

## New COBRA subsidies create urgency for employers



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President Joe Biden signed the American Rescue Plan Act of 2021 (American Rescue Plan) into law on March 11, 2021. The American Rescue Plan provides up to six months of full Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) premium payments for “assistance eligible individuals” (AEIs). The COBRA subsidy period lasts from April 1, 2021, to Sept. 30, 2021.

The American Rescue Plan provides new special election opportunities for certain AEIs and imposes several new notice requirements on employers with respect to the subsidies. The quickly-approaching deadlines create some urgency for employers to understand the COBRA subsidy requirements and act to ensure compliance.

### Who is an AEI?

An AEI is someone who would be entitled to COBRA coverage under a health plan at any time between April 1, 2021, and Sept. 30, 2021, due to an involuntary termination of employment, other than for gross misconduct, or a reduction in hours. The subsidies clearly apply to major medical plans, whether self-insured or fully insured, regardless of size of the plan. It also appears that they apply to dental and vision plans. However, they do not apply to health care flexible spending accounts.

The availability of the subsidies does not extend an AEI's normal maximum 18-month COBRA coverage period in these situations. For example, if an AEI lost coverage on Jan. 1, 2020, due to an involuntary termination of employment and takes advantage of the new special election opportunity as of April 1, 2021, his or her eligibility for COBRA coverage, and the concomitant subsidy, will terminate as of June 30, 2021, because his or her maximum 18-month COBRA coverage period ends on that date. An AEI's entitlement to subsidies will also end if the AEI becomes eligible for another employer's major medical plan or Medicare.

### What is the new special election opportunity?

Employers will need to offer a new special election opportunity to certain individuals. Specifically, unless an individual is no longer within his or her maximum 18-month COBRA period, the individual gets a second opportunity to elect COBRA coverage if he or she had a reduction in hours or involuntary termination prior to April 1, 2021, and either (a) did not elect COBRA coverage in conjunction with that event or (b) elected COBRA coverage before April 1, 2021, but discontinued it before that date. These AEIs can elect COBRA coverage during the period beginning April 1, 2021, and ending 60 days (90 days, if the employer allows AEIs to choose a different coverage option with an equal or lower premium that was originally available to them) after they are provided notice of the special election opportunity. Special election enrollees

*The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.*

will be entitled to the COBRA subsidies.

## What are the new notice requirements?

The American Rescue Plan imposes three new notice requirements on employers:

- 1. Special election opportunity:** Employers must provide notice by May 31, 2021, to AEIs who are eligible for the special election opportunity. However, the AEI's 60-day election period begins to run as soon as the employer provides him or her with these special election opportunity notices. Consequently, employers generally should try to get these notices out as soon as possible because they start the clock for each applicable AEI's special election period. The DOL's model special election notice is available at [Model COBRA Continuation Coverage Election Notice \(dol.gov\)](#).
- 2. New qualifying beneficiaries:** Employers must notify AEIs who become eligible to elect COBRA during the subsidy period of the subsidy's availability and, if permitted by the plan, the option to enroll in different coverage. An employer can satisfy this notice obligation by supplementing previously-provided COBRA notices or providing separate documents that include the required information. The DOL's model notice for this purpose is available at [Model COBRA Continuation Coverage Election Notice \(dol.gov\)](#).
- 3. Notice of subsidy termination:** Employers generally will be obligated to notify AEIs no more than 45 days and no less than 15 days of the date on which the AEI's COBRA subsidies will expire. This notice obligation does not apply if the AEI is losing the subsidy because he or she has become eligible for coverage under another major medical plan or Medicare. The DOL's model notice of subsidy termination is available at [Notice of Expiration of Period of Premium Assistance \(dol.gov\)](#).

## How is an employer reimbursed for the subsidies?

An employer generally will claim reimbursement for the subsidies by virtue of credits toward payroll taxes that are otherwise due on a quarterly basis from the employer. However, if the plan is fully-insured and the employer is not subject to the federal COBRA rules (e.g., due to the employer's small size), then the insurance company will be entitled to the credit.

**For more information on this topic, or to learn how Godfrey & Kahn can help, contact a member of our Employee Benefits Practice Group.**