

March 15, 2021

New Legislation Brings Additional Changes to Benefit Plans

The COVID-19 pandemic continues to challenge employers and employees as they navigate business interruption, return to work policies, COVID-19 testing, and vaccinations. Additionally, in their roles as plan sponsors and plan participants, employers and employees, respectively, have also had to deal with many changes surrounding their employee benefit plans over the last year. Just two weeks ago we published this [Alert](#) addressing the extension of certain employee benefit plan and participant-related deadlines as set forth in EBSA [Notice 2021-01](#). Just as employers were digesting this information and figuring out how to apply it to their plans and communicate it to their employees, the [American Rescue Plan Act](#) (“ARPA”) became law.

The ARPA, which was signed into law by President Biden on March 11, 2021, contains many provisions that affect employers and individuals, including a few provisions that directly affect them in their roles as plan sponsors and plan participants. Specifically, the ARPA temporarily changes two long-standing benefit plan provisions related to Dependent Care Assistance Programs (“DCAPs”) and the continuation of health coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”). Although these provisions are meant to provide relief and assistance, plan sponsors may find the administration of these laws challenging, especially while considering the implications between these provisions and those in Notice 2021-01 and the [Consolidated Appropriations Act](#) (“CAA”). We discussed the challenges of the CAA at the beginning of 2021 in this [Alert](#). The two key benefit plan-related provisions of the ARPA are outlined below.

1. Increased DCAP Limit

- **DCAP Overview:** Section 129(a)(2) of the Internal Revenue Code (“IRC”) had previously capped employees’ contributions to a DCAP at \$2,500 and \$5,000 per year (married filing separately and married filing jointly, respectively).
- **The New Contribution Limits:** The ARPA, however, increases these contribution limits to \$5,250 and \$10,500, respectively. These limits represent the maximum dollar amount that can be withheld from an employee’s gross income for certain dependent care expenses.

- **Optional Provision:** This provision is not mandatory for employers, which means plan sponsors can choose whether to adopt the new contribution increases. However, plan sponsors who were struggling with how to apply a newly adopted unlimited carryover or extended grace period, as allowed by the CAA, may see the benefit of allowing these new limits. Although some plan sponsors may find this provision helpful, please refer to the caveat below.
- **Plan Amendments:** Plan sponsors must amend their DCAP plan documents to allow for these new limits. Plans that are amended by the last day of the 2021 plan year can apply the new limits retroactively.
- **Nondiscrimination Caveat:** The IRC Section 129 nondiscrimination rules were not amended by the APRA. Therefore, plan sponsors need to carefully consider the contribution increase in light of the current participation in their DCAP and test their plans accordingly to ensure they are nondiscriminatory.

2. COBRA Premium Subsidy and Election Period

- **COBRA Overview:** Certain employers covered under the COBRA law are required to provide continuation of health coverage for employees and their dependents (“COBRA beneficiaries”) who undergo certain qualifying events. However, the COBRA law had not previously mandated that employers pay for any portion of a COBRA beneficiary’s COBRA premium payment. Indeed, employers could charge these individuals the entire cost of the premium plus an administrative fee.
- **The Subsidy:** The ARPA, however, provides “assistance eligible individuals” with a 100% premium subsidy for both federal and state COBRA coverage. Assistance eligible individuals generally include employees or dependents who lose group health plan coverage due to an *involuntary termination of employment or reduction in hours*. Notably, individuals who must be offered COBRA for other qualifying events (such as voluntary termination) are *not* eligible for the premium subsidy.
- **Length of Subsidy:** The premium subsidy applies to COBRA coverage provided between April 1, 2021 and September 30, 2021. However, the subsidy will end earlier if the individual becomes eligible for other group health coverage or Medicare or if the individual’s maximum COBRA coverage period ends prior to September 30, 2021. Individuals can be fined under the ARPA for not notifying their employer/former employer of any change to their COBRA eligibility.

- **Notice Requirements:** Employers must provide written notice to assistance eligible individuals within 60 days of April 1, 2021. The notice must contain specific information as prescribed by the ARPA including information on the individual's right to a subsidy, how long the subsidy will last, and information on enrollment, including how long the individual has to enroll. A model notice is required to be released by the requisite government agencies within 30 days of the ARPA's enactment.
- **Payment of Subsidy:** The entity to whom premiums are payable (the employer for self-funded plans and the insurer for fully insured plans) is eligible to be reimbursed for the premiums paid via a quarterly payroll tax credit. In certain cases, if the tax credit is greater than the payroll tax liability, the ARPA allows for the tax credit to be refunded.
- **Special Election Period:** Any assistance eligible individual who was eligible for but did not elect COBRA coverage or who dropped COBRA coverage prior to April 1, 2021, must be offered a special election period (i.e. a second chance to elect COBRA) under the ARPA. Specifically, these individuals have 60 days after receiving the required employer notice to elect COBRA. Such COBRA coverage would then be provided prospectively from this new election date (not retroactively to the date of the initial COBRA qualifying event).
- **Changing Plan Coverage:** Employers may also allow assistance eligible individuals to change their coverage option when enrolling in COBRA coverage. Previously, COBRA-eligible individuals could only elect the same plan coverage they had as their prior active coverage and changes to plan options could only be made during Open Enrollment. However, under the ARPA, if certain requirements are met, employers *may* allow these individuals to change to a lower cost plan option within 90 days of the individual receiving their required notice.
- **Interaction with Notice 2020-01 and 2021-01:** As stated in our two previous Alerts, these two Notices extended many of the COBRA deadlines, including deadlines related to COBRA notices and payments. As plan sponsors are working to meet these new deadlines and provide updated notices, as applicable, they will want to consider the changes to COBRA under the ARPA, as well.

We realize this last year has been challenging in many ways. If your challenges relate to any of this new guidance or any benefit plan issues, the experts at [Patriot Growth Insurance Services](#) and our partner agencies are here to help. Please reach out to use for assistance with this or any challenging compliance issue.

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