



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

March 11, 2021

COBRA Subsidies Return as Part of Latest COVID-19 Relief Bill

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On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA), the latest COVID-19 relief bill, which includes a substantial, temporary government subsidy of COBRA (Consolidated Omnibus Budget Reconciliation Act) premiums for “assistance eligible individuals.”

The subsidy created by ARPA is equal to 100 percent of COBRA premiums for assistance eligible individuals, beginning on the first day of the first month after the date of enactment of ARPA (April 1) and ending on September 30, 2021 (Subsidy Period). Assistance eligible individuals generally include those who were eligible for COBRA as a result of an involuntary termination of employment or a reduction in hours resulting in a loss of coverage, and who elected COBRA during the Subsidy Period. Individuals who voluntarily terminate employment are not eligible for the subsidy.

The COBRA subsidy under ARPA will continue for assistance eligible individuals during the Subsidy Period, except in cases in which coverage terminates due to the assistance eligible individual becoming eligible for other health plan coverage, or the COBRA period (or maximum COBRA period) comes to an end. Assistance eligible individuals are required to report to plans or plan administrators when they become eligible for other health care coverage or they could face a fine of up to \$250 (or more in cases of fraud). COBRA subsidies paid pursuant to ARPA are not included in gross income for assistance eligible individuals.

ARPA also imposes a number of additional notice requirements on the plan administrator, including, but not limited to, notices that must be provided to individuals who became eligible for COBRA before the beginning of the Subsidy Period, and notices to assistance eligible individuals of an upcoming termination of COBRA premium subsidies within specified timeframes.

Recoupment by plans and plan sponsors of COBRA premiums that would have been paid by assistance eligible individuals will operate in a manner similar to the way tax credits operated under the [Families First Coronavirus Response Act](#) (FFCRA) and the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act). Plans and plan sponsors are eligible for a refundable tax credit to be taken on their quarterly tax filings against the tax imposed by Section 3111(b) of the Internal Revenue Code. Plans and plan sponsors also may elect to advance their tax credit by withholding their deposit of tax amounts due. Finally, if a plan sponsor included any of these amounts for purposes of utilizing the employee retention tax credit under the CARES Act or the required paid leave provisions of the FFCRA, they may not be included for purposes of claiming the tax credit under ARPA.

ARPA specifies that additional agency guidance is forthcoming. The operation of the COBRA premium subsidy under ARPA, coupled with the [COBRA extensions](#) announced by the Employee Benefits Security Administration, will be complex and difficult to navigate. Furthermore, there are significant issues outstanding for which additional guidance is needed, particularly surrounding the treatment of individuals

who became or will become eligible for COBRA prior to April 1, 2021. Plan sponsors are encouraged to seek competent counsel with respect to these issues and their COBRA obligations.

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