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COBRA Changes under the American Rescue Plan Act of 2021

President Biden signed the American Rescue Plan Act of 2021 (the Act) into law on March 11, 2021. While direct payments to certain taxpayers and extending unemployment benefits have received most of the attention in the media, the Act also provides for the federal government to pay 100% of the cost of COBRA premiums for the period beginning April 1 through September 30 (the Subsidy Period). The federal government will pay for the cost of the COBRA subsidies by providing certain tax credits. For most single employer plans, the employer will be eligible to take the credit. However, for fully-insured medical plans that are not subject to federal COBRA requirements, the credit will be taken by the insurer.

Eligible Individuals

The COBRA subsidy is available to “assistance eligible individuals”, which generally means any qualified beneficiary who is eligible for COBRA as a result of an *involuntary* termination of employment (except for termination for gross misconduct) or reduction of hours, and whose maximum COBRA coverage period falls within the Subsidy Period. Importantly, the Act does not extend the maximum COBRA coverage period.

The COBRA subsidy is generally not available to individuals who are eligible for coverage under:

1. Another group health plan, or
2. Medicare.

Otherwise, ineligible individuals who claim a subsidy are subject to a penalty.

The Bottom Line

The American Rescue Plan Act of 2021 requires employers to provide new or updated notices to qualified individuals about the availability and expiration of newly created COBRA subsidies.

Plan sponsors should work with their COBRA administrators and ERISA counsel to understand their obligations under the Act with respect to these subsidies and to set up procedures to comply with their new notice requirements.

Special Enrollment Period

The Act also provides an extended COBRA election period for individuals who are still within their COBRA maximum coverage period and:

1. Were eligible for COBRA continuation coverage during the Subsidy Period but did not initially enroll, or
2. Elected COBRA continuation coverage that was discontinued before the Subsidy Period.

The Act also provides that qualifying individuals may elect different coverage than the COBRA continuation coverage ordinarily available to such individual if:

1. The plan sponsor allows for these types of changes, and
2. The new coverage costs no more than the coverage ordinarily available to such individual under COBRA.

It remains to be seen how many employers will avail themselves of this option.

Notices

The Act places the burden on plan sponsors to provide notices to qualifying individuals regarding the availability and expiration of the COBRA subsidy.

Notice of COBRA subsidy

Pursuant to the Act, the COBRA election notice sent to qualifying individuals must now include information regarding the COBRA subsidy, and, if the plan sponsor allows, information regarding electing different coverages.

These notices must include the following:

- >> The forms necessary for establishing eligibility for the subsidy;
- >> A prominently displayed description of the individual's right to the subsidy and any conditions on entitlement to the subsidy;
- >> A description of the extended COBRA election period;
- >> A description of the individual's obligation to notify the group health plan if the individual no longer is eligible for the subsidy (e.g., the individual becomes eligible for coverage under another employer's group health plan or Medicare) and the penalty for failure to provide this notification;



- >> If the plan sponsor permits, a description of the individual's ability to enroll in different coverage; and
- >> Relevant contact information.

If an individual became entitled to COBRA continuation coverage before the start of the Subsidy Period, the plan administrator must provide a new notice containing the above information within 60 days after the start of the Subsidy Period. Additional planning will need to take place to coordinate with the recent guidance regarding the extension of COBRA [deadlines](#) due to the COVID-19 outbreak period.

Notice of expiration of the COBRA subsidy

Additionally, the Act requires plan administrators to provide a notice to all individuals receiving the COBRA subsidy that the COBRA subsidy is set to expire. There is no requirement to provide this notice to individuals who become eligible for coverage under another employer's group health plan or Medicare and lose their eligibility for the COBRA subsidy.

The notice must be provided between 15 and 45 days before the COBRA subsidy is set to expire. The notice must include:

- >> The date, displayed in a prominent manner, on which the subsidy is set to expire (e.g., September 30, 2021); and
- >> Information that the individual may be eligible for coverage without the subsidy through COBRA continuation coverage or coverage under a group health plan.

It is unclear at this time, if individuals will have an opportunity to enroll in Marketplace coverage after the expiration of the Subsidy Period.

Model Notices

To facilitate the distribution of these notices, the Act instructs the Departments of Labor, the Treasury, and Health and Human Services to prepare model notices for plan administrators to use to satisfy these new notice requirements. However, these model notices may not be available before the Subsidy Period begins, so plan administrators may have to develop their own versions of these notices in the interim.



Next Steps

With the Subsidy Period start date quickly approaching, plan sponsors should act now by:

1. Consulting with their ERISA counsel to understand their obligations under the Act, and
2. Reaching out to their COBRA administrators to confirm that these administrators are developing procedures to ensure compliance with these new notice requirements.

For More Information

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Please contact the attorneys listed below or the D&G attorney with whom you have regular contact.

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