

COBRA SUBSIDY COMPLIANCE CHART

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COBRA SUBSIDY COMPLIANCE CHART

On May 18, 2021 the Internal Revenue Service ("IRS") issued Notice 2021-31 which provides guidance regarding the temporary COBRA premium assistance ("Subsidy") created under the American Rescue Plan Act of 2021 ("ARPA"). Notice 2021-31 is formatted as a series of 86 Questions and Answers, organized by topic, and significantly expands upon the Frequently Asked Questions ("FAQs") issued by the Department of Labor ("DOL") on April 7, 2021. The ARP COBRA assistance provides a subsidy of 100% of the premium, which would otherwise be paid by an individual, for employees who experienced a reduction of hours or who were involuntarily terminated (Assistance Eligible Individual, or "AEI"). The Subsidy is only available from April 1, 2021 until September 30, 2021.

The Summary Chart provided below includes the Notice 2021-31 guidance, guidance from the DOL April 7, 2021 FAQs, as well as informal guidance received from DOL Benefits Analysts. It does not include guidance regarding small-employer plans or state continuation coverage. The Summary Chart condenses a large amount of information and it is recommended that employers and plans review the full Notice and consult with their own benefits legal counsel and plan professionals for additional assistance specific to their health plan.

| | |
|---|---------|
| Eligibility for COBRA Premium Assistance | Page 1 |
| Reduction in Hours | Page 4 |
| Involuntary Termination of Employment | Page 5 |
| Coverage Eligible for COBRA Premium Assistance | Page 6 |
| Beginning of COBRA Premium Assistance Period | Page 9 |
| End of COBRA Premium Assistance Period | Page 10 |
| Extensions Under The Emergency Relief Notices | Page 11 |
| Payments to Insurers Under Federal COBRA | Page 13 |
| Calculations of COBRA Premium Assistance Credit | Page 14 |
| Claiming the COBRA Premium Assistance Credit | Page 17 |

If you have any questions please contact Brandie Barrows at bbarrows@taylorenglish.com.

COBRA SUBSIDY COMPLIANCE CHART

ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE

ARPA: The Subsidy is available when the employee (1) is eligible for COBRA coverage, and (2) experiences a reduction in hours or is involuntary terminated. AEI means the employee, their spouse and dependent children *who were enrolled in the health immediately prior to the reduction in hours or involuntary termination*. Each AEI has an independent right to elect COBRA and the COBRA Subsidy. AEI's eligible prior to April 1, 2021 must still be in their COBRA period and can elect the Subsidy: (1) Even if they did not enroll in COBRA when first eligible, (2) If they enrolled in, but later dropped, COBRA coverage, or (3) Beginning on April 1st. The AEI has 60 days after they are provided with the COBRA Subsidy Notice to elect the Subsidy.

DOL Webinar/Email Guidance

- Dependent Spouses and Children: A child born to or adopted by the covered employee during the COBRA period is eligible for the Subsidy. Spouses added during the COBRA subsidy period are not eligible for the Subsidy.

IRS NOTICE 2021-31

- It is possible for an individual to become an AEI more than once. For example, an individual's own involuntary termination, followed by coverage under a spouse's employer plan, followed by the spouse's involuntary termination, would make the individual eligible for the Subsidy again.
- Employers can, but do not have to, require employees to self-certify or attest that they are (1) eligible for the Subsidy based on involuntary termination or reduction in hours, and (2) not eligible for Medicare or other health plan coverage. Employers can rely on the attestation provided in the model COBRA Subsidy Notices provided by the DOL, and they may also rely on additional self-certifications, attestations, and/or documentation, unless they have actual knowledge that the self-certification or attestation is incorrect.

Q&A 3

Q&A 4 -
Q&A 6

COBRA SUBSIDY COMPLIANCE CHART

| ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE | |
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| <ul style="list-style-type: none"> ▪ If the employer intends to rely on an individual's attestation the employer must keep a record of the attestation in order substantiate eligibility for the reimbursement. ▪ If a potential AEI was eligible for other health coverage prior to April 1st, but not permitted to enroll in the other health plan coverage until after April 1, 2021 they are eligible for the Subsidy until they eligible to enroll in the other health coverage. If a COBRA eligible individual enrolls in coverage, and loses that coverage prior to April 1, they are still eligible for the Subsidy. After April 1st enrollment in other health coverage and loss of that coverage after April 1st is disqualifying. Eligibility to enroll in a spouse's group health plan under a loss of coverage special enrollment period extended by the Emergency Relief Notices, may disqualify an individual from receiving the Subsidy. | <p>Q&A 7</p> <p>Q&A 9</p> |
| <p>Example One. An individual was involuntarily terminated and eligible for COBRA October 1, 2021. The individual was eligible to enroll in their spouse's group health plan November 1, 2020 during the open enrollment period ending December 1, 2020 but did not enroll. The individual has not been permitted to enroll in the spouse's plan on or after April 1, 2021. The individual is not eligible for the spouse's plan on or after April 1, 2021 and is therefore eligible for the Subsidy under the plan of their former employer.</p> <p>Example Two. Same facts as Example One, except that the spouse's plan has an open enrollment period from June 1, 2021 to June 14, 2021, with coverage beginning July 1, 2021. The individual does not elect coverage under the spouse's plan and continues COBRA coverage. The individual is no longer eligible for the Subsidy on and after July 1, 2021.</p> <p>Example Three. An individual was involuntarily terminated and eligible for COBRA October 1, 2021. The individual's loss of coverage under their employer's plan entitles the individual to special enrollment in the spouse's group health plan. The individual is also eligible to enroll in the spouse's group health plan between November 1 and December 1, 2020. Under the Emergency Relief Notices (see page []) the individual is remains eligible to enroll in the spouse's plan due to the special enrollment period for loss of coverage. The individual can enroll in COBRA but they are not eligible for the Subsidy.</p> | |

COBRA SUBSIDY COMPLIANCE CHART

| ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE | |
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| <ul style="list-style-type: none"> ▪ Enrollment in other group health plan coverage before electing COBRA continuation coverage does not end the period of eligibility for the Subsidy if the individual is no longer enrolled in or eligible for that other coverage as of April 1st. | Q&A 10 |
| <ul style="list-style-type: none"> ▪ An individual who is currently enrolled in individual health insurance coverage through an Exchange may be eligible for the Subsidy, but they will not be eligible for the premium tax credit to help pay the Exchange coverage for months they are enrolled in COBRA coverage. <i>Per guidance received from the DOL during a COBRA Subsidy Webinar, when an individual drops Exchange coverage for subsidized COBRA coverage the COBRA coverage can only be prospective.</i> | Q&A 13 |
| <ul style="list-style-type: none"> ▪ Individuals enrolled in a group health plan not subject to COBRA are not eligible for the Subsidy. | Q&A 15 |
| <ul style="list-style-type: none"> ▪ If the original COBRA event was a reduction in hours or an involuntary termination, the Subsidy is available to an individual who is in an extended COBRA period due to a disability determination (29 months) <u>or</u> a secondary qualifying event (up to 36 months based divorce/legal separation, death of the employee, employee entitlement to Medicare, or child reaching the age of 26). | Q&A 17 |
| <ul style="list-style-type: none"> ▪ Retiree coverage: (1) If a retiree is offered coverage under the same group health care plan, they are eligible for the Subsidy; (2) If a retiree is offered retiree coverage (that is not COBRA coverage) under a separate group health plan they are not eligible for the Subsidy. | Q&A 18 |
| <ul style="list-style-type: none"> ▪ An individual who does not meet the federal COBRA definition of “qualified beneficiary” (e.g., a Domestic Partner) is not eligible for the Subsidy even if they have to be offered coverage under the plan by state law. | Q&A 19 |

COBRA SUBSIDY COMPLIANCE CHART

| REDUCTION IN HOURS | |
|--|---|
| ARPA: The Subsidy is available to AEI's based on an employee's reduction of hours that causes a loss of health plan coverage. | |
| April 2020 FAQs: A reduction does <u>not</u> have to be involuntary. It can be a: (1) A change in business hours, (2) A change from full-time to part-time status, (3) A temporary leave of absence, or (4) Participation in a lawful strike. | |
| IRS NOTICE 2021-31 <ul style="list-style-type: none">▪ A furlough is also a reduction in hours, regardless of whether the employer initiated the furlough or the in a furlough process analogous to severance "window" program, as long as there is a reasonable expectation that the employee will return to employment or resumption of hours.▪ Reduction in hours includes a work stoppage, either as the result of a lawful strike initiated by employees or their representatives or a lockout initiated by the employer, as long as at the time the work stoppage or lawful strike begins the employer and employee intend to maintain an employment relationship. | <div>Q&A 22</div> <div>Q&A 23</div> |

COBRA SUBSIDY COMPLIANCE CHART

INVOLUNTARY TERMINATION OF EMPLOYMENT

ARPA: The Subsidy is available to AEIs based on involuntary termination.

IRS NOTICE 2021-31

The IRS guidance adopts the definition of “involuntary termination” that was used in 2009 for the COBRA subsidy under the American Recovery and Reinvestment Act: “...a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.” The IRS guidance provides additional clarifications:

- The determination of whether a termination is involuntary is based on the facts and circumstances. For example, a retirement would be considered “involuntary termination” if the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee; the employee was willing and able to continue working; and that the employee knew that they would be terminated absent retirement.
- Involuntary termination includes:
 - An employer’s action to end the employee’s employment while they are absent from work due to illness or disability.
 - Retirement if absent retirement the employer would have terminated the employment, the employee was willing and able to work, and the employee knew that they would be terminated absent retirement.
 - Termination for cause, as long as it does not rise to the level of “gross misconduct.”
 - Resignation because of a material change in the geographic location of employment.
 - Participation in window program under which employees facing termination are offered a severance package within a specific period of time.

Q&A 24

Q&A 25

Q&A 26

Q&A 27

Q&A 28

Q&A 29

COBRA SUBSIDY COMPLIANCE CHART

| INVOLUNTARY TERMINATION OF EMPLOYMENT | |
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| <ul style="list-style-type: none">○ Resignation if employee can demonstrate that the employer's action or inaction resulted in a material negative change in the employment relationship analogous to constructive discharge.○ Employee-initiated termination employment due to an involuntary material reduction in hours. | Q&A 30 |
| ▪ Involuntary termination does not include: | Q&A 32 |
| <ul style="list-style-type: none">○ Employee-initiated termination because a child is unable to attend school or daycare, unless the facts and circumstances show that this was a temporary leave of absence and both parties intended to maintain an employment relationship. | Q&A 31 |
| <ul style="list-style-type: none">○ An employer's decision not to renew a contract if both parties understood at the time that they entered into the contract, and at all times when services were being performed, that the contract was for specific services over a set term and would not be renewed. | Q&A 34 |

COBRA SUBSIDY COMPLIANCE CHART

COVERAGE ELIGIBLE FOR COBRA PREMIUM ASSISTANCE

ARPA: Health plans, vision only plans, dental only plans, and health reimbursement accounts (“HRAs”) are eligible for the Subsidy. Flexible Spending Accounts (“FSAs”) are not eligible for the Subsidy.

IRS NOTICE 2021-31

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|--|----------------------------|
| <ul style="list-style-type: none"> ▪ An AEI is permitted to elect any coverage they are eligible for, even if they rejected it when they originally elected COBRA (e.g., they can elect vision and dental coverage, even if they only elected medical when they originally elected coverage). | Q&A 35 |
| <ul style="list-style-type: none"> ▪ Retiree coverage can be treated as COBRA coverage/eligible for the Subsidy if it is offered under the same group health plan offered to active employees, as long as the amount charged to the retiree for the coverage doesn’t exceed the maximum COBRA amount. | Q&A 36 |
| <ul style="list-style-type: none"> ▪ An HRA (an employer-funded plan that reimburses employees for qualified medical expenses and, in some cases, insurance premiums), except for an HRA integrated with Medicare, is eligible for the Subsidy because it is paid with employer contributions, not with salary reductions. The HRA can’t reimburse expenses incurred after the date of the reduction in hours or the involuntary termination, and before the first day of the period of coverage beginning on or after April 1, 2021. An AEI will have the same access to the same level of reimbursements they had immediately prior to the reduction of hour or involuntary termination based on the amount originally available for the plan year, reduced by reimbursements incurred before the qualifying event and reimbursed after the qualifying event. | Q&A 37 Q&A 39 Q&A 54 |
| <ul style="list-style-type: none"> ▪ Eligibility for a new HRA ends eligibility for the Subsidy, unless it qualifies as an FSA (FSAs are not eligible for the Subsidy). | Q&A 38 |

COBRA SUBSIDY COMPLIANCE CHART

COVERAGE ELIGIBLE FOR COBRA PREMIUM ASSISTANCE

- The Subsidy is not available for any coverage with premiums greater than the premiums for the coverage in which the individual was enrolled prior to the qualifying event, unless that coverage is no longer available ***OR the coverage is elected in the normal course of an open enrollment that occurs during the Subsidy period.***

Q&A 41

COBRA SUBSIDY COMPLIANCE CHART

BEGINNING OF COBRA PREMIUM ASSISTANCE PERIOD

ARPA: The Subsidy is available as of the first period of coverage starting on or after April 1, 2021 and will not be available for periods of coverage beginning after September 30th.

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- The beginning date for the first period of Subsidy coverage on or after April 1st depends on the period in which premiums would have been normally charged by the plan if the individual was paying the premium.

Example: COBRA coverage is normally paid bi-weekly. For March 2021 the last two-week period of coverage is March 28th to April 10th followed by a period of coverage from April 11th to April 24th. The Subsidy could apply to the premium period beginning on April 11th.

- An AEI can choose to waive COBRA continuation coverage for periods prior to electing the Subsidy, and prior to April 1st. For example, an AEI originally eligible for COBRA January 1, 2021 can waive COBRA for the months of January, February and March.
- An AEI can elect the Subsidy for the period between April 1st and September 30th after September 30th, as long as the election is made within 60 days of the AEI receiving the applicable Subsidy Notice.

Q&A 43

Q&A 44

Q&A 46

COBRA SUBSIDY COMPLIANCE CHART

END OF COBRA PREMIUM ASSISTANCE PERIOD

ARPA: The Subsidy ends the earliest of (1) the date the AEI becomes eligible for Medicare or other health coverage, (2) the date the individual is no longer eligible for COBRA, or (3) as of the last period of coverage beginning on or before September 30th.

IRS NOTICE 2021-31

- “Last Period of Coverage Beginning on or before September 30th.” Example: COBRA coverage is normally paid bi-weekly and the last two-week period of coverage is from September 19th through October 2nd. The Subsidy would apply to the entire period of coverage, including October 1st and 2nd.
- COBRA coverage automatically continues after the Subsidy period ends, and payment for the first period of coverage following September 30th will be timely if paid in accordance with plan and COBRA terms. If the plan is subject to ERISA payment is also subject to the Emergency Relief Notices.
- The death of the employee AEI does not end the Subsidy for their dependents.

Q&A 47

Q&A 48

Q&A 50

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EXTENSIONS UNDER THE EMERGENCY RELIEF NOTICES

Emergency Relief Notices

In May 2020 the DOL and the Internal Revenue Service (“IRS”) issued a Joint Notice requiring health plans to disregard the period beginning March 1, 2020 and ending 60 days after the end of the COVID national emergency (the “Outbreak Period”) when applying the deadlines that would normally apply to special enrollment requests, COBRA events (election, payment, and notice periods), and benefit claims and appeals. This relief was extended by Notice 2022-02 and plans can disregard the periods specified above until the earlier of: (1) one year from the date the deadline period would have begun running for an individual or (2) 60 days after the end of the National Emergency.

ARPA: Time extensions available under the Emergency Relief Notices do not apply to the Subsidy.

IRS NOTICE 2021-31

- If an AEI received a standard COBRA notice before April 1st, and then the COBRA Subsidy Notice after April 1st, they have 60 days from the receipt of the COBRA Subsidy Notice to elect the Subsidy and COBRA coverage prior to April 1st. The AEI can also choose not to elect retroactive COBRA coverage, however if they do elect retroactive coverage, they must self-pay any months prior to April 1st.
- The extended notice periods under the Emergency Relief Notices do not apply to the COBRA Subsidy Notices or COBRA Subsidy election periods.
- If the AEI elects retroactive COBRA coverage when electing the Subsidy the extended timeframes under the Emergency Relief Notices for **premium payment** remain available. If the retroactive COBRA coverage is not paid in full by the individual, COBRA coverage only has to be provided for months that the individual makes payments, premiums received will be applied to the earliest

Q&A 56

Q&A 57

Q&A 58

COBRA SUBSIDY COMPLIANCE CHART

EXTENSIONS UNDER THE EMERGENCY RELIEF NOTICES

month(s) of coverage, and there will be a coverage gap until the period of subsidized coverage begins on April 1, 2021.

- If the AEI does **not** elect retroactive COBRA coverage when they elect the Subsidy, they cannot later elect COBRA back to the original COBRA eligibility date after the 60-day period for electing the Subsidy has ended - even if the Emergency Relief would have otherwise permitted a later election.

Q&A 59

An individual is involuntarily terminated on November 1, 2020 and receives a standard COBRA notice prior to April 1st, and they receive the Subsidy Notice on April 30, 2021.

Example One: The AEI elects the Subsidy effective April 1, 2021, as well as COBRA coverage retroactive to November 1, 2020. The AEI only pays three months of COBRA coverage premiums within applicable deadlines and makes no other payments. The three months of premiums paid are applied to November 2020, December 2020, and January 2021; there is no retroactive coverage for February and March 2021. The AEI's Subsidy begins April 1st and terminates in accordance with guidance above.

Example Two: The AEI elects to receive the Subsidy effective April 1, 2021. Assuming the Outbreak Period is still in effect the individual only has 60 days following the receipt of the Subsidy Notice (June 29, 2021) to retroactively elect COBRA coverage back to November 1, 2020, despite the extensions available under the Emergency Relief Notices.

COBRA SUBSIDY COMPLIANCE CHART

PAYMENTS TO INSURERS UNDER FEDERAL COBRA

IRS NOTICE 2021-31

- If the employer and the insurer of an insured plan subject to COBRA (not a multiemployer plan) have agreed that the insurer will collect the COBRA premiums directly from the COBRA qualified beneficiaries, the insurer is required to treat AEIs as having paid in full. Otherwise the insurer will be liable for the excise tax. The employer must still continue to pay the premium to the insurer for the months of the individual's COBRA assistance.

Q&A 60

COBRA SUBSIDY COMPLIANCE CHART

CALCULATION OF COBRA PREMIUM ASSISTANCE CREDIT

IRS NOTICE 2021-31

- If an employer does not subsidize COBRA premium costs for similarly situated non-AEIs the credit for the quarter is equal to the amount of premiums not paid by the AEI.
- If the employer subsidizes COBRA for similarly situated non-AEIs the credit is equal to the amount the employer would have charged to the AEI. Any amount subsidized by the employer is not included in the credit. For example, if the COBRA premium is \$1000 per month and employer only requires employees who elect COBRA to pay \$600 per month, the credit available to the employer is \$600.
- If the plan was previously charging less than the full COBRA premium and increases the premium in accordance with federal COBRA regulations for all similarly situated covered employees and COBRA participants, the Subsidy applies to the increased COBRA premium.
- If the plan was previously charging less than the full COBRA premium and increases the premium in accordance with federal COBRA regulations for all similarly situated covered employees and COBRA participants, and also provides a separate taxable payment to the AEI the credit available to the employer applies to the increased premium amount.

Q&A 63

Q&A 64

Q&A 65

Q&A 66

Example. 102% of a health care plan premium is \$1000 per month and prior to April 1, 2021 the plan charged \$400 for COBRA coverage. The employer, in accordance with federal COBRA requirements, charges all covered employees and COBRA participants \$1000 per month for COBRA coverage for periods beginning April 1, 2021. In addition, effective April 1, 2021 the employer provides a taxable severance benefit of \$600 per month to AEIs. An AEI is entitled to COBRA coverage without payment of any premium. The credit available to the employer is \$1000.

COBRA SUBSIDY COMPLIANCE CHART

CALCULATION OF COBRA PREMIUM ASSISTANCE CREDIT

- If COBRA coverage is offered to an individual who is not eligible for the Subsidy, the Subsidy amounts are allocated first to the AEI based on the cost of COBRA coverage (without the Subsidy) for only AEIs. The remainder is allocated to the premiums for non-AEIs. If the total cost of coverage for all covered individuals does not exceed the cost for just the AEIs, then the premium for non-AEIs is zero and the credit is the full Subsidy. If the cost of the non-AEI increases the total COBRA premium the additional cost is not eligible for the credit.

Q&A 68

Example One. An employee and the employee's two dependent children are AEIs and have COBRA continuation coverage. COBRA continuation coverage also covers an individual who lives in the same household who is not an AEI. The amount the plan requires to be paid for COBRA continuation coverage for self-plus-two-or-more-dependents (which includes the individual who is not an AEI) is \$1,000 per month. The amount the employee would pay for coverage for the employee and the two children for COBRA continuation coverage is \$1,000 per month. The additional premium amount for coverage of the individual who is not an AEI is \$0 per month. The employee is entitled to apply the Subsidy for the full \$1,000 premium amount per month. The employer credit is \$1,000 per month.

Example Two. Same facts as Example 1, except the employee has only one dependent child, and the plan charges \$800 per month for self-plus-one-dependent COBRA continuation coverage. The incremental amount the employee pays for COBRA continuation coverage for the individual who is not an AEI is \$200 per month. The Subsidy applies to the \$800 COBRA coverage for the employee and child, and the employee pays \$200 per month for the non-AEI out of pocket. The employer credit is \$800 per month.

Example 3. An employee is an AEI who has self-only coverage that costs \$450 per month. During the ARP extended election period, the plan has an open enrollment period and allows active employees and qualified beneficiaries to add spouses and dependents to their health coverage. The employee adds the employee's spouse and dependent child, who were not covered before the employee's qualifying event, to the employee's COBRA continuation coverage. Without regard to the COBRA premium assistance, COBRA continuation coverage for self-plus-two-or-more-dependents is \$1,000 per month. The spouse and the dependent child are not AEIs because they were not covered by the plan on the day before the employee's qualifying event. The amount the employee pays for the spouse and the dependent child is \$550 per month (\$1,000 less \$450). The employee is entitled to COBRA premium assistance with respect to \$450 per month. The employer credit is \$450/month.

COBRA SUBSIDY COMPLIANCE CHART

CALCULATION OF COBRA PREMIUM ASSISTANCE CREDIT

- The credit available to the employer for an individual coverage HRA is limited to 102% of the amount actually reimbursed with respect to the AEI.
- If the employer offers continued health care coverage under a severance agreement the credit available for the quarter depends on how the severance agreement is structured.

Q&A 70

Q&A 64

For the examples below assume the employer pays the Subsidy, and that 102% of the applicable premium is \$1000 per month. The employee is involuntarily terminated and elects the Subsidy effective April 1st and it terminates September 30th.

Example One. Employees pay \$200 per month for health coverage. Severance benefits include continued health coverage at the cost of \$200 per month for three months. After the end of the three months the terminated employee pays the full monthly premium of \$1000. The employer considers the three-month severance period (where it pays the remaining \$800) to be part to be part of the employee's COBRA period. The credit available to the employer for April, May and June is \$200 per month. The credit available to the employer for July, August and September is \$1000 per month.

Example Two. Same facts as in Example One, except that the employer considers the COBRA period as beginning after the three-month severance period. In other words, the terminated employee is not eligible for COBRA or an AEI for the first three months of severance. The employee receives severance benefits for April, May and June, and then elects the Subsidy beginning July 1, 2021. The credit available to the employer is \$0 for April, May, and June; it is \$1000 for July, August, and September.

Example Three. Same facts as in Example Two, except that the severance benefits include continued health care at no cost to the terminated employee for the first three months. Because the monthly premium for April, May, and June is \$0 the Subsidy is not available and there is no credit available to the employer. The credit available to the employer is \$1000 for the months of July, August, and September.

COBRA SUBSIDY COMPLIANCE CHART

CLAIMING THE COBRA PREMIUM CREDIT

ARPA: The premium credit for the Subsidy is available to the “premium payee.” The premium payee is the employer maintaining a self-insured group health plan, the insurer of a fully insured plan, and a group multiemployer plan (a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer).

The Subsidy will be reimbursed by the IRS through a credit against the quarterly 1.45% Medicare Hospital Insurance (“HI”) payroll tax. Credit amounts exceeding the HI payroll tax will be treated as a refund of an overpayment.

IRS NOTICE 2021-31

- The premium payee becomes eligible for the credit as of the date the premium payee receives the AEI’s enrollment election, including back to the date of the AEI’s eligibility for the premium. The premium payee is prospectively eligible for each subsequent period of coverage covered by the Subsidy regardless of when the premium payee could have required a premium payment.

Example One. The premium payee receives an AEI’s election for the Subsidy on June 17, 2021 with a Subsidy beginning date of April 1st. The premium payee is entitled to the credit as of June 17, 2021 for the Subsidy for the months of April, May, and June. The premium payee is eligible for the credit as of the first calendar day of July, August, and September.

Q&A 74

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CLAIMING THE COBRA PREMIUM CREDIT

- A premium payee claims the credit by reporting the credit, both the nonrefundable and refundable portions of the credit, and the number AEIs on the designated line of its federal employment tax returns, usually Form 941 "Employer's Quarterly Federal Tax Return."
- A premium payee may: (1) Reduce the deposits of federal employment taxes, including withheld taxes, that it would otherwise be required to deposit up to the anticipated credit, (2) Request an advance of the amount of the anticipated credit that exceeds the federal employment tax deposits available for reduction by filing Form 7200 "Advance Payment of Employer Credits Due to COVID-19."

Q&A 75

Q&A 75

Example Two. Under the example directly above the premium payee should report the credit for April through June on Form 941 for the second quarter of 2021.

Example Three. Same facts as the Example One directly above, except the AEI elects the Subsidy as of June 1, 2021. The premium payee is entitled to the credit as of June 17, 2021 for the months of June and July. The premium payee should report the total credit on Form 941 for the third quarter of 2021 for the months of June.

- If the anticipated credit exceeds the federal employment tax deposits available for reduction, the premium payee may file Form 7200 to request an advance payment of the credit. The Form 7200 may be filed after the end of the payroll period in which the premium payee became entitled to the credit.
- Deposits can't be reduced, and advances may not be requested, for a credit for a period of coverage that has not begun. Form 7200 must be filed before the earlier of: (1) the day the employment tax return for the quarter in which the premium payee is entitled to the credit is filed; or (2) the last day

Q&A 76

Q&A 76

COBRA SUBSIDY COMPLIANCE CHART

CLAIMING THE COBRA PREMIUM CREDIT

of the month following that quarter. The premium payee should also report any advance payments received in anticipation of the credit for the quarter on the employment tax return.

Example Four. Under the same facts as under Example One the premium payee can reduce its employment tax deposits as of June 17, 2021.

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| <ul style="list-style-type: none"> ▪ If the premium payee is a multiemployer plans it should claim the credit on Form 941 for the quarter in which it becomes entitled to the credit. The multiemployer plan should (1) report any advance payments received in anticipation of the credit on the same Form 941, (2) 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. | Q&A 77 |
| <ul style="list-style-type: none"> ▪ If an AEI fails to notify the plan that they are eligible for other group health plan coverage or Medicare, the premium payee is still entitled to the credit for the period of ineligibility unless the payee knew of the individual's eligibility for other coverage. | Q&A 78 |
| <ul style="list-style-type: none"> ▪ The premium assistance credit is included in gross income of any premium payee for the taxable year which includes the last day of any quarter in which the credit is allowed. | Q&A 79 |
| <ul style="list-style-type: none"> ▪ Records substantiating credit: must be provided to the IRS upon request. This includes documentation of the AEI's eligibility. | Q&A 84 |
| <ul style="list-style-type: none"> ▪ If an AEI is reimbursed for a payment that should have been a Subsidy premium the premium payee is eligible for the credit as of the date of reimbursement. | Q&A 85 |

COBRA SUBSIDY COMPLIANCE CHART

CLAIMING THE COBRA PREMIUM CREDIT

- Premium payees that use a third-party payer such as a payroll agent, payroll service provider, professional employer organization (“PEO”), or certified professional employer organization (“CPEO”) to report and pay employment taxes are still entitled to the credit, but different rules apply depending on the type of third-party payer arrangement.
 - The third-party payer will only be able to claim the reimbursement as a payee if (1) it maintains the group health plan, (2) is considered the sponsor of the group health plan and is subject to the applicable DOL COBRA guidance, including the providing COBRA election notices, and (3) would have received the COBRA premium payments directly from AEIs were it not for the COBRA Subsidy.
 - Payees using these third-party services should contact their plan professionals for additional guidance.

Q&A 81 -
83