



HAYS COMPANIES

Updated Guidance: COBRA Subsidies Under the ARPA

Earlier this week, the IRS issued [Notice 2021-46](#) (“Notice”), an additional set of Q&As providing guidance on the application of COBRA premium assistance under the American Rescue Plan Act of 2021 (ARPA). The Notice supplements IRS [Notice 2021-31](#) issued in May of 2021. While brief, the Notice includes important information for employers regarding the availability of the premium assistance and claiming the premium assistance tax credit.

BACKGROUND

The ARPA’s COBRA subsidy provisions provide temporary premium relief for assistance eligible individuals (AEIs) who have lost their health care coverage due to an involuntary termination of employment or reduction in hours. Subject to certain exceptions, the subsidy covers 100% of the premium for continuation coverage in effect from April 1, 2021, through September 30, 2021. To offset the cost of the subsidized premiums, employers, group health plans, and insurers may claim a premium assistance tax credit.

HIGHLIGHTS

- Eligibility for other group health plan coverage or Medicare will result in an AEI’s ineligibility for the subsidy for all previously elected COBRA continuation coverage, even if the other coverage does not include all the benefits provided by the previously elected COBRA continuation coverage. For example, the COBRA subsidy for dental-only and vision-only coverage will end when an individual becomes eligible for Medicare that does not provide dental and vision coverage. (Q/A-2)
- For group health plans that are subject to both State-mandated continuation coverage and Federal COBRA, the common law employer is the premium payee entitled to claim the tax credit even if the State-mandated continuation coverage requires the AEI to pay premiums directly to an insurer following the end of Federal COBRA. (Q/A-5)
- For group health plans (other than multiemployer plans) subject to Federal COBRA that cover employees of two or more employers within a single controlled group, each common law employer that is a member of the controlled group is entitled to claim the premium tax credit with respect to its active and former employees. (Q/A-6)
- In a business reorganization situation, a selling entity who remains obligated to make COBRA continuation coverage available to M&A qualified beneficiaries (e.g., because the selling entity maintains a group health plan) is the premium payee entitled to claim the premium tax credit. (Q/A-9)

The Research & Compliance Team will continue to monitor developments as further guidance is released.

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