

The American Rescue Protection Act (“ARPA”) passed on March 11, 2021 requires employers to provide temporary COBRA and state mini-COBRA subsidy assistance for eligible individuals for periods of coverage from April 1, 2021 through September 30, 2021. The Department of Labor (DOL) has recently published some guidance and the IRS and Department of Treasury concurred with the DOL’s application of the laws and benefits. Below are the specifics with regard to an employer’s obligation to provide temporary COBRA premium assistance.

General Information

- Employers or employee organizations (i.e., unions) who provide health coverage and are subject to COBRA or state mini-COBRA rules must offer temporary premium assistance to Assistance Eligible Individuals (“AEI”) if the AEI has a qualifying event.
- COBRA and mini-COBRA premium assistance includes dental and vision. It does not cover flexible spending accounts, qualified small employer health reimbursement arrangements, life insurance and disability benefits.
- Under ARPA, employers must cover the monthly subsidy premium for COBRA and mini-COBRA for eligible individuals who elect COBRA or mini-COBRA continuation coverage beginning April 1, 2021, unless employers choose to offer different health coverage and meet certain requirements:
 - The new plan charges the same or lower COBRA or mini-COBRA premium than the coverage they had at the time of the qualifying event;
 - The new coverage is offered to similarly-situated active employees; and
 - The new plan is not limited to only excepted benefits, a qualified small employer health reimbursement arrangement (QSEHRA), or a health flex savings account.
- The temporary premium assistance ends September 30, 2021 unless an individual’s COBRA or mini-COBRA continuation coverage is legally required to end sooner.

Eligibility

- An AEI is a COBRA or mini-COBRA qualified beneficiary eligible to receive the COBRA premium subsidy if a “qualifying event” occurred: i) on or after April 1, 2021; ii) before the expiration of the 18-month maximum period for COBRA continuation coverage only (i.e., not mini-COBRA); or iii) before the expiration of mini-COBRA under state law, which is 9 months in Texas.
- Under ARPA, the COBRA and mini-COBRA premium subsidy is available for AEIs who lose health insurance coverage due to the following qualifying events:
 - an involuntary termination (other than gross misconduct); or
 - a reduction in hours (voluntary or involuntary) while still an employee (e.g., a temporary leave of absence; a change in a business’s hours of operation; a change from full-time to part-time status; an individual’s participation in a lawful labor strike).
- The following qualified beneficiaries have another opportunity to independently elect COBRA continuation coverage and receive the premium assistance if there was a qualifying event prior to April 1, 2021 and they had:

- elected COBRA continuation coverage but are no longer enrolled (e.g., discontinued coverage because unable to pay premium);
- declined COBRA continuation coverage when it was offered; or
- declined COBRA continuation coverage when it was offered and are currently receiving individual Marketplace coverage.
- Employers are not responsible for providing the COBRA premium subsidy to individuals who are not eligible for a subsidy under ARPA due to the following:
 - they were terminated for gross misconduct (but use caution with this);
 - they voluntarily resigned, retired, or died;
 - they are eligible for new employer-sponsored coverage;
 - they are eligible for a spouse's health plan;
 - they are entitled to Medicare;
 - the qualifying event involved a divorce or legal separation;
 - their child lost dependent status; or
 - they are beyond their maximum COBRA coverage period.

Mini-COBRA Differences

- The subsidy is available only to those employees who:
 - Are currently enrolled in state mini-COBRA;
 - Experience a COBRA Qualifying Event during the Subsidy Period of April 1-September 30, 2021.
 - Small employers are not required to “look back” to past terminations or reductions of hours the way employers with 20 or more employees are required to do under the COBRA subsidy.

COBRA Notice Requirements

- Employers are required to provide specific notices to all qualified beneficiaries and their families who lost or are losing health care coverage. The notice must explain their COBRA or mini-COBRA rights to premium assistance as provided under ARPA.
- ARPA requires the following notices be *timely* provided to qualified beneficiaries:
 - General Notice and COBRA Continuation Election Notice- this notice must be provided to eligible individuals within 30 days of their qualifying event after April 1, 2021. This notice requirement applies to COBRA and mini-COBRA.
 - COBRA Continuation Coverage Notice in Connection with Extended Election Periods – this notice must be provided no later than May 31, 2021 to all AEl's.
 - Notice of Expiration of Period of Premium Assistance- this notice must be sent 15-45 days before an individual's premium assistance ends. (*See Termination of COBRA subsidy below*). This notice must also state whether the individual is eligible to continue COBRA or mini-COBRA coverage without the COBRA premium subsidy.
- Unless specifically modified by ARPA, existing requirements for the manner and timing of COBRA notices continue to apply (i.e., employers have 30 days to provide notice of

eligibility for COBRA continuation coverage to qualified beneficiaries who experience loss of coverage).

- The DOL published “model notices” and a summary of the key provisions under ARPA regarding COBRA premium assistance. These documents are available at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>
- Although employers are not required to use the DOL’s model notices, the DOL has advised that employers who appropriately use its model election notices will have acted in good faith with regard to compliance with the election notice content requirements.
- Employers who do not satisfy COBRA or mini-COBRA continuation coverage requirements may be investigated by the DOL and may be subject to an excise tax under the Internal Revenue Code.

Termination of COBRA premium subsidy

- The COBRA and mini-COBRA premium subsidy ends for qualified beneficiaries on the first day of the month after whichever of the following dates occurs sooner:
 - September 30, 2021, the end of the subsidy period;
 - The date a qualified beneficiary becomes eligible for another group health plan (e.g., a new employer or spouse’s employer);
 - The date the qualified beneficiary’s COBRA or mini-COBRA continuation coverage period expires; or
 - The date the qualified beneficiary’s COBRA or mini-COBRA continuation coverage was due to expire notwithstanding receiving an extended election period.
- Individuals may qualify for a special enrollment period to enroll in health care coverage when their COBRA continuation coverage and/or their premium assistance ends. Individuals may also be eligible for coverage through Medicaid or the Health Insurance Marketplace.

Tax Credit

- Employers may recover the costs expended on COBRA and mini-COBRA premiums, including the 2% administrative fee paid to a plan administrator, through Medicare payroll tax credits.
- Employers can apply for a direct payment of the remaining credit amount if the cost for the health plan sponsor’s COBRA or mini-COBRA premium exceeds its Medicare payroll tax liability.
- A plan’s insurer may claim the tax credit only when it is a small employer plan (generally less than 20 employees) subject to a state’s mini-COBRA and is fully insured. Employers should talk to their insurance carriers to discuss whether the carrier is planning to send these notices and if the carrier is going to administer and take the tax credit because the employer is still ultimately responsible for ensuring compliance.

Severance Agreements

- Employers who entered into a severance agreement with a former employee may not rely on the COBRA subsidy to meet their existing obligations under a severance agreement or

other arrangement with employees if they had agreed to pay for a certain period of COBRA or mini-COBRA coverage.

- Employers' severance agreements or policies should be temporarily modified to reflect the COBRA subsidy (i.e., COBRA will be provided without charge to the terminated employee through September 30, 2021, to the extent required by the ARPA).