) for periods of coverage beginning on or after April 1, 2021 and ending September 30, 2021. ARPA allows assistance eligible individuals to forego paying applicable COBRA coverage premiums but be deemed to have made full payment. Employers will be able to claim employment tax credits to offset the amounts (including applicable administrative fees) of unpaid COBRA premiums. What do employers need to know about this critical legislative change?

Who is Eligible?

Eligible qualified beneficiaries include anyone who, due to an involuntary termination of employment or reduction in hours, becomes eligible for or already has effective COBRA continuation coverage during the period that begins April 1, 2021 and ends September 30, 2021. Since assistance eligible individuals include those for whom such a qualifying event occurred prior to April 1, 2021, qualified beneficiaries whose COBRA coverage started as long ago as November 2019 could qualify for premium assistance.

Service Focus

Employee Benefits and Tax

ARPA also provides for COBRA premium assistance for individuals who were eligible to elect COBRA continuation coverage due to involuntary termination or reduction in hours but who had not yet elected as of April 1, 2021, or who had elected such coverage but discontinued it prior to April 1, 2021 (Extended Qualified Beneficiary).

Special Extended Election Rule

Extended Qualified Beneficiaries must elect COBRA during a period that begins on April 1, 2021 and ends 60 days after the plan administrator provides a newly required notice alerting them that they qualify for COBRA premium assistance under ARPA. The U.S. Department of Labor (DOL) must provide model notices for this purpose by no later than April 10, 2021, and plan administrators must provide the notices to Extended Qualified Beneficiaries by no later than May 31, 2021.

ARPA clearly excludes from premium assistance individuals whose termination or reduction in hours is voluntary. It is unclear, however, whether employers will need to provide notice to all qualified beneficiaries and determine voluntariness later, or to predetermine voluntariness and only send notices to individuals determined to have involuntarily terminated or had hours reduced. We expect future guidance to clarify this point.

Extended Qualified Beneficiary coverage will begin with the first period of coverage that begins on or after April 1, 2021. It will not extend beyond what would have been the maximum applicable COBRA continuation period had the Extended Qualified Beneficiary timely elected COBRA continuation coverage or not discontinued such coverage.

Model Notices

In addition to specific notices to Extended Qualified Beneficiaries, ARPA requires plan administrators to notify qualified beneficiaries who become eligible for COBRA between April 1, 2021 and September 30, 2021

that COBRA premium assistance is available. Plan administrators can either amend existing COBRA qualifying event notices or include a separate clear and understandable written notice that:

- describes any forms necessary for establishing COBRA premium assistance eligibility;
- provides the name, address, and telephone information for the plan administrator or other individual maintaining relevant information regarding COBRA premium assistance;
- explains the extended election period available to Extended Qualified Beneficiaries;
- notifies qualified beneficiaries that they must tell the group health plan if they become eligible for other group health coverage or Medicare or be subject to a \$250 penalty (higher if intentional); and
- prominently describes the right to subsidized coverage as well as any conditions on receiving subsidized coverage.

The statute is unclear as to whether DOL will provide model language to include in general notices to all qualified beneficiaries, but we expect further guidance to clarify this point.

Premium Assistance Expiration

Individuals will cease to be eligible for COBRA premium assistance for any month of coverage that begins on or after the earlier of the date they become eligible for either other group health coverage or Medicare. COBRA premium assistance also will cease as of the earlier of the date following the date the applicable maximum COBRA continuation coverage period expires or, in the case of an Extended Qualified Beneficiary, the date following the date that the period of COBRA coverage that would have been required had the COBRA election been made by, or had not been discontinued before, April 1, 2021.

ARPA requires plan administrators to provide clear and understandable written notice prior to premium assistance expiring except when it expires because an individual becomes eligible for other group health coverage or Medicare. The premium assistance expiration notice must clearly state when COBRA premium assistance will expire. It must also explain that the individual still may be eligible for group health coverage without premium assistance under either COBRA or another group health plan.

Plan administrators must provide this notice during a period that begins 45 days before premium assistance will expire and ends 15 days before premium assistance expires. The DOL will provide model premium assistance expiration notices by no later than April 25.

Premium Assistance Tax Credits

As with prior health coverage provisions under the Families First Coronavirus Relief Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security Acts (CARES Act), the COBRA premium assistance under ARPA will be in the form of dollar-for-dollar credits against required employer quarterly employment taxes. The tax credits will equal the COBRA premiums not paid by individuals eligible for assistance under ARPA. Employers will not be able to claim a COBRA premium assistance tax credit for any amounts paid for which they also are claiming tax credits as qualified wages under the CARES Act or qualified health plan expenses under the FFCRA.

ARPA also requires employer plan sponsors to refund any COBRA premiums paid by individuals who are eligible for premium assistance for any periods of coverage for which they paid beginning on or after April 1, 2021 and ending September 30, 2021. Plan sponsors must refund these premiums no later than 60 days after the date on which an individual made the premium payment but can claim a tax credit to offset the refunded premiums.

The Treasury Department will provide further guidance, including necessary forms and instructions for seeking advance credits, regarding the mechanics of receiving available tax credits.

Permissible Coverage Election Changes

ARPA provides that a plan sponsor may (but is not required to) allow qualified beneficiaries to switch their group health plan election to a different employer-sponsored plan provided that:

- the premium cost for that plan is not higher than for the plan in which the qualified beneficiary is enrolled;
- the plan sponsor offers the plan to similarly situated active employees; and
- the coverage is not just excepted benefits, a qualified small employer health reimbursement arrangement (QSEHRA) or a health flexible spending arrangement (HFSA).

Conclusion

We expect forthcoming DOL and IRS guidance to provide greater detail regarding premium assistance eligibility, newly required notices and claiming available tax credits. We will continue to monitor this issue and provide relevant updates as needed. You should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions about any aspect of this new law and its impact on your workplace, contact your Fisher Phillips attorney or any attorney in our [Employee Benefits Practice Group](#).

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