

100% COBRA Subsidy Passed by Congress

By: John Kirk on March 10, 2021 on graydon.law

Earlier today, Congress passed the American Rescue Plan Act (“**ARPA**”). The bill will now go to President Biden for signature. Under ARPA, eligible COBRA enrollees will be able to receive a 100% subsidy for their COBRA premiums. The subsidy will be provided by the federal government via payroll tax credits for employers. The House had originally passed ARPA in February but that version of the bill only contained an 85% COBRA subsidy. The Senate approved a revised bill on March 6 which raised the subsidy amount to 100%. The House then passed the revised bill today.

Under the bill, the subsidy for COBRA premiums begins April 1, 2021, and ends on Sept. 30, 2021. While the bill makes clear that employees who have an involuntary termination or reduction in hours are eligible for the subsidy, the subsidy is not available for employees who terminate employment voluntarily.

For eligible COBRA enrollees, the subsidy will last for six months at most, and will end on the earlier of (i) the individual’s maximum period of COBRA coverage (generally 18 months) or (ii) September 1, 2021. The subsidy will also end early if the individual becomes eligible for coverage under another group health plan or Medicare. As with COBRA normally, individuals are required to notify their former employer if they become eligible for such coverage. Unlike with COBRA normally, ARPA subjects individuals to a penalty of \$250 if they fail to provide notice of their new coverage. If the failure to notify is deemed to be intentional, the penalty is the greater of \$250 or 110% of the subsidy amount.

ARPA permits, but does not require, employers to allow employees the ability to choose a different group health plan than the individual’s current plan. The premium for the new plan cannot be higher than the premium for the employee’s previous plan, among other restrictions. If allowed by the employer, the employee would have 90 days from the date of their COBRA notice to make a new election.

As with all new laws recently, there are also new notice requirements under ARPA. Employers must provide a revised COBRA notice to all individuals that may be eligible for the subsidy. This will require employers to amend their current COBRA notice and election forms. To aid employers, new model COBRA forms will be issued within 30 days after ARPA is enacted into law.

In addition, employers will need to provide notices to eligible workers who haven't elected COBRA by April 1 and those who elected COBRA coverage but then discontinued it. Those former employees may elect COBRA coverage during an enrollment period starting April 1 and ending 60 days after the date on which the notice regarding the subsidy was delivered.

Finally, employers will need to send a notice to enrolled former employees if their subsidy will expire prior to September 21, 2021. This notice will not be required if the coverage is ending because the individual is eligible for other coverage.

While it is expected TPAs or COBRA administrators will shoulder the burden for most of the new requirements, employers should begin those conversations now. Employers should start compiling a list of the individuals who may be eligible for the subsidy and should receive the notice. The list should include individuals who were COBRA eligible for the last 18 months. This means individuals whose coverage was terminated as far back as November 2019 should be included as their 18 months of eligibility would run through April 2021.

This new bill, while a huge benefit to workers, will be an administrative burden for employers. If you need help preparing or reviewing any of the new notices or implementing the many changes required by this new bill, please contact any of Graydon's employee benefits team.