



# American Rescue Plan Act of 2021:

## IRS Guidance on COBRA Premium Assistance Tax Credits for Employers/Plans

The Internal Revenue Service (IRS) released much-needed guidance on the American Rescue Plan Act of 2021 (ARPA) COBRA Premium Assistance program for employers, plan administrators, and health insurers on May 18, 2021. The guidance, outlined in [Notice 2021-31](#), includes further details on claiming the COBRA premium assistance payroll tax credit and examples, as highlighted below:

Question	Answer	Notes
Who is the “premium payee” eligible for the assistance credit?	(1) A multiemployer plan; (2) A common law employer maintaining the plan, including both private employers and governmental entities sponsoring group health plans; or (3) An insurer providing the coverage (when coverage is subject only to state continuation, not federal COBRA, such as in the case of a church group or small employer with fewer than 20 employees).	<b>Q/A 71-73</b>
When does the premium payee become entitled to the premium assistance credit?	The premium payee is entitled to the credit for any month an Assistance Eligible Individual (AEI) receives subsidized COBRA coverage (on or after 4/1/2021 and before 9/30/2021), including any coverage period prior to the date the AEI’s election is received.	<b>Q/A 74</b>
How does an employer who is a premium payee claim the premium assistance credit?	<p>The credit is reported on the employer’s quarterly federal employment tax returns (normally, Form 941, Employer’s Quarterly Federal Tax Return), reduced by any advance payments.</p> <p>The employer may reduce its federal employment tax deposits in advance of the credit by filing Form 7200 after the end of the payroll period in which the credit was “earned,” before the date the quarterly employment tax return is filed (by the last day of the month following the end of the quarter).</p>	<b>Q/A 75-76</b>



Question	Answer	Notes
How is the premium assistance credit claimed if the premium payee does not have any employment tax liability, for example, in the case of a multi-employer plan with no employees?	If the premium payee entitled to claim the credit does not have any employment tax liability, the premium payee should claim the credit on the Form 941 for the quarter in which the premium payee becomes entitled to the credit. The premium payee entitled to the credit should also report any advance payments received in anticipation of the credit on the same Form 941. The premium payee should enter zero on all remaining non-applicable lines so that the overpayment amount on the Form 941 is the amount of the credit reduced by any advance payment received.	<b>Q/A 77</b>
Must the premium assistance credit be returned if the AEI fails to notify the premium payee of eligibility for other group health coverage or Medicare?	The premium payee remains eligible for the credit unless they knew of the individual's eligibility for other coverage. Once the premium payee learns of the AEI's loss of eligibility for the subsidy, the credit can no longer be obtained.	<b>Q/A 78</b>
Is the premium assistance credit included in gross income?	Yes, the credit is added to the premium payee's gross income for the taxable year that includes the last day of any quarter in which the credit is allowed.	<b>Q/A 79</b>
Can the premium payee claim the premium assistance credit if they are also receiving credits for qualified health plan expenses included as wages under the CARES Act?	No. A premium payee may not receive a double benefit with respect to these amounts.	<b>Q/A 80</b>



Question	Answer	Notes
May a premium payee that uses a third-party payer to report and pay employment taxes to the IRS receive the premium assistance credit?	Yes. The premium payee is entitled to the credit, regardless of whether it uses a third-party payer (such as a reporting agent, payroll service provider, professional employer organization (PEO), certified professional employer organization (CPEO), or § 3504 agent) to report and pay its federal employment taxes. Thus, unless the third-party payer is treated as the premium payee for purposes of the credit in accordance with Q&A-82, the third-party payer is not entitled to the credit, regardless of whether the third-party is considered an “employer” for other purposes of the Code. However, the third-party payer may report the credit on behalf of a client that is the premium payee with respect to any federal employment taxes it reports and pays on the premium payee’s behalf.	<b>Q/A 81</b>
May a third-party payer (such as a PEO, CPEO, or § 3504 agent) be treated as a premium payee for purposes of claiming the premium assistance credit?	Yes, but only under certain circumstances. A third-party payer is treated as the premium payee for purposes of the credit if the third-party payer: (i) maintains the group health plan, (ii) is considered the sponsor of the group health plan, and (iii) would have received the COBRA premium payments directly from the Assistance Eligible Individuals were it not for the COBRA premium assistance.	<b>Q/A 82</b>
What information must a third-party payer obtain from its clients that are premium payees to claim the premium assistance credit on their behalf?	If a third-party payer is claiming the credit on behalf of a client that is a premium payee, it must obtain any information that would have been necessary for the premium payee to accurately claim the credit on its own behalf.	<b>Q/A 83</b>



Question	Answer	Notes
Must a premium payee or a third-party payer claiming the premium assistance credit on behalf of a premium payee maintain records to substantiate eligibility for the credit?	<p>Yes. Records substantiating the premium payee's eligibility for the credit must be maintained, either by the third-party payer or the premium payee.</p> <p>The premium payee and the third-party payer will be liable for employment taxes that are due as a result of improper claim of payroll tax credits.</p>	<b>Q/A 84</b>
What happens is an AEI pays premiums for a period for which the individual should have received COBRA premium assistance?	<p>The premium payee is responsible for reimbursing the AEI for any such period.</p> <p>The premium payee is entitled to the credit on the date the AEI is reimbursed.</p>	<b>Q/A 85-86</b>

Further guidance is anticipated on certain open questions remaining on the COBRA premium assistance provisions, such as treatment of the credit for a fully-insured plan that is not subject to federal COBRA. According to the Notice, *"The Treasury Department and the IRS are continuing to consider these issues and the possibility of issuing guidance with respect to them."*

Employers (premium payees) or their third-party payers should consult with their legal or tax advisors for specific advice on reporting and compliance matters.

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