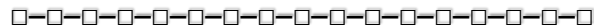


**Benefit Plan Changes in the American Rescue Plan Act of 2021**

**Executive Summary**

[The American Rescue Plan Act of 2021](#) (“ARPA”) was signed into law by President Biden yesterday. ARPA contains numerous changes impacting retirement, health and welfare benefit plans, which are intended to provide additional help to employers and employees as a result of the COVID-19 pandemic. This newsletter highlights the following key features of the new law:

- Temporary Increase in Dependent Care FSA Limits for 2021
- Temporary COBRA Subsidies and New Elections
- New Limits on Deductible Compensation for Executives in Publicly-Traded Companies
- Funding Support for Traditional Pension Plans



**I. TEMPORARY INCREASE IN DEPENDENT CARE FSA LIMIT**

Currently, the annual limit for dependent care flexible spending account benefits is \$5,000 for married individuals filing jointly and \$2,500 for married individuals filing separately. Under ARPA, this limit would increase temporarily—only for 2021—to \$10,500 and \$5,250, respectively.

This change comes on the heels of additional flexibility that is provided for FSAs under the Consolidated Appropriations Act, 2021, described in our earlier [newsletter](#). Employers interested in increasing the dependent care FSA limit for 2021 should coordinate this change, and any others, with their FSA recordkeeper and be sure to timely update their plan documents no later than 12/31/2021.

**II. TEMPORARY COBRA SUBSIDIES AND NEW ELECTIONS**

Subsidies for up to 6 months. Under ARPA, individuals and family members eligible for COBRA continuation coverage due to involuntary termination of employment (for reasons other than gross misconduct), reduction in hours, or furlough are eligible for a 100% COBRA subsidy for up to 6 months, for COBRA coverage during the period from April 1<sup>st</sup> through September 30, 2021. (Note that there is no requirement that the termination of employment or reduction in hours has to be related to the COVID-19 pandemic, but the subsidy will not be available if the loss of group health coverage was due to a voluntary termination of employment.)

ARPA provides that the subsidy period will end if the individual's COBRA period ends before September 30, 2021, or if the individual becomes eligible for other group health plan coverage or Medicare. They will need to notify the employer about this other coverage or face possible financial penalties equal to the greater of \$250 or 110% of the COBRA premiums subsidized on their behalf.

Logistically, the way the subsidy will be implemented is that employers will need to absorb or advance the cost of COBRA premiums for the assistance-eligible individuals, but will then recover those costs through a tax credit against the employer's quarterly payroll taxes.

*New COBRA elections.* ARPA also extends new COBRA election rights to individuals who (i) lost their group health plan coverage due to involuntary termination of employment (for reasons other than gross misconduct), reduction in hours or furlough, (ii) failed to timely elect COBRA or dropped their COBRA coverage, and (iii) would otherwise still be eligible for COBRA coverage as of April 1, 2021. These individuals will have the opportunity to enroll in COBRA, effective April 1, 2021, and their COBRA coverage will continue until it otherwise would have ended. Effectively, employers will need to contact these individuals again and provide them with a new 60-day election period in which to enroll in subsidized COBRA as of April 1, 2021.

In addition, employers may (but are not required to) give COBRA recipients the opportunity to change their coverage elections to a lower-cost health option that is otherwise available to similarly-situated active employees. If an employer decides to make this opportunity available through new notices and election packages, COBRA qualified beneficiaries will have 90 days to elect the lower-cost, alternative coverage.

*Implementation will require new notices and forms.* Employers (working by themselves or with their third-party COBRA administrators) will be required to send new notices and new election forms explaining the subsidies and any new options to enroll in different coverage, as well as notices about the expiration of the subsidy period before it expires on 9/30/21. Model notices from the DOL are expected to be issued within 30 days, but we recommend that employers start working now to identify which of their current or former employees may be eligible for any subsidies or new elections, and to develop a game plan about how to implement these new changes in a timely manner.

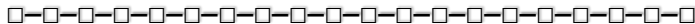
### **III. NEW LIMITS ON DEDUCTIBLE COMPENSATION FOR EXECUTIVES IN PUBLICLY-TRADED COMPANIES**

Beginning in 2027, the number of executives in publicly-traded companies, for whom compensation in excess of \$1 million is not deductible, has increased by 5.

### **IV. PENSION FUNDING RELIEF**

As part of ARPA, the [Butch Lewis Emergency Pension Plan Relief Act of 2021](#) provides temporary funding relief for traditional pension plans and also establishes a special emergency assistance fund for union-sponsored multiemployer pension plans that are in danger of becoming insolvent. Key provisions include:

- The ability for single-employer pension plans to amortize funding shortfalls over a 15 year period (not 7 years).
- The ability of a multiemployer pension plan to temporarily delay their designation as being in “endangered” status (the yellow zone); “critical” status (the red zone); or critical and declining status—all of which trigger the need to adopt funding improvement or rehabilitation funding plans.
- A 5-year extension of the funding improvement and rehabilitation periods for multiemployer pension plans that are already in endangered or critical status.
- The establishment of a PBGC “special financial assistance program” to support multiemployer plans that are in “critical and declining status” and are at risk of becoming insolvent, or that satisfy other alternative criteria.
- Additional premiums payable to the PBGC by multiemployer pension plans.



To discuss the American Rescue Plan Act of 2021, or other employee benefits matters, please contact any member of our Employee Benefits and Executive Compensation Group below.



1945 Old Gallows Road  
Suite 650  
Vienna, VA 22182  
(703) 748-2690

1111 East Main Street  
Suite 1605  
Richmond, VA 23219  
(804) 489-5507

Andrea I. O’Brien aobrien@islerdare.com	Vi D. Nguyen vnguyen@islerdare.com	Jeanne Floyd jfloyd@islerdare.com	Ashley Hedge ahedge@islerdare.com
--	---------------------------------------	--------------------------------------	--------------------------------------

