



HAYS COMPANIES

## COBRA Subsidies under American Rescue Plan Act of 2021

On Wednesday, March 10, 2021, the U.S. House of Representatives ratified the Senate-amended version of the [American Rescue Plan Act of 2021](#). The bill was enacted into law with President Biden's signature on Thursday, March 11.

In our previous article (see "[Benefit Changes Proposed under Stimulus Bill](#)"), we discussed certain key employee benefits provisions of Section 9501 (Preserving Health Benefits for Workers) of the original House bill affecting displaced workers. The final revised version reconciling differences between the versions of the American Rescue Plan Act passed by the House and Senate incorporates an increase in the American Rescue Plan's COBRA premium subsidy provisions, from 85% to 100% of the premium for continuation coverage in effect beginning April 1, 2021 and ending on or before the earliest of:

- The date a premium-assistance eligible individual becomes eligible for other group health plan coverage or Medicare (as opposed to standard COBRA continuation rules, under which a qualified beneficiary loses COBRA when they become covered by another group health plan or Medicare);
- When the qualified beneficiary exhausts his or her COBRA coverage period; or
- September 30, 2021.

To qualify for the temporary COBRA premium relief, the employee must have been involuntarily terminated from employment or experienced a reduction in hours triggering an offer of COBRA coverage. The premium subsidy is available to the employee, the employee's spouse, and dependents (qualified beneficiaries) who lost group health coverage as a result.

The Act does not clearly state whether the COBRA premium relief applies only to major medical benefits (although the Act does stipulate that gaining eligibility for a plan consisting only of excepted benefits will not cause a loss of the subsidy), or if it is extended to medical, dental, and vision coverage. Health flexible spending accounts are specifically excluded. This question should be resolved in the regulatory process. The COBRA premium relief applies to assistance-eligible COBRA qualified beneficiaries who have previously elected COBRA continuation coverage, and are still within their COBRA continuation coverage periods as of April 1, 2021.

In addition, assistance-eligible individuals whose previous COBRA coverage was discontinued, and those still within their election periods (which have been extended due to the "tolling" of election timelines applicable to ERISA plans) who have not elected COBRA continuation coverage, will be entitled to receive the premium assistance. These individuals must be given a special election period beginning on April 1, 2021 and ending "60 days after the date on which notification...is provided to such individual." If a COBRA election is made during this special election period, the COBRA coverage will begin as of the first coverage period beginning on or after April 1, 2021, but it will "not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision or had not been discontinued."



For example, a former employee who was involuntarily terminated from employment on July 1, 2020 who has not elected COBRA continuation coverage will now be able to prospectively elect COBRA coverage for the period commencing April 1, 2021 through September 30, 2021 and have 100% of the COBRA premium subsidized.

The Act requires notice to COBRA qualified beneficiaries of the availability of premium assistance and establishes a framework for the information that must be contained in the Notice, including the terms and conditions under which premium relief may be applied. This additional notification may be satisfied by amending existing election notice forms or by a separate document containing the required information. Further, notice to qualified beneficiaries will be required when premium assistance ends. Model Notices are intended to be published by the Departments of Labor, Treasury and Health and Human Services shortly after enactment (i.e., the Act requires the availability notice to be released within 30 days of the Act's effective date, and the model notice of expiration of premium assistance must be provided by the Departments within 45 days). For plan sponsors who outsource COBRA administration services, we anticipate that their third-party COBRA administrators will adapt their notification procedures and notice packets accordingly.

The fair market value (COBRA premium) for subsidized COBRA coverage for assistance-eligible individuals will be advanced by employers who sponsor fully-insured or self-funded health plans subject to COBRA under the Code, ERISA, or the Public Health Services Act. Plan sponsors of such plans will then apply uncollected COBRA premiums as a credit against their quarterly payroll tax payments. This treatment also applies to sponsors of self-funded health plans not subject to COBRA (i.e., "church plans," plans maintained by Tribal entities, and plans maintained by small employers).

Multiemployer plans and insurers of plans maintained by plan sponsors who are not subject to COBRA are required to provide the coverage to assistance-eligible individuals without collection of COBRA premiums during the premium relief period, and will be responsible for recouping those advanced premiums on behalf of the issuer.

It should be noted that there is an interpretation in the industry that insurers for all fully-insured plans are required to cover the cost of the COBRA premiums and file for the tax credits for reimbursement. It appears that this interpretation is based on an earlier version of the legislation that did not incorporate changes made in the Senate. We will continue to monitor agency guidance for possible clarifications.

The final enacted version retains the original House bill's optional provision allowing employers to permit assistance-eligible individuals to elect alternative coverage offered to similarly-situated active employees. (Generally, a qualified beneficiary may only elect coverage that was in effect immediately prior to the date of the qualifying event.) The employer must have determined that they will permit the employee to elect alternative coverage, for which the premium is not greater than the coverage the qualified beneficiary had prior to the date of the qualifying event. Such other coverage may not be a Health Flexible Spending Arrangement (FSA) or Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) or constitute only excepted benefits (for instance, stand-alone dental and vision plans).

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