
# Episode 5:

# COBRA subsidies in the American Rescue Plan Act

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**Holly Murphy:** COBRA is so complicated, and the extensions that are required because a previous IRS guidance. And now, these subsidies are making it even more complicated.

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**Pratin Shah:** Hello, my name is Pratin Shah, and I'm a Senior Director in our Benefit Outsourcing Practice. I'm excited to be your host on today's episode of Benefits, with Purpose, entitled COBRA Subsidies in the American Rescue Plan Act. With me today is our resident compliance expert, Holly Murphy. Holly is our Compliance Lead and Consulting Attorney in the Benefit Outsourcing Practice. She also supports our COBRA administration team to operationalize federal requirements.

**Holly Murphy:** Hi, Pratin. Thank you for having me on today for a topic that may not be the most exciting topic, but it is something that is just very important for our clients. And as far as what I do hear at Willis Towers Watson, I think you summarized it very well. It's operationalizing the compliance requirements that we have under these federal regulations and statutes.

**Pratin Shah:** Yeah, and I can firsthand, Holly, confirm that our clients are asking. So appreciate everything you do to support our clients and our teams. Let me kind of maybe give a background sort of where this started, and then let's get into it. So on March 11, President Biden signed the latest COVID-19 Relief Bill. Many provisions in the bill are getting a lot of press in the media, especially the ones around the stimulus payments and unemployment benefits.

Our topic today is COBRA subsidies. This topic, which may not be getting a lot of press in the media, is of high importance to our employers. I know, Holly, you and I in the last maybe year or 12 months talked a lot about recent changes to eligibility, extensions, all of those other COBRA-impacting benefits. But what do employers need to know about this particular legislation change?

**Holly Murphy:** Well, I think it's helpful starting out to understand that the COBRA subsidies in this latest relief bill are based on the same framework for the COBRA subsidies in the American Recovery and Reinvestment Act of 2009, which is affectionately known as ARRA. So, this is very similar to the ARRA framework but with a few key differences. And I would say the biggest difference is that the new subsidies are actually 100% of the COBRA premium. The 2009 subsidies were only 65% of the premium. So just to state the obvious, we think that the 100% subsidy will mean that many more people will opt to take advantage of their COBRA enrollment opportunities.

**Pratin Shah:** Yeah. I'll be honest with you, I was shocked when I saw that, and I think some of our clients feel the same way with the 100% of the premium. And when you think of COBRA, obviously, it impacts multiple benefits or many benefits. So, is this sort of an overarching sort of subsidy or is it on certain types of benefits that employers offer?

**Holly Murphy:** That's actually a really good question. This subsidy is only for your medical, dental, and vision coverages. And one type of coverage was specifically excluded, and that's your Flexible Spending Accounts. And I think that's very important because if that were subsidized, that really would be free money out of the employer's pockets. So, the FSA, healthcare FSAs, are not included in the subsidy.

**Pratin Shah:** OK, great. And I know one of the questions I get right away, and our teams are getting is, how are they going to be funded? How are employers going to financially sort of plan and budget for these payments? So maybe you can kind of give a little bit of insight of how that's going to work or what's the sort of impact to employers.

**Holly Murphy:** You're right. We have had this question so much. And there is a lot of confusion about whether employees have to go to the federal government and apply for these, or how this is going to work. The way it's going to work is, again, based off of how things were done in 2009. The employer basically has to advance the money. They have to fund the subsidy, and then the employer applies to the federal government for reimbursement through a credit against their payroll taxes.

**Pratin Shah:** And then in terms of the timing and when these take effect, based on the fact that the legislation was just announced and approved, what should employers expect from a timing perspective? So they can start planning the budgetary aspect of it, but then in general, communication is going to be key as we're going to talk about that later on. But if I was a client, what should I expect?

**Holly Murphy:** Oh, wow. There is a lot going on there in terms of timing. I think the first thing to think about is what period of time do the subsidies apply to. So they start April 1, 2021, obviously, and they'll run through September 30, 2021. And that's just 6 months. I want to point out, though, that ARRA, the 2009 bill, was also only supposed to run for six months. It was extended a couple of times and ultimately, ran for 15 months for some participants. So for now, September 30th is the maximum subsidy period, but it's possible that could be extended.

The other thing to keep in mind is that for an individual participant, this subsidy period might end earlier. And there are a couple of conditions where it might end earlier. The first is if their COBRA period expires. Obviously, you're not going to subsidize coverage they're not eligible for any longer. And then the second is, and this one's a little bit of a twist, if the participant becomes eligible for other medical coverage or for Medicare, at that point, their subsidy will also end. And the employee, the participant is required to report to the COBRA administrator or the employer, as the case may be, that they've gained that eligibility. And if they don't, they're potentially subject to a tax penalty for failing to report that to us.

**Pratin Shah:** I think that's going to alarm - knowing that there is the possibility of penalties and reporting. I know it's going to be top of mind for our clients to make sure they do this right. And just to your earlier point around the extensions, and right now, September 30th for some reason, I wouldn't put a stake in that because just based on our experience, things tend to be extended. When we think about the participants that are eligible, that are currently enrolled in the COBRA benefit, is everybody eligible for this? Or are there certain populations excluded? How does that work?

**Holly Murphy:** That's a very important point. The participants who will be eligible will be anyone who lost coverage due to an involuntary termination of employment or due to a reduction in hours event. So, let me first just point out that there are some COBRA events that are not included in that list. The other COBRA events are death of the employee, divorce between the employee and the covered spouse, and then a dependent child's loss of eligibility. The subsidies are only available for the first two events we talked about — the involuntary termination or the reduction in hours event.

And just a couple of words on what I mean by a reduction in hours event, that's going to include things like furloughs, where someone's hours may be reduced to zero, but they're not technically terminated. And it's also going to include what I call a step-down, which is someone moving from a full-time position to a part-time position, if they lose eligibility for their benefits in connection with that change.

**Pratin Shah:** OK. That definitely clarifies a lot. So thank you. And then in terms of eligibility, does the whole family get the subsidy or just the employee?

**Holly Murphy:** The whole family, all qualified beneficiaries, and the qualified beneficiary, the employee, spouse, and dependent children, if they were enrolled in coverage at the time of the event that termination or reduction in hours. So if an employee had family coverage, and then the employee was laid off, they can elect family coverage and COBRA and that entire premium is subsidizes, not just the premium for the employees coverage.

I want to stop for a minute and talk a little bit about domestic partners. Many of our clients extend coverage to domestic partners as active participants, but they also treat domestic partners as if they were qualified beneficiaries for COBRA purposes. So domestic partners are offered COBRA, domestic partners can independently elect COBRA. They're treated basically the same as spouses.

But if we go back to the actual COBRA statute, domestic partners aren't true qualified beneficiaries. And what that means is that they're not eligible for the subsidy. So the COBRA administrator and the employer are going to have to account for the fact that the domestic partners coverage is not subsidy eligible. Let's say that an employee is enrolled in coverage for themselves and their domestic partner. And then the employee is involuntarily terminated. And they elect COBRA coverage. And they elect COBRA for self plus domestic partner.

And let's say, the monthly COBRA premium is $1,000. I'm going to leave the 2% administrative fee out of this, just to keep it simple. Of that monthly $1,000 premium, $700 is for the employee’s coverage. If the employee had elected employee only, their premium would only have been $700. And then $300 out of the $1,000 a month premium is for the domestic partner. In this situation, only $700 of that monthly premium is eligible for the subsidy. So, the other $300 for the domestic partner, not eligible for the subsidy. So that means in this situation, where the employee elects coverage for self plus domestic partner, the $700 is subject to the federal subsidy, the $300 is not. And the employer can only claim a payroll tax credit for the $700 that was for the employee's coverage.

**Pratin Shah:** It's never easy, right? There's always…

**Holly Murphy:** Goodness, no. I told one of our COBRA directors the other day, I said, they didn't tell me there'd be math.

**Pratin Shah:** I know. It's a lot to unpack, but I appreciate everything and you going into detail, especially on this session because I think employers, just in my conversations on a day-to-day basis, they — I wouldn't say, it's faring, but it's sometimes tough to understand and making sure they're doing what's right. So, I definitely appreciate your subject matter expertise on this. One question that I had, and I think I might know the answer based on historical precedent, but does a participant have to be enrolled in COBRA to qualify for the subsidy? Or is there some sort of lookback period?

**Holly Murphy:** I'm sure you're thinking of what we went through in 2009 with the ARRA subsidies. So, if a participant is not currently enrolled, they're actually going to get a chance to enroll to take advantage of the subsidy. And let's think about this in two groups. So group one is participants who are currently enrolled in COBRA. And they meet the other eligibility criteria. Meaning, their event was an involuntary termination or a reduction in hours. They don't have access to other medical coverage. That group, those currently enrolled, will have to certify that they don't have access to other coverage, and then they get the subsidy. So that's actually pretty straightforward.

Group two consists of participants who are not currently enrolled in COBRA. And they had an event, a termination of employment or reduction in hours within 18 months before April 2021. And that's what you're thinking of from ARRA. And that's going to take us back to October, November 2019, all the way up through April of 2021. Those participants, they're going to get a special election opportunity to enroll in COBRA just to take advantage of these subsidies. And if they do that, the subsidies start date will still be April 1st. So we're looking backward to identify the participants, but the subsidy doesn't go backwards.

**Pratin Shah:** I think a lot of clients are going to be, I would say, not shocked, but surprised at the fact that they have to go back even prior to some of the legislation that came out last year in terms of eligibility. And then just thinking through the communication effort and aspect of somebody just sort of out of the blue getting this notification, and I think that — unfortunately, it's the right thing to do based on the legislation, but it's going to be administratively something that's going to be very complex. That obviously, we're going to help support our clients perform these services. OK. So then I think — and again, I know that I'm clear on this, but I just want to confirm one more time. So the 18-month COBRA period run does not start from April 1st, correct?

**Holly Murphy:** Correct. Right. They don't get a fresh start at their 18-month COBRA period. The original COBRA end date still applies. So they can't go more than 18 months past their qualifying event date.

**Pratin Shah:** So what should employers be doing when they're meeting with us and we're advising them on next steps, how should we frame the conversation in terms of what they should be doing now or what they should be anticipating doing relatively soon in the future?

**Holly Murphy:** So I would say, the good news is there aren't any immediate deadlines because there are several things that need to happen before we can even start applying subsidies to COBRA premiums. The first thing that needs to happen is the Department of Labor is going to issue model subsidy notices. And the Department of Labor has until April 10th to issue those notices. Based on ARRA, on our experience in 2009, we expect there'll be two types of notices — again one for those who are currently enrolled and one for those who are not currently enrolled, but who are eligible for that special election opportunity.

After those notices come out, the second thing that needs to happen is the COBRA administrators will send the notices to the participants. And I know that's what we're doing for our clients in our COBRA administration services. The notices regarding the special enrollment opportunity must be sent by May 31st. After that happens, the participants will have to certify that they're eligible for the subsidy, again, that they're not eligible for other medical coverage. And if they're not currently enrolled in COBRA, they'll need to complete their election. Then once all of that happens, we will start applying subsidies to the COBRA participants premiums back to April 1st. But because so much needs to happen, we may not see any subsidies actually applied to anyone's account until this summer.

**Pratin Shah:** And I think the fact that we are reliant or dependent on the DOL is critical because I think, we need them to issue the model notices. And then based on that then we, I'll speak for Willis Towers Watson, in our practice and administration, we can't do anything until those come out and then work with our clients. But yeah, I think it would be beneficial for all of us to one more time hear those dates and the timing around that.

**Holly Murphy:** And I'm really glad you said that about the Department of Labor. One of the things that I think is really important is that we not get out ahead too far. There has been a big temptation over the last year with all the different COVID guidances come out to make sure that we get lots and lots of communications out right away to everybody. And what we're finding is if you get out too far ahead, things change, the rules change, the ground shifts, and then we have to send corrections out. And it's the multiple communications that can become so confusing to participants. So, it really is key to wait for the Department of Labor to issue those model notices. So, going back over the dates, the Department of Labor must issue the model notices by April 10th. COBRA administrators have until May 31st to mail the notices to participants. And then once the participants actually certify their eligibility and then if necessary complete their COBRA election, the subsidies will be applied back to April 1st. We're a month or two out minimum from starting to take action.

**Pratin Shah:** OK. And then I know it's like an extension on top of an extension. It just seems like everything is competing with each other and overlapping. So, I know, right now, we're in a special election window as it is with some of the enrollment and eligibility COBRA extensions that we've been able to implement. And now, we have this special election window. So how do they work in coordination or in conjunction?

**Holly Murphy:** So that that's the $60,000 question. Or actually, I think we need to adjust the $60,000 for inflation. It's like the $250,000 question. Because at the end of February, the Department of Labor issued guidance it said, oh, everybody gets a one-year extension pass whatever their individual deadline is to elect COBRA, to pay for COBRA, to report second qualifying events. We have all of these other things going on. So how we're going to coordinate the subsidies with those kind of at this point unlimited extensions is really anyone's guess. We're going to need some guidance from the Department of Labor and the IRS. Though, there is one thing I can guarantee you, Pratin, is whatever it is, it's going to be complicated.

**Pratin Shah:** And that's why we're fortunate to have folks like you, Holly, supporting our client teams and our clients to hopefully unpack some of this and continuously keep us updated. So, I think you mentioned this, and I think it's important to really reiterate, to take a deep breath. So, what should clients be doing or employers be doing today as a result of this recent change?

**Holly Murphy:** Right, yeah, definitely take a deep breath. I know that there are a lot of law firms and consultants pushing out these articles in the headlines that say, urgent action is needed, urgent action. But again, there's no immediate deadline. We need to wait on the Department of Labor before we can do anything. And I think the other thing that's really important to remember is this is, as we said in Texas, this is not our first rodeo, or this is not our first dance.

COBRA administrators dealt with COBRA subsidies before, back in 2009. So, we're not starting from zero. We, at Willis Towers Watson, for our COBRA administration clients, we have taken our ARRA materials out of mothballs. We're buffing and polishing them and getting them all ready to go. So, we have that framework to build on. But there are a few things that employers can do now that I think will put them in the best position to be able to react quickly as we get more guidance from the Department of Labor. And the first thing is to make a plan for identifying which terminations are voluntary versus involuntary. And your COBRA administrator is going to need this on an ongoing basis, but they're also going to need it back to that October, November 2019 period. And I think that, for employers, is going to be the biggest lift in the short term.

The other thing that you can do is you can think about what reporting you're going to need from your COBRA administrator so that you can claim the payroll tax credit. And this may involve some conversations with the tax department or whoever files the payroll reporting for the employer because they're going to need data from the COBRA administrator, so they know who was eligible for and given the subsidy. And in the case, as I talked about with domestic partners, if you have domestic partners in coverage, you're going to have to do math so that you can calculate the amount of that subsidy and make sure that you're not overclaiming.

And then the other thing is just keep watching. Watch for more guidance and model notice. Again, all sorts of articles are coming out right now. But all the articles, and I've read all of them I think, are all just summaries of what the law says. You're going to see another burst of activity when we see guidance and model notices coming out. If you work with a COBRA administrator, lean hard on them to keep you updated because I can guarantee you, they're probably like me just watching the screen and hitting refresh and waiting for that guidance to come out.

**Pratin Shah:** Yeah, I think going back to your earlier point around the data, sometimes we really trip over that. So that is definitely what I would recommend to my clients as an immediate next step. Let's work together in partnership and make sure that once we are moving forward, we have the right eligibility group and the right population as we want to support our clients. But I totally agree with you because I know some clients, they don't have that detail in the data — involuntary versus voluntary. So, it could become a sticking point or a very complex issue.

**Holly Murphy:** Right. It's going to be difficult. What kind of questions are you getting?

**Pratin Shah:** So, it's interesting. So, clients, they're nervous. I think the clients are asking me lots of questions around, what do I need to communicate? What's mandatory? What's optional? What can the administration support, versus what do I have to go outside and somehow be able to implement it to adhere to the legislations? I think they're just nervous because it always seems like everything's rushed, and everything, administratively, they have to take this burden on, which obviously we're here to support them. But I think they're just concerned that this is a population that honestly, for a very long time, has been status quo in terms of how to support them and provide benefits. But now, everything is changing. So, they're just — they're nervous because this is maybe an area where they're not the most comfortable in in terms of understanding all the regulatory legislation.

**Holly Murphy:** Well, and COBRA is just so technical. It's a constant challenge. I think it's interesting that you said they're asking about whether it's mandatory because we have had that question, too. And unfortunately, the subsidies are absolutely mandatory. What's interesting here from a policy perspective is that what Congress has done is they've actually shifted costs back to the employer plans. Because although, the subsidy is going to be reimbursed, COBRA participants historically have had a higher claim rate because you tend to get more adverse selection. And so, I'm wondering what the impact is going to be on overall claims coming from COBRA participants because of this.

**Pratin Shah:** Yeah. And I think the frustration is that everything just keeps changing. And I don't think anybody expected this as part of this legislation, unless somebody had a crystal ball. So, we were still working through the latest extensions and working through that administrative directive. And now, we have this. And honestly, just 100% subsidy is very lucrative - from a participant perspective, so maybe not so much. But again, there are obviously some credits and things that employers can take advantage to offset some of this additional financial burden.

**Holly Murphy:** That's a big difference from ARRA because with ARRA, the participant had to pay 35% so they had to have some skin in the game. And with this, they don't have any skin in the game, so it's kind of a why not. COBRA is so complicated, and the extensions that are required because a previous IRS guidance. And now, these subsidies are making it even more complicated. And I think what employers are going to do as far as administering these subsidies is try to keep it simple — simple for the plan and also, simple for the participants. There is such a thing as too many options. Like, when you go to the ice cream aisle, and you're like, I don't know, I can't make a decision.

**Pratin Shah:** Yeah. I hear you. And especially with me having an 8 and a five-year-old, I have to bring lots of options home. So, Holly, thank you so much. I think this really helps. I think this really at a high level hopefully gave our audience just a lens into the legislation, the impact, some of the things that they should be considering.

**Holly Murphy:** Well, thanks, Pratin. I appreciate that. I think my last words are really just buckle up. It's a rocky road, and it's going to stay rocky for a while, at least into the foreseeable future.

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**Pratin Shah:** Well, again, just to close out, Holly, thank you so much for providing this intel and wisdom and expertise. And of course, we want to thank our Benefits, with Purpose! listeners for joining us. Please make sure to subscribe to join us for our future episodes. We look forward to seeing you next time. Thank you.

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