

REMINDER: Action Required on COBRA Provisions of the American Rescue Plan Act

This alert contains important action items related to the ARPA COBRA subsidy program. If the actions below have not yet been initiated, it is critical that you take steps immediately to comply with the ARPA's requirements with respect to the COBRA subsidy and special enrollment period. Please contact your Piper Jordan account team if you need further assistance.

The March 12, 2021 COVID-19 relief and stimulus package known as the American Rescue Plan Act (ARPA) includes a COBRA premium subsidy program that imposes specific requirements on employers with respect to notice and enrollment for assistance eligible individuals (AEIs). Our original alert on the ARPA is copied below for reference. Employers who are subject to COBRA will need to ensure that they are prepared to take the following actions:

- Identify all AEIs. This includes employees/former employees, as well as their dependents, whose COBRA eligibility resulted from an involuntary separation from work (other than for cause) or reduction in hours, whose COBRA eligibility period includes any portion of the subsidy period (April 1 – September 30, 2021). NOTE: The involuntary separation from work or reduction in hours **does not need to be a direct result of COVID-19** for an individual to be assistance eligible.
- Ensure that systems are in place for implementing the 60-day special enrollment period for each AEI. **Each individual will have 60 days to enroll** from the date they receive notice of their eligibility for coverage/subsidy.
- Notify all AEIs of their eligibility for a 60-day special enrollment window and COBRA premium subsidy. Model notices have been made available on the [Department of Labor website](#). **Notice must be sent to all AEIs by May 31, 2021.**

- Determine whether to offer AEIs the option to enroll in cheaper coverage. If this option is offered, certain conditions apply (see below). AEIs will have 90 days to switch their coverage. Employers are **not required** to allow a change in coverage.
- Ensure that there is a plan in place for notifying all AEIs when their coverage and/or subsidy is coming to an end.
 - Notice must be sent no sooner than 45 days prior and no less than 15 days prior to the end of an individual's eligibility period.
 - AEIs whose COBRA eligibility expires prior to September 30 will need to be notified that both the premium subsidy and their COBRA coverage are ending.
 - All AEIs who continue to be eligible for COBRA coverage after the September 30 subsidy expiration date will need to be notified that their subsidy eligibility is ending, but that they can continue coverage at their own expense until their COBRA eligibility period expires.

American Rescue Plan Act COBRA Subsidy Provisions

The American Rescue Plan Act (ARPA), the most recent COVID-19 relief and stimulus package, was signed into law on March 11, 2021. The sweeping legislation includes changes to COBRA eligibility and access as well as an increase in the IRS limit for dependent care assistance programs and flexible spending accounts (FSAs).

COBRA Subsidies and Special Enrollment

The ARPA defines a six-month period (April 1 – September 30, 2021) during which “assistance eligible individuals” may access COBRA coverage with their premiums fully subsidized – even if they previously declined, or enrolled in and then dropped, COBRA coverage. Individuals who qualified for COBRA due to a layoff or involuntary reduction in hours, whose COBRA eligibility period includes any amount of time within the six-month subsidy window, are eligible for a special 60-day enrollment period during which they can elect to participate in COBRA until their original period of eligibility (generally, up to 18 months from the date of a qualifying event) ends.

- The COBRA provisions in the ARPA apply to any assistance eligible individual who had, or could have had, COBRA coverage going back to November 2019.
- Employers/plans will receive refundable Medicare payroll tax credits to cover the cost of COBRA premiums. The tax credits can also be advanced; this will be addressed in rules to be set by the Department of the Treasury.
- Assistance eligible individuals must be given access to a special COBRA election period of 60 days from the date they receive notice of eligibility.
- During the subsidy window, enrollees' premiums will be fully subsidized as long as they remain COBRA eligible. The ARPA does not extend the COBRA eligibility

window; eligible individuals will cease to be eligible for COBRA (and thus for the premium subsidy) when their regular eligibility period ends.

- Eligible individuals do not have to pay any back premium in order to access subsidized COBRA benefits; coverage will be effective prospectively from April 1 until the individual is no longer eligible.
- Employers may choose to offer eligible individuals the option of switching to less-expensive coverage when enrolling in COBRA, with the following conditions:
 - The premium for the new plan must be equal to or less than the premium for the plan that was in effect when COBRA eligibility began.
 - The new plan must be available to similarly situated active employees.
 - The new plan must otherwise meet the subsidy program requirements; health FSAs, ICHRAs, and plans that offer only excepted benefits do not qualify for the subsidy.
 - Any change must be made within 90 days after the individual receives notice of the opportunity to change enrollment.
- Individuals who elect to participate in COBRA under the subsidy program are required to notify the group plan if they become eligible for other coverage, including Medicare, subject to a \$250 penalty per instance of failure to do so.
- There is no income cap on the COBRA subsidy, and subsidized premiums are not taxable to the individual.
- The ARPA includes a requirement for the Secretary of Labor to publish model notices of premium assistance eligibility and premium expiration within 30 days and 45 days, respectively.

Notice Requirement

The COBRA subsidy provisions in the ARPA include significant notice requirements for employers, including requirements to give notice to individuals who may have been separated from employment for a year or longer.

- Within 60 days of the April 1 subsidy effective date (in other words, by May 31), employers must provide COBRA notices to assistance eligible individuals and their beneficiaries. Notice must include information about each of the following:
 - COBRA and subsidy availability, prominently displayed, including conditions for qualifying for the subsidy
 - special election period
 - option to change plans, if applicable
 - forms for establishing eligibility, including copies of the forms
 - obligation to notify plan of loss of eligibility, including potential penalties for failing to do so
 - name, address, and phone number to contact for more information

- Notice must be sent to all assistance eligible individuals, including former employees who previously rejected COBRA coverage or enrolled and later terminated their coverage.
- Between 45 and 15 days before an individual's eligibility ends, employers must send notice of pending subsidy expiration. Employers **are not obligated** to send notice when eligibility ends because an individual has become eligible for other coverage (e.g., Medicare or another employer's group plan).
- Notice of pending ineligibility must include notification of eligibility for non-subsidized coverage if the individual's COBRA eligibility period extends beyond the subsidy expiration date of September 30, 2021.

Employer Concerns

- Employers should begin immediately to identify assistance eligible individuals to whom they will need to provide notice, and develop systems for tracking these individuals' start and end dates for COBRA eligibility.
- Subsidy-eligible employees who mistakenly make a COBRA payment must receive a refund of their payment within 60 days.
- Individuals who are currently enrolled in COBRA because of layoff/reduction in hours must be notified of their eligibility for the ARPA premium subsidy.
- Individuals who remain eligible for COBRA, but are not currently enrolled, must be notified of their new COBRA election rights and eligibility for the ARPA premium subsidy.
- If employers have in place automatic COBRA termination processes, they should take steps now to modify those systems to ensure that no employee's coverage is terminated when premium payments are not received.
- Employers should ensure that they are maintaining documentation of involuntary terminations and reductions in hours that result in employee eligibility for the ARPA subsidy, as well as documentation for any former employee who is determined to be ineligible for the subsidy (e.g., one who resigned or was terminated for gross misconduct).
- The COBRA provisions of the ARPA may impact previous "Outbreak Period" deadline extensions enacted by the Departments of Labor and the Treasury. No guidance has yet been issued by the government regarding the intersection of the ARPA provisions with the previous COBRA deadline extensions.

FSA Limit Increase for Dependent Care Accounts

The ARPA also includes a significant increase in the dependent care flexible spending account (FSA) limit for calendar year 2021. This represents the first time the dependent care FSA limit has been increased in 35 years and although it is temporary – unless extended – this change may require immediate action on the part of employers who wish to amend their FSA plans to reflect the increase.

- For the first time since the inception of dependent care FSAs, the contribution limit has been increased from \$5,000 for heads of household or married couples filing jointly/\$2,500 for married individuals filing separately, to \$10,500/\$5,250 respectively.
- Employers who wish to amend their plans will need to adopt an amendment by December 31, 2021.
- If enrollment has already been completed for the employer's 2021 plan year, they may allow a special enrollment period for employees to adjust their 2021 contributions. This is possible under previously issued relief from the Internal Revenue Service (IRS).
- While employers have until the end of the year to adopt plan amendments to increase employee contribution limits, employers who wish to do so should take steps immediately to inform their employees and open a special enrollment for this purpose. Employees who wish to increase their contributions will want to space the increase over as many paychecks as possible, particularly if taking the maximum contribution of more than double the previously allowed amount.
- Although the current increase is temporary, employers should anticipate that the increased contribution may ultimately be extended beyond calendar year 2021.

These alerts are being sent from an **active email inbox** that we monitor throughout the day. Feel free to contact us at this email address if you need additional information or clarification. We are here to answer your questions and provide guidance. Or, feel free to contact your Piper Jordan account team directly. We are here to assist you.