PUBLICATION

Six Months of Paid COBRA Premiums for "Assistance Eligible Individuals"

Authors: Andrea Bailey Powers, Blake Harper
March 12, 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law. Included among the many pandemic relief provisions in ARPA is a COBRA subsidy structure that is now designed to fully subsidize COBRA for employees and family members losing group health plan coverage due to an involuntary termination of employment or reduction in hours. The 100 percent subsidy begins April 1, 2021 and runs through September 30, 2021. The premiums are to be paid by employers, who can recover these payments via a refundable tax credit on their quarterly payroll taxes. As discussed below, ARPA presents significant administrative challenges for employers and leaves open significant questions that will likely be answered by additional regulatory guidance in the coming days.

COBRA Basics and Background

Federal law, under the Consolidated Omnibus Budget Reconciliation Act, or COBRA, allows employees to continue their employer-provided health insurance for up to 18 months after they lose their jobs due to layoffs, because they were fired, because they quit, or because their hours are reduced below the employer's minimum to receive benefits. To retain employer-based coverage as permitted under COBRA, individuals must pay up to the full premium negotiated by their former employer plus a two percent administration charge. Although the COBRA premium may be less than individuals could secure on the private market, these premiums are often still a significant expense. The economic impacts of the COVID-19 pandemic have placed health care coverage at risk for many laid-off or furloughed employees and their families, and ARPA's provisions regarding COBRA are intended to address this issue.

Effect of ARPA on Employees

Who Is Assistance Eligible?

An "assistance eligible individual," or AEI, is defined in the statute as a COBRA qualified beneficiary. AEIs are those who lost health coverage due to involuntary termination of employment or reduction in hours. It appears that AEIs also include qualified beneficiaries who are currently enrolled in COBRA coverage and those who are in an election period. Administrative guidance will advise whether the designation will extend to those whose original COBRA period of coverage would not yet have expired had the individual previously elected COBRA.

Note that in determining if an individual is an AEI, employers will need to take into account the tolling of COBRA deadlines that began March 1, 2020, which applies on a person-by-person basis and ends the earlier of:

- One year from the date the deadline would have begun running for that individual; or
- 60 days from the end of the National Emergency (which is still ongoing).

What Benefits Are Available?

AEIs receive up to six months of free COBRA premiums. The coverage period is from April 1, 2021 to September 30, 2021, but the benefits end earlier if the individual's maximum period of COBRA coverage (generally, 18 months) ends earlier than September 2021 or the individual becomes eligible for coverage under another group health plan or Medicare. Individuals are responsible for notifying employers about a change in their eligibility for coverage and are subject to a penalty of $250, and in the case of intentional failure to notify, the greater of $250 or 110 percent of premium assistance provided after loss of eligibility, for failure to do so. Also, subject to the employer's discretion, eligible individuals may elect to enroll in a different group health plan covered by their employer within 90 days following COBRA notice receipt if the alternative coverage has a premium that is not greater than the current premium, among other restrictions.

What Is the Enrollment Period?

Under normal circumstances, qualified beneficiaries must elect COBRA coverage within 60 days from the later of the date that coverage is lost due to the qualifying event or notice is provided to the qualified beneficiary of the right to elect COBRA coverage. However, the COBRA election period has been tolled for up to 12 months. Administrative guidance will likely clarify how the tolling of the COBRA deadlines impacts eligibility for the subsidy.

Effect of ARPA on Employers

Is ARPA Permissive or Mandatory?

The language of ARPA is mandatory regarding the payment of premiums on behalf of AEIs by employers but permissive as to allowing employees the option to change coverage.

What Are the Notice Requirements to Assistance Eligible Employees?

COBRA notices must be revised to include provisions regarding the availability of subsidies and, if offered, the ability to change plan options. Notices must include:

- The forms to establish eligibility for subsidies;
- The name, address, and phone number to contact the employer or other person who can provide assistance and further information;
- A description of the extended election period;
- A description of the individual's obligation to notify the plan of loss of eligibility for the subsidies, and the potential penalties for failure to do so;
- A prominently displayed description of the right to subsidies and the conditions to qualify; and
- If permitted by the employer, a description of the option to enroll in a different plan option.

Existing qualified beneficiaries eligible for subsidies, including individuals eligible for the extended election period to enroll in subsidized COBRA, must receive an additional notice including this information by May 31, 2021. We expect model language from the administrative agencies by April 10.

How is Reimbursement for Premiums Paid Obtained?

Employers will obtain reimbursement for the subsidy under ARPA through a payroll tax credit against the employers' quarterly taxes. If the credit exceeds the amount of payroll taxes due, the credit will be refundable when employers submit Form 941. The credit could also be advanced under rules that will be set by the Treasury Department. It is worth noting that ARPA was a reconciliation bill that only allocates $10 million in implementation funding for this subsidy, so availability of those funds, particularly regarding refunds and advances, should be closely monitored.

Final Observations

Much of the specific guidance on administration of ARPA is left to regulatory authorities such as the Department of Labor and the Internal Revenue Service. Many employers may remember the complexity and confusion associated with administration of the premium assistance credit program under the 2009 American Recovery and Reinvestment Act (ARRA). Whether ARPA has similar results will depend largely on the clarity of the rules to be established by these agencies in the coming weeks. We will be closely monitoring developments and guidance on this issue and will be issuing future alerts. If you have any questions, please contact the authors or your Baker Donelson attorney.