

**COBRA PREMIUM SUBSIDY AND ELECTION PERIOD EXTENSION
UNDER THE AMERICAN RESCUE PLAN ACT OF 2021**

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (“**ARPA**”). Among its many provisions, ARPA includes a temporary 100% federally funded COBRA premium subsidy (“**ARPA COBRA Subsidy**”) during the 6-month period starting on April 1 and ending September 30, 2021 (“**Subsidy Period**”) and an extension of COBRA election period for certain individuals (“**Extended Election Period**”). Pursuant to ARPA, eligible individuals will have their COBRA premiums fully subsidized during the Subsidy Period by the employer (or applicable plan fiduciary), who may in turn claim federal tax credits for the premiums paid on behalf of the eligible individuals.

What are the general implications of the ARPA COBRA Subsidy? During the Subsidy Period, eligible individuals (AIEs and Extended Election Period Participants, as defined below) will not pay COBRA premiums, but rather such premiums will be “advanced” by the employer (or applicable plan fiduciary), and then reimbursed by the federal government through a refundable tax credit (against Medicare hospital insurance taxes).

Who is eligible for the ARPA COBRA Subsidy? The ARPA COBRA Subsidy is available to individuals considered as Assistance Eligible Individuals (“**AEI**”), which include employees (and their dependents) who:

1. Are eligible for COBRA continuation coverage because of an involuntary termination of employment or reduction in working hours (employees who voluntarily terminate employment are not eligible);
2. The COBRA continuation coverage includes months of the Subsidy Period; and
3. Elected COBRA continuation coverage.

Who may also benefit from the ARPA COBRA Subsidy? The ARPA COBRA Subsidy is also available to individuals who are not AEIs, but would have been if they had elected COBRA coverage, or would have been under COBRA coverage during the Subsidy Period, but lost such coverage because they (“**Extended Election Period Participants**”):

1. Failed to timely elect COBRA coverage during their original election period; or
2. Elected COBRA coverage but discontinued the same before the commencement of the Subsidy Period.

How long does the ARPA COBRA Subsidy last? Eligibility for the ARPA COBRA Subsidy will end:

1. When the Subsidy Period expires;
2. When the individual’s maximum COBRA coverage period expires, even if it occurs during the Subsidy Period; or
3. The first date the individual becomes eligible for coverage under (in these instances, individuals must notify their employers as specified in the future by DOL or face penalties for failing to do so, unless there is a reasonable cause for such failure):
 - (i) another group health plan (other than coverage consisting of solely of excepted benefits);
 - (ii) a health care flexible spending arrangement;
 - (iii) a qualified small employer health reimbursement arrangement; or
 - (iv) the Medicare program.

What other benefits does the ARPA provide? ARPA provides employers the option to permit AEI to enroll in a different group health plan coverage offered by the employer. If the employer elects to implement this option, the following restrictions apply:

1. The premium for the different coverage must be equal to or less than premium the AEI had at the time of the qualifying event;
2. The different coverage must also be offered to similarly situated active employees; and
3. The different coverage may not include coverage that provides only excepted benefits, a health care flexible spending arrangement or a qualified small employer health reimbursement arrangement.

AEI will have a 90-day period after the election notice described below is provided, to elect this alternative enrollment option.

Are there any applicable Notice Requirements? Yes. Applicable plan fiduciaries must comply with the following notice requirements:

- **Election Notice***: All COBRA Election Notices must now include additional information regarding the availability of the subsidy and, if permitted by the employer, the option to enroll in different coverage.
- **Notice of Extended Election Periods***: A COBRA Election Notice with the required additional information must be provided to Extended Election Period Participants within 60 days of the commencement of the Subsidy Period.

*DOL is expected to issue models of the above notices within 30 days of ARPA's enactment.

- **Notice of Expiration of ARPA COBRA Subsidy****: Applicable plan fiduciaries must provide AEI written notice of the approaching expiration date for the ARPA COBRA Subsidy. This notice must be provided between 15 and 45 days before the subsidy's expiration. The notice must (i) include a prominent identification of the ARPA COBRA Subsidy expiration date; and (ii) inform eligibility for coverage without subsidy through COBRA or under a group health plan.
 - This notice is not required if the subsidy would terminate because of eligibility for other group health plan coverage or Medicare.

**DOL is expected to issue a model of the above notice within 45 days of ARPA's enactment.

Form and Content of Notices: Applicable plan fiduciaries must ensure compliance with the following:

- The required additional information must be provided in a clear and understandable language through amended COBRA election notices or by inclusion of a separate document containing the additional information.
- Notices shall follow the DOL's model notices.
- The ARPA contains specific content requirements for COBRA election notices.

Consequences of not complying with the notice requirements: Failure to comply with the requirements to provide the notices imposed by ARPA will be treated as failure to comply with normal COBRA notice requirements.

What is ARPA COBRA Subsidy tax credit? Employers (or applicable plan fiduciaries) will be reimbursed for the ARPA COBRA Subsidy with a tax credit against the federal employer's (or applicable plan fiduciary's) quarterly payroll taxes, similarly to the tax credits applicable to the paid leaves under the Families First Coronavirus Response Act ("FFCRA"). If the credit exceeds the amount of payroll taxes due (reduced by any credits otherwise allowed under the Coronavirus Aid, Relief, and Economic Security Act or FFCRA), the credit will be refundable when the employer (or applicable plan fiduciary) submits its quarterly federal tax return and will be treated as an overpayment.

Now what? Employers' (or applicable plan fiduciaries') action steps: should consult with their legal advisors and plan/COBRA administrators, if any, to take immediate action to address ARPA requirements. Among other things, employers should:

1. Identify and compile a list of all AEIs and Extended Election Period Participants (looking back to anyone whose COBRA coverage period would have begun as of November 2019).
2. Determine whether to give the option to enroll in different healthcare coverage.
3. Identify applicable notices to be provided to AEIs and Extended Election Period Participants, as applicable.
4. Beware of prior extensions and COBRA reliefs granted due to the COVID-19 pandemic.
5. Monitor the DOL for issuance of regulations and model notices and coordinate efforts with COBRA administrators, if any, for the timely delivery of ARPA required notices.
6. Coordinate efforts with any payroll vendors to ensure any applicable payroll tax credit is accurately calculated.

This document has been prepared for information purposes only and is not intended as and should not be relied upon as legal advice. If you have any questions or comments about the matters discussed in this notice, wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us.