

COVID-19

House Passes Health and Tax Changes as Part of New COVID-19 Legislation

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In the early morning hours of February 27, the House of Representatives narrowly passed [H.R. 1319, the American Rescue Plan Act](#) (the “Rescue Plan”), by a vote of 219-212. The Senate will now take up the sweeping \$1.9 trillion stimulus package later this week. Lawmakers aim to pass a final version of the bill next week before federal unemployment benefits for roughly 10 million Americans begin to expire on March 14.

Groom previously published an alert detailing the Rescue Plan’s pension provisions [here](#). Below, we provide an overview of the package’s other significant provisions, including COBRA subsidies, Affordable Care Act (“ACA”) subsidies, and notable tax provisions.

COBRA Subsidies

The Rescue Plan includes temporary COBRA subsidies for COBRA qualified beneficiaries where the employee’s qualifying event was an involuntary termination of employment or reduction in hours. The subsidies would apply to an “assistance eligible individual,” which appears to include both an employee and dependents who had elected or will elect COBRA. The Rescue Plan allows assistance eligible individuals to pay just 15% of the COBRA premium, with the remaining 85% paid by the employer, plan, or insurer and reimbursed by the government through a refundable FICA tax credit.

The original legislation reported out of the Ways and Means and Education and Labor Committees had provided that the tax credit would be claimed by the employer for self-insured coverage, the insurer for insured coverage, and the plan for a multiemployer plan. This division could have delayed an employer with an insured plan from receiving proceeds from the credit because the insurer was the only entity that could claim the tax credit. A Manager’s Amendment passed by the House and incorporated into the House-passed Rescue Plan addressed this issue by changing the language so that the *employer* is the entity that claims the tax credit for both insured and self-funded coverage where the employer’s group health plan is subject to COBRA under the Code, ERISA, or the PHSA (similar to the ARRA COBRA subsidy provisions from 2009).

As of this writing, the subsidy is expected to begin for coverage periods beginning on April 1, 2021 and ending on September 30, 2021. The subsidy would end sooner if the qualified beneficiary's maximum COBRA coverage period ends or if the individual is eligible for another group health plan or Medicare. If an individual pays more than 15% of the premium during this time, the employer, plan, or insurer is required to refund the excess.

The Rescue Plan also provides additional enrollment options for individuals who already had an involuntary termination of employment or reduction in hours within the last 18 months and did not timely elect COBRA or dropped COBRA. These individuals would have a new election period of 60 days following the date that they receive a new required COBRA notice. Additionally, employers would be permitted to allow assistance-eligible individuals to change elections to other plan options that have the same or lower cost premiums (this is optional).

The Rescue Plan requires employers to update COBRA notices sent to assistance eligible individuals to describe the subsidy and to issue extended COBRA election notices within 60 days of the date of applicability. Failure to do so would be treated as a failure of the COBRA notice requirements. Employers also must provide a notice of expiration before the premium subsidy expires. The legislation sets out content for these notices and directs the Secretary of Labor to publish Model Notices.

Affordable Care Act Subsidies

The Rescue Plan makes significant, but temporary, changes to the existing ACA premium subsidies. For 2021 and 2022, the bill would eliminate the upper income limit for eligibility for premium tax credits, which is currently set at 400% of the federal poverty level, and would increase the amount of the premium tax credits by decreasing the amount that an individual must contribute to the cost of coverage. While the income limit increase expands the availability of subsidies to many more households, the bill contains a requirement that individuals contribute a percentage of their income toward coverage. This percentage is currently set at 8.5% of household income for those with incomes of 400% or more, meaning that the more an individual makes, the more that individual will be expected to contribute toward the cost of coverage. Additionally, because the amount of premium tax credits available will vary based on the cost of coverage, there will be a level of income at which the individual's required contribution will exceed the cost of coverage, and no premium tax credit will be available.

The bill also provides special support for individuals who receive unemployment compensation. For 2021, a taxpayer who receives or is approved to receive unemployment compensation for a week or more would be treated as eligible for premium subsidies and any income above 133% of the federal poverty level would be disregarded for purposes of determining the contribution percentage the taxpayer must contribute toward coverage. Because the contribution level for incomes up to 150% of the federal poverty level would be zero under the bill, an individual who received unemployment compensation would not be expected to contribute toward the cost of subsidy-eligible coverage. The bill also suspends repayment of excess subsidies for 2020.

Tax and Unemployment Provisions

The Rescue Plan also includes the following notable tax and unemployment extension provisions;

Employee Retention Credit. The legislation would extend the availability of the CARES Act's employee retention credit an additional two quarters, from July 1, 2021 to December 31, 2021. After June 30, 2021, the credit will apply against an employer's Medicare hospital insurance ("HI") taxes rather than Social Security Old Age, Survivor's, and Disability Insurance ("OASDI") taxes. The credit would continue to be refundable for employers with insufficient tax liability. The Consolidated Appropriations Act ("CAA") enacted in December 2020 had previously extended the ERTC through June 30, 2021, increased the credit percentage from 50% to 70%, increased the per employee limit on qualifying wages to \$10,000 per quarter, and expanded the eligibility of qualifying employers.

Credits for Paid Sick and Family Leave. The legislation would also extend the availability of the refundable paid sick leave and family and medical leave credits through September 30, 2021. After March 31, 2021, there would be changes to the credits, including increasing the maximum amount of wages used to calculate the credit, increasing the maximum number of sick days an employer can count for the credit, and allowing leave for COVID vaccinations to count for the credit. Like the employee retention credit, after March 31, 2021, the credit will apply against an employer's HI taxes instead of OASDI taxes. The obligation to provide paid leave remains voluntary, as it was under the CAA which extended the paid sick and family leave credits — but not the employer mandate — through March 31, 2021.

Dependent Care FSAs. The legislation would increase the dependent care FSA limit from \$5,000 to \$10,500.

Individual Tax Provisions. The bill also includes individual tax provisions intended to stimulate the economy:

- One-time \$1,400 checks for individuals earning less than \$75,000 (\$2,800 for joint filers earning less than \$150,000) with \$1,400 for each dependent;
- For 2021 only, an expansion of the child tax credit for individuals earning less than \$75,000 (\$112,500 for head of household and \$150,000 for joint files) consisting of:
 - increasing the credit from \$2,000 per child to \$3,000 per child over age 6 and \$3,600 per child under age 6;
 - making 17-year-old children eligible; and
 - making the credit fully refundable; and
- An expansion of the earned income tax credit.

Unemployment benefits. The bill would extend temporary federal unemployment benefits through August 29, 2021 and increase them to \$400 per week.

Next Steps

The Rescue Plan is expected to pass the Senate later this week and then be returned to the House for another vote to approve the revised bill.

Under the Senate's budget reconciliation rules, which Democrats are using to pass the bill without Republican support, provisions that are not directly related to the federal budget may be subject to points of order in the Senate under what is known as the "Byrd rule." On March 1, the Senate parliamentarian ruled that provisions related to the COBRA tax subsidies and multiemployer pension pensions were not subject to Byrd rule points of order. Previously, the Senate parliamentarian had ruled that a provision in the House bill increasing the federal minimum wage to \$15 per hour was subject to a Byrd rule point of order. The House-passed version of the bill includes the \$15 minimum wage provision, but the Senate is expected to remove it before passing the legislation, and it is likely that the Senate will make other changes as well. This means the House will have to vote on the bill again after Senate passage.

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