compliance ALERT

$1.9T COVID-19 Relief Package Includes Rules to Expand COBRA and ACA Exchange Subsidies

March 11, 2021

The $1.9 trillion American Rescue Plan Act of 2021 includes much-needed relief and stimulus funds for employees and businesses suffering from the impact of the ongoing COVID-19 pandemic. **Most relevant to employers, the American Rescue Plan Act:**

- **Expands COBRA Subsidies.** The law provides 100% of the funding for certain unemployed individuals to stay on their prior employers' health insurance coverage from April 1, 2021 through September 30, 2021.
- **Expands ACA Exchange Subsidies.** The law provides funding for significantly more generous ACA premium subsidies and eliminates the ACA's "subsidy cliff."
- **Increases Dependent Care FSA Maximum.** The maximum amount of dependent care FSA benefits that can be excluded from income is temporarily increased from $5,000 to $10,500 for the tax year of 2021.
- **Extends Family and Sick Leave Tax Credits.** The law extends certain family and sick leave tax credits available under the Families First Coronavirus Response Act (FFCRA) through September of 2021.

The **COBRA expansion** comes with specific requirements for employers to update COBRA notices (or include in a separate notice) describing the premium subsidy to all eligible individuals. Employers must also provide notification of any early termination of the premium subsidy prior to September 30, 2021. The U.S. Department of Labor will be providing model notices for both in the coming weeks.

The law's new **expanded ACA subsidies** may indirectly increase employers' potential exposure to ACA Employer Shared Responsibility (ESR) penalties since many more individuals are likely to sign up for Exchange coverage and qualify for premium tax credits. That can trigger more ESR penalties against employers that are not offering health insurance coverage that meets the ACA's minimum standards.

Employers and plan sponsors should review and discuss the new COBRA rules with their COBRA administrators and vendors, as well as insurance carrier representatives and third-party administrators, to ensure that participants and COBRA beneficiaries are properly notified of the law's changes and the required subsidies. Additionally, employers subject to the ACA should review their health plan offerings to ensure that they meet the ACA's minimum standards. ■

Action Required:

- **Review and discuss the new COBRA rules with your relevant COBRA administrators to ensure proper notice of the changes and the required subsidies.**
- **Review your health plan offerings to ensure that they meet the ACA's minimum standards (if your organization is subject to ACA requirements).**

↓ Full Explanation Follows ↓

$1.9T COVID-19 Relief Package Includes Rules to Expand COBRA and ACA Exchange Subsidies

The [American Rescue Plan Act of 2021](), a $1.9 trillion COVID-19 relief bill (the "Law" or "Relief Package"), includes much-needed relief and stimulus funds for employees and businesses suffering from the impact of the ongoing pandemic.

The new Law includes, among other provisions, $400 billion for $1,400 direct payments to most Americans, $350 billion in aid to state and local governments, an expansion of the child tax credit, and increased funding for vaccine distribution, school re-openings, small business grants, pension funds and unemployment assistance. The Law also includes provisions designed to significantly expand health insurance coverage subsidies under the Affordable Care Act (ACA) and COBRA, and it significantly increases the maximum contribution to dependent care FSAs.

How Does the Relief Package Change the Law?

The Relief Package changes the law in the following ways:

- **Expands COBRA Subsidies.** Provides 100% of the funding for certain unemployed individuals to stay on their prior employers' health insurance coverage through September of 2021 (discussed in more detail below).
- **Expands ACA Exchange Subsidies.** Provides funding for significantly more generous ACA premium subsidies and eliminates the ACA's "subsidy cliff" (discussed in more detail below).
- **Increases Dependent Care FSA Maximum.** The maximum amount of dependent care FSA benefits that can be excluded from income is temporarily increased from $5,000 to $10,500 for the tax year of 2021 (discussed in more detail below).
- **Extends Family and Sick Leave Tax Credits.** Extends certain family and sick leave tax credits available under the Families First Coronavirus Response Act (FFCRA) through September of 2021 (discussed in more detail below).
- **Funds Stimulus Checks and Extends Unemployment Assistance.** Provides funding for $1,400 stimulus checks and extends federal unemployment assistance through September 6, 2021 (discussed in more detail below).
- **Expands Caregiver Tax Credits.**
    - Enhances the child tax credit for the 2021 tax year, from $2,000 for children under 17 currently, to $3,600 for children under 6 and $3,000 for all other children under 17 in 2021.
    - Allows for advance payments of the credit starting in July of 2021.
    - Changes the child and dependent care tax credit for 2021 from $3,000 in qualifying expenses to $8,000 for one child, and from $6,000 to $16,000 for two or more children.
    - Imposes a new income phaseout threshold at $125,000, and completely eliminates the credit for incomes above $400,000. The maximum credit amount would go up from 35% of qualifying expenses to 50%.

- **Funds the Paycheck Protection Program, SBA Assistance for Hard-hit Industries and Troubled Pension Plans.**
    - Provides an additional $7.25 billion to the Paycheck Protection Program (PPP), but it does not extend the PPP beyond the current expiration date of March 31, 2021.
    - Establishes a $29 billion Restaurant Revitalization Fund (RRF) to address the pandemic's impact on the food services industry, and an additional $1.25 billion for the Shuttered Venue Operators Grant (SVOG) program to address the pandemic's impact on the live events industry.
    - Allocates significant additional funding for troubled multiemployer pension plans that are insolvent, in critical and declining status, or that meet other funding criteria under applicable federal pension laws.
- **Expands COVID-19 Vaccines, Testing, Contact Tracing and Pandemic Mitigation Activities.**
    - Allocates approximately $89 billion for the Centers for Disease Control and Prevention (CDC) and U.S. Department of Health and Human Services (HHS) to support continued COVID-19 testing and mitigation efforts, including efforts to detect, diagnose, trace and monitor COVID-19 infections and related strategies to mitigate the spread of COVID-19.
    - Allocates significant additional funding (within that $89 billion) for COVID-19 vaccine activities by providing billions to the CDC and HHS to plan, prepare for, promote, distribute, administer, monitor and track COVID-19 vaccines.
    - Appropriates $10 billion to carry out Titles I, III, and VII of the Defense Production Act (DPA), which is designed to greatly expand procurement of COVID-19-related medical supplies and equipment.
- **Increases Spending on Mental Health Services.** Provides an additional $3.5 billion for block grants to states, with half allocated for the Community Mental Health Services Block Grant program and the other half for the Substance Abuse Prevention Treatment Block Grant program. These block grant programs provide funding to all U.S. states and

territories for programs targeting those with serious mental illnesses and to prevent and treat substance abuse.

- **Mandates and Funds Medicaid and CHIP Coverage for COVID-19 Vaccines.** Requires state Medicaid and CHIP plans to cover 100% of the cost of testing and treatment for COVID-19 for Medicaid and CHIP beneficiaries through one year after the end of the public health emergency.

What are the New Rules Expanding COBRA Subsidies?

The new Law includes rules designed to help unemployed individuals remain covered under their prior employer's health insurance plan through COBRA. Specifically, the Relief Package includes a 100% COBRA premium subsidy for any employee or dependent who is a COBRA qualified beneficiary (or will become one), resulting from an involuntary termination of employment or a reduction of hours (referred to as an "Eligible Individual"). Employees who voluntarily terminate employment are not eligible for the COBRA premium subsidy. The COBRA premium subsidy is effective the first of the month following the date of the enactment of the legislation (April 1, 2021) and ends on September 30, 2021 (the "Subsidy Period").

More specifically, the COBRA premium subsidy will be available to any Eligible Individual who is enrolled in COBRA (or who will enroll in COBRA) on or after April 1, 2021, and before the Subsidy Period ends on September 30, 2021.

In addition, any former employee (who is otherwise an Eligible Individual) who did not elect COBRA coverage, or who dropped COBRA coverage prior to April 1, 2021, but who would otherwise be within their 18-month COBRA coverage period between April 1 and September 30, 2021, is eligible for the COBRA premium subsidy. The Subsidy Period would terminate if the Eligible Individual becomes eligible for other group health plan coverage (other than an excepted benefit) or Medicare. Eligible Individuals are required to notify the plan if they become eligible for other group health plan coverage.

The new Law also includes specific requirements for employers to update COBRA notices (or include in a separate notice) describing the premium subsidy to all Eligible Individuals. Failure to provide such a notice will be treated as a failure of the COBRA notice requirements. The Secretary of the U.S. Department of Labor, in consultation with the Secretary of the Treasury and the Secretary of HHS (the "Agencies"), are required to provide model notices within 30 days of enactment. Employers must also provide notification of any early termination of the premium subsidy prior to September 30, 2021. The Agencies are required to provide a model notice for this circumstance within 45 days of enactment.

Employers will receive a credit for the COBRA premium subsidy through a payroll tax credit against the employer's quarterly taxes. If the credit exceeds the amount of payroll taxes due, the credit will be refundable when the employer submits its quarterly federal tax return (*i.e.*, IRS Form 941).

What are the New Rules Expanding ACA Subsidies?

The new Law includes rules designed to help individuals struggling to afford health insurance by increasing the value of subsidies for ACA Exchange coverage. The Law's more generous ACA subsidies put an end to the ACA's "subsidy cliff." The subsidy cliff is a term that refers to the termination of health insurance premium subsidies on Exchanges for households earning over 400% of the federal poverty line (FPL), which is equal to approximately $51,000 per year for an individual.

An end to the subsidy cliff on the Exchanges is achieved by limiting the amount of money that any individual would have to pay for health insurance through the end of 2022 at 8.5% of a household's income.

The new Law also provides certain cost-sharing support subsidies that are available for unemployed individuals purchasing coverage on qualified plans on the ACA Exchanges.

Currently, under the ACA, for those enrolled in such a plan who make between 100% and 400% of the FPL, the ACA mandates insurers reduce cost-sharing in phased amounts to make out-of-pocket expenses more affordable for lower-income Americans. The Senate legislation amends this provision for 2021 to deem that any person who received (or is approved to receive) unemployment compensation for any week during 2021 meets the requirements for an "Eligible Insured" under the ACA for such cost-sharing support. Further, for the phased amounts to limit out-of-pocket expenses, the legislation would not include household income in excess of 133% of the FPL in calculating the support under these provisions.

What are the New Rules Increasing Dependent Care FSA Contributions?

The maximum amount of dependent care FSA benefits that can be excluded from income is increased from $5,000 to $10,500 (from $2,500 to $5,250 for taxpayers who are married filing separately) for any taxable year beginning after December 31, 2020, and before January 1, 2022. Plans can be amended retroactively for the change so long as the amendment is adopted by the last day of the plan year in which the amendment is effective and the plan is operated in accordance with the amendment's terms beginning on its effective date.

[1] Unlike the original and previously-amended versions of the Law that allowed a credit against the 6.2% employer share of Social Security tax (up to annual wage caps) imposed under Code § 3111(a), the current legislation would allow a credit against the 1.45% employer share of Medicare tax (without any annual wage cap) imposed under Code § 3111(b).

How Does the Relief Package Extend Family and Sick Leave Tax Credits?

The Law extends certain family and sick leave tax credits available under the FFCRA through September 30, 2021. As background, the FFCRA required employers with less than 500 employees to provide COVID-19-related paid family leave and paid sick leave, and established corresponding tax credits. This leave mandate originally expired on December 31, 2020, but the Consolidated Appropriations Act, 2021 (CAA) allowed an employer to voluntarily extend paid leave (and receive applicable tax credits for such voluntary leave) until March 31, 2021. The Relief Package now extends these FFCRA/CCA tax credits for qualifying family leave and sick leave wages that an employer voluntarily pays between April 1, 2021, and September 30, 2021.[1]

Additionally, the Law makes leave taken due to a COVID-19 vaccination qualify; creates a reset date for counting paid sick leave (March 31, 2021); increases the total number of days of eligible family leave from 50 days to 60 days (thereby increasing the total amount of wages eligible for the tax credit from \$10,000 to \$12,000 (plus health plan expenses properly allocable to qualifying leave); and allows Code § 501(c)(1) governmental organizations to participate. The Law also gives the IRS five years from the tax return filing date to audit claimed tax credits, up from the standard three-year statute of limitations on assessment provided under Code § 6501.

What are the New Rules for Stimulus Checks? How does the Relief Package Impact Unemployment Benefits?

The Relief Package offers another round of direct economic impact payments ("stimulus checks"). Eligible recipients can expect stimulus checks of \$1,400 per person (\$2,800 for couples), including adult dependents—a family of four could receive up to \$5,600.

However, the payment parameters for the stimulus checks are stricter this time around, as the full amount will now go only to individuals earning under \$75,000 (or \$150,000 for couples), with payments cut off entirely for individuals earning over \$80,000 (or \$160,000 for couples). Individuals earning an amount between those figures will receive a reduced sum.

The Relief Package also extends unemployment benefits until September 6, 2021 and provides an additional \$300 payment per week. The mixed-earner supplement provides an extra \$100 per week for those whose income is a mix of self-employed and wages paid by their employer.

The Law also extends the Pandemic Unemployment Assistance (PUA) program to September 6, 2021, capped at 79 weeks; the PUA program covers the self-employed, part-time employees, gig workers and others who are not eligible to receive regular unemployment benefits. There is also a new tax-free unemployment benefits allowance that will allow recipients with an annual household income of less than \$150,000 to avoid paying tax on the first \$10,200 of benefits.

When does the Relief Package Go into Effect?

Generally, the new Law is in effect once signed. However, several of the new rules applicable to health plans will not go into effect until the first of the month following the signing of the Law (*i.e.*, April 1, 2021).

How Does the Relief Package Impact Employers and Plan Sponsors? What was Not Included in the Relief Package?

The new COBRA subsidy rules will likely create administrative challenges for employers sponsoring both fully-insured and self-insured plans. Accordingly, employers and plan sponsors should not assume that their COBRA administrators and/or other COBRA vendors will automatically make the necessary adjustments required under the Law. Rather, employers should work closely with their COBRA administrators and vendors to identify any Eligible Individuals and to ensure that they will be receiving the appropriate notices and that their subsidies will be distributed properly.

While the Law's new expanded ACA subsidies don't directly impact employers, they may have an indirect effect of increasing employers' potential exposure to ACA Employer Shared Responsibility (ESR) penalties due to the fact that many more individuals are likely to sign up for Exchange coverage and qualify for premium tax credits on the Exchanges as a result of this Law. When that occurs, that can trigger more ESR penalties against employers that are not offering health insurance coverage that meets the ACA's minimum standards.[2]

Notably, the Relief Package did not include any kind of federal minimum wage increase. House Democrats' version of the bill originally included a provision to raise the minimum wage to \$15 per hour by 2025, but the Senate parliamentarian decided the provision did not satisfy the rules that govern budget reconciliation bills in the Senate. Additionally, while not included in the House bill, the Law did not include an extension of mandated paid sick and family and medical leave under the FFCRA, as some had expected (even though it extended the tax credits).

What Should Employers and Plan Sponsors Do Next?

Employers and plan sponsors should review and discuss the new COBRA rules with their COBRA administrators and vendors, as well as insurance carrier representatives and third-party administrators, to ensure that the proper procedures are being followed to provide participants and COBRA beneficiaries with appropriate notice of the Law's changes and the required

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subsidies.

Additionally, in light of the ways that the Law will make Exchange coverage much more attractive to employees, and the greater potential for ACA ESR penalty exposure that may result, employers subject to the ACA should review their health plan offerings to ensure that they meet the ACA's minimum standards.

The government agencies tasked with implementing the new Law will likely soon release new regulations and guidance, as well as model notices and forms, designed to assist employers and plan sponsors with putting these new rules into effect. We will continue to provide updates on those developments as they arise.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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