



Biden American Rescue Plan Provides for COBRA Subsidies, Extends Premium Tax Credit, Paid Leave Tax Credit & More

Set to be one of the biggest spending bills in U.S. history, the Biden stimulus plan is intended to supplement the January Trump Administration stimulus bill, the [Emergency COVID-19 Relief Act of 2020](#). The \$1.9 trillion economic rescue plan (see Congressional Budget Office [costs analysis](#)), called the [American Rescue Plan \(“Plan”\)](#), focuses on the economic impact of the COVID-19 national emergency.

Some provisions in the Plan will require additional regulations by the Departments of Labor, Treasury, and Health and Human Services (e.g., COBRA, Premium Tax Credit (“PTC”), and vaccine program provisions). Other provisions are now well-known bed-fellas in a nightmare escape room that is COVID-19, such as the emergency paid sick leave tax credits and the multiple emergency funding programs rolled out since the emergence of the pandemic. Many provisions are extensions of existing programs. New rules or programs of interest to employee benefits plans and employers are discussed below. While many of the below edicts will require additional sub-regulatory guidance, the impact of the economic provisions will be known within the month for households out of work due to COVID-19, businesses suffering from COVID-19 related losses in transportation, educations, state and local government; that is, *if* they are eligible for the economic assistance in this pricey package.

Economic Relief

Economic Relief for Individuals

- **Unemployment Benefits – Extended until September 6, 2021** (originally set to expire on March 14, 2021).
 - Extended number of available weeks from 50 to 79.
 - Additional \$300/week for COVID-19 related job losses.
 - The first \$10,200 of 2020 unemployment benefits will be tax-free for households making less than \$150,000.
 - Self-employed - unemployment available for income losses due to COVID-19.
- **Stimulus Check – Eligibility narrowed** to only include individuals making less than \$75,000 annually / \$120,000 head of household / \$150,000 married couple (phased out \$75,000 - \$80,000).
- **Disaster Relief Fund** – Provides funds to cover funeral expenses related to COVID-19 deaths.
- **Dependent Care Assistance Program (DCAP)** - Limit increased from \$5,000 to \$10,500 for December 20, 2020 until January 1, 2022. (See page 402 of the [Act.](#))

Originally, the stimulus plan included an increase to the federal minimum wage to \$15/hour. This provision was eliminated during negotiations.

Economic Relief for Entities

- **Small Business** – A small business grant, along with lending and investing programs, will provide low-interest loans and equitable grants for small businesses.
 - Increase funding for the Paycheck Protection Program (PPP).
 - PPP not extended past March 31, 2021, rather only added additional funding.
 - Small business grants in low-income areas may be eligible for an **Economic Injury Disaster Loan Advance Grant**. Terms depend on employer size and losses ranging from 30-50%.
 - No more than 300 employees.
 - › Suffered a loss of gross receipts of more than 30% during an 8-week period between March 2, 2020 and December 31, 2021 compared to an 8-week period prior to March 2, 2020.
 - Fewer than 10 employees.
 - › Losses of 30-50%; the highest losses are eligible for a Small Business Administration grant of \$5,000 to each eligible company while funds last.
- **State and Local** – Allocation of funding for the Economic Development Administration to provide resource directly to state and local government entities, tribal institutions, institutions of higher education and non-profit to fund economic development.
- **Transit Agencies** – Allocation of funding to keep agencies from laying off transit workers and cutting routes. See pages 230-234 of the [Plan](#).

- **Tribal Governments** – Invest funds in tribal governments to assist in the response to COVID-19.
- **K-12 and Higher Education Funding** – Provide funding to assist schools with reopening and to cover losses in higher education from revenue losses. The funding also will cover employee retention requirements.
- **Shuttered Venues and Restaurant** funding. See pages 222 of the [Plan](#).

COBRA Subsidy

Workers losing their active employee coverage due to COVID-19 will be eligible for a COBRA subsidy to continue their medical coverage through the end of September 2021. These subsidies will be available to employees beginning the first of the month following the date of enactment of the new law. Assistance Eligible Individuals (“AEI”) are those eligible for the COBRA subsidy and consists of employees and dependents who have, or will, elect COBRA following the qualifying event of involuntary termination of employment or reduction in hours due to COVID-19. Many provisions will require additional guidance from the Departments in the coming weeks. Key factors as reflected in the Plan are below. Also, see page 313 of the [Plan](#) for full available details.

A COBRA premium subsidy may be available to AEI’s for the eligible qualifying event beginning **April 1, 2021 and through September 30, 2021**.

- **100% COBRA premium subsidy**
 - Plans subject to ERISA, COBRA or Public Health Services Act (PHSA)
 - Paid by employer for insured plans
 - Paid for by plan for self-funded plans & Association Health Plans / Multiemployer Welfare Plans
- Reimbursed by government through refundable FICA tax credit
 - Credits shall not exceed taxes imposed for such quarter
 - COBRA premium assistance is excludable from gross income
- Notify plan of other coverage
 - Employees who fail to notify the plan of other relevant coverage (i.e., Medicare or other Group Health Plan coverage) may be penalized at the time of their tax filing \$250 or 110 percent of the premium assistance that was provided after eligibility terminated, absent reasonable cause.
- Duration of subsidy will end sooner if exhausting the COBRA period or becoming eligible for another group health plan or Medicare.

Prior COVID-19 Related Qualifying Events - Additional COBRA enrollment options are available for those already suffering from an involuntary termination in employment or reduction in hours due to COVID-19. If the AEI suffered the qualifying event within last 18 months and did not timely elect COBRA or dropped COBRA, they will become newly eligible to an election period of 60 days following the date they receive the new required COBRA notice.

Additional Option to Change Election - Plan sponsors may allow AEI's to change their election to other plan options with the same or lower cost premiums. This is a voluntary option to the plan sponsor and the plan participant.

- Other elected coverage must not be [excepted-only benefits](#), a Qualified Small Employer Reimbursement Arrangement (QSEHRA) or Flexible Spending Account.
- Timeframe for Election - Within 90 days of notice of other plan enrollment options. (optionally)
 - The different coverage must be offered to similarly-situated employees at the time the election is made.

COBRA Notice of Subsidy Availability and/or Enrollment Change Options

COBRA notices must be updated to include the subsidy language available to AEI within 60 days. A separate notice containing only the COBRA subsidy and new enrollment options available, per this Plan, may also be used instead of updating the entire COBRA notice. Employers must provide notice of premium subsidy expiration. The Department of Labor (DOL) will publish the new model notices within 45 days of enactment of the American Rescue Plan.

COBRA Notice of Subsidy / Enrollment Options Content

Whether using the soon-to-come DOL model COBRA notices, employers may also utilize any forms necessary for establishing eligibility for premium assistance. Including all of the following:

- Name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance.
- Description of the extended election period.
- Description of the obligation of the qualified beneficiary.
- Penalty for failure to carry out the obligation.
- Description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium.
- Description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage.

Forty-five (45) days prior to expiration of the COBRA premium assistance subsidy, a notice of the expiration of the COBRA premium assistance subsidy must be provided in clear and understandable language. The notice must include the date the premium assistance will expire, prominently displayed, and include the right to continue COBRA benefits without the premium assistance through what date, where applicable. The DOL will release model notices within 45 days of enactment of this Plan.

Plan sponsors are reminded that special rules currently exist for COBRA election and notices during the national emergency. (See recent [guidance](#) on this topic.) Further details are unavailable at this stage of the legislative process. See page 426 of the [Plan](#) for full existing details. Individuals denied status as an assistance eligible individual are entitled to expedited review. The process for review under ERISA will be provided in future regulation.

Premium Tax Credit

For 2021 and 2022, the Premium Tax Credit (“PTC”) will be available to more households. The sliding scale for PTC offers the credit to households up to 400% of the Federal Poverty Level (FPL), or \$106,000 for a family of four. This top threshold is removed opening the Exchange to many households. However, due to the limit on premiums in the exchange and the availability of the PTC, there will be an income that will eliminate the availability of the PTC.

- Individuals receiving unemployment in 2021 will be treated as PTC-eligible.

Any income above 133% FPL or \$35,245 for a family of four will be disregarded when determining contribution percentage individual must contribute towards coverage. In 2021, any individual receiving unemployment compensation will not need to contribute towards their Exchange coverage medical insurance premium.

Affordability of Exchange Marketplace medical insurance premium is set at 8.5% (2021 affordability rate was originally 9.83%).

Child Tax Credit

For 2021, refundable childcare tax credits will be available for childcare. Terms laid out in the [Plan](#) (see page 359) include:

- **Credit Amounts** - For children under age 13, a tax credit of up to \$3,000 (\$3,600 for under age 6) for one child or \$8,000 for two or more may be available.
- **Income Threshold** - Families making \$125,000 - \$400,000 will receive a partial credit; those with less than \$125,000 will receive a full 50% reimbursement. Full credit to those earning less than \$75,000 (\$112,500 for head of household and \$150,000 for joint filers).
- Earned Income Tax Credits (EITC) will be raised for one year.
- Children up to age 18 (not including age 18) are eligible children.
- Fully refundable.

Additional guidance is likely to come.

Vaccines & Testing

The latest round of COVID-19 related stimulus bill sets aside about 7% of the funding for treatment, testing and contact tracing. Many more details need to be flushed out in sub-regulatory guidance. [Existing law](#) mandates health plans already cover COVID-19 testing without cost-sharing. GBS will release full details as they come to light.

Paid Sick Leave Tax Credit Extension

Unable to pass a mandate for employers to provide a paid sick leave due to reconciliation rules (without more than a simple majority vote, democrats who broke a party-line tie to pass this legislation could only pass legislation tied to the budget process under the budget reconciliation rules). Last year's Families First Coronavirus Response Act provided emergency paid sick leave and extended family medical leave for workers suffering from, caring for a family members suffering from, or quarantining due to, COVID-19. The prior piece of COVID legislation, and the last of the Trump Administration, the Emergency COVID Relief Act of 2020, extended tax credits for offering paid leave for COVID-19 related qualified situations, through March 31, 2021. This edict was only for employers optionally paying for the extended and additional paid leave (see page 403 of the [Plan](#) for full available details).

This latest piece of COVID legislation, the first of the Biden Administration, now extends the tax credit for employers who choose to provide extended and additional paid leave for situations related to COVID-19. However, this Plan did not extend the leave itself. The extension of the tax credits only provides financial credits for employers who voluntarily provide sick leave beyond December 31, 2020, not additional leave time. There is no mandate to provide additional leave.

- Extend availability of credits through September 30, 2021.
 - After March 31st, a change to the credits increases the maximum amount of wages used to calculate the credit, maximum number of sick days that can be counted towards the credit and credit for COVID-19 vaccine leave.
 - Credits after March 31, 2021 will apply against the employers Medicare Hospital Insurance rather than the Social Security Old Age, Survivors and Disability Insurance.
 - Self-employed individuals now eligible for leave tax credits. See page 433 of the [Plan](#).

Obligation to provide paid leave remains voluntary, as it was under the prior stimulus act and appropriations act in December of 2020 that extended the [tax credit](#) for emergency paid sick leave and extended family leave.

School Funding

The Biden American Rescue plan includes \$170 billion (supplemented by additional state and local relief resources) for K-12 schools and institutions of higher education. These funds are intended to help schools with improved infrastructure, staff, mitigation measures and other initiatives that will help students get back into the classroom. In addition to this funding, schools will be able to access FEMA Disaster Relief Fund resources to get reimbursed for certain COVID-19 related expenses and will receive support to implement regular testing protocols.

Additional funding is proposed to assist in all level of education, from early childhood to higher education - see page 7 of the [proposal](#) for full details.

Dependent Flexible Spending Account Limit

Dependent Flexible Spending Accounts limits will increase from \$5,000 to \$10,5000.

Employee Retention Credit

The Plan extends the CARES Act refundable [employee retention credit](#) by an additional two quarters; from July 1, 2021 to December 31, 2021.

Conclusion

Employers in many industries will find the economic relief provision of interest, especially if in businesses most affected by COVID-19. Employers are encouraged to read the full text to understand all of the provisions (see [Senate Budget Memo](#) for an easier read). Employers will have additional requirements in challenged industries, such as offering the COBRA subsidy to affected individuals. Updated notices will be forthcoming by the DOL. Other regulatory guidance is expected in the coming weeks. GBS Compliance will be sure to let you know when that happens.

March 2021

The information herein is educational only and not intended as legal advice.