



Group Health Plan Advisory

IRS NOTICE REGARDING THE AMERICAN RESCUE PLAN ACT PREMIUM ASSISTANCE FOR COBRA BENEFITS

Background

On May 18, 2021, the IRS issued a 41-page notice containing 86 FAQs detailing the premium assistance for COBRA benefits provided by the American Rescue Plan Act (ARPA). The FAQs are very complex and detailed. This advisory provides an overview of the key concepts contained in the 12 categories of questions in [Notice 2021-31](#).

ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE (Questions 1-20)

An Assistance Eligible Individual (AEI) includes individuals who were:

- Eligible for or enrolled in another group health plan prior to April 1, 2021, but as of April 1, 2021, are not eligible for or enrolled in such coverage, or
- Enrolled in individual health insurance coverage through a Health Insurance Exchange, although such individuals are not eligible for both COBRA premium assistance and premium tax credits to pay for the cost of Exchange coverage for the same month

Individuals currently enrolled in Medicare are not assistance eligible, even though they may be eligible to elect COBRA continuation coverage.

Employers can require individuals to self-certify or attest their eligibility for COBRA premium assistance and that they do not have other disqualifying group health plan coverage or are enrolled in Medicare. Employers are required to maintain records of their self-certification or attestation from individuals regarding their eligibility for COBRA premium assistance to demonstrate the employer's eligibility for premium tax credits.

REDUCTION IN HOURS (Questions 21-23)

Any reduction in hours that results in the loss of coverage makes someone an AEI, regardless of whether the reduction in hours is voluntary or involuntary.

INVOLUNTARY TERMINATION OF EMPLOYMENT (Questions 24-34)

The IRS defines an involuntary termination of employment as a:

- Severance of employment,
- via the unilateral decision by the employer exercising its independent authority,
- under circumstances where the employee has not expressly or implicitly asked to be terminated,
- and the employee was ready, willing and able to continue performing services

COVERAGE ELIGIBLE FOR COBRA PREMIUM ASSISTANCE (Questions 35-42)

COBRA premium assistance is available for:

- Medical plans, and/or
- Health reimbursement accounts, and/or
- Dental only, and/or
- Vision only

COBRA premium assistance is available not available for:

- Health Flexible Spending Accounts
- Qualified Small Employer Health Reimbursement Arrangements

BEGINNING OF COBRA PREMIUM ASSISTANCE PERIOD (Questions 43-46)

An AEI is entitled to receive COBRA premium assistance as of the first applicable period of coverage beginning on or after April 1, 2021.

AEIs may waive COBRA continuation coverage for any period before electing to receive COBRA premium assistance, including retroactive periods of coverage beginning prior to April 1, 2021.

END OF COBRA PREMIUM ASSISTANCE PERIOD (Questions 47-50)

COBRA premium assistance applies until the **earliest** of:

1. the first date the AEI becomes eligible for other group health plan coverage (with certain exceptions) or Medicare coverage, or
2. the date the individual ceases to be eligible for COBRA continuation coverage, or
3. the end of the last period of coverage beginning on or before September 30, 2021.

EXTENDED ELECTION PERIOD (Questions 51-55)

An AEI's spouse and dependents have independent rights to elect COBRA during the extended election period, even if the employee elected self-only COBRA coverage prior to April 1, 2021.

All available lines of coverage (e.g., dental and vision) are available for election during the extended election period, even if waived at the time of the original qualifying event.

EXTENSIONS UNDER THE EMERGENCY RELIEF NOTICES (Questions 56-59)

In 2020, the Departments of Labor and Treasury issued a notice providing extensions of certain time frames for group health plans and participants. That notice provides that plans must disregard certain periods beginning March 1, 2020, until 60 days after the announced end of the National Emergency. The recently released FAQs clarify that the disregarded periods last until the earlier of (1) one year from the date the AEI was first eligible for relief, or (2) 60 days after the announced end of the National Emergency.

PAYMENTS TO INSURERS UNDER FEDERAL COBRA (Question 60)

Pertaining to insured plans subject to COBRA that are not multiemployer plans – if the insurer and the employer agree that the insurer will collect the COBRA premiums directly from qualified beneficiaries, the insurer is required to treat an AEI as having paid the full premium.

Notwithstanding the above, employers are required to pay premiums to the insurer for the months of COBRA premium assistance with respect to the AEI's.

COMPARABLE STATE CONTINUATION COVERAGE (Questions 61-62)

State continuation coverage programs may have different maximum periods of continuation coverage, or different qualifying events, or different qualified beneficiaries or different maximum premiums. None of these differences alone, or in combination cause these programs to fail the comparable coverage test to qualify for COBRA premium assistance under the ARPA.

Employers using fully-insured plans subject solely to state laws requiring continuation coverage are not eligible to take the premium assistance credit if the employer plays the full premium to the insurer.

CALCULATION OF COBRA PREMIUM ASSISTANCE CREDIT (Questions 63-70)

If an employer does not subsidize premium costs for qualified beneficiaries, then the premium assistance credit that employers can claim for each calendar quarter is the amount equal to the premiums not paid by the assistance eligible individuals for COBRA continuation coverage. Any amount subsidized by the employer is not included in the premium assistance credit.

COBRA premiums eligible for premium assistant credits may include administrative costs up to 2% of the applicable premium.

Oswald Observation

Employers should consider charging the full COBRA premiums beginning April 1 through September 30, 2021, for all similarly situation covered employees and qualified beneficiaries. This allows the employer to receive premium assistance credits for 102% of the AEI's premium while the employees pay zero dollars for the coverage.

CLAIMING THE COBRA PREMIUM ASSISTANCE CREDIT (Questions 71-86)

In anticipation of receiving the credit, the Premium Payee (generally, the employer) may (1) reduce the deposits of the Medicare hospital insurance tax up to the amount of the anticipated credit, and (2) request an advance of the amount of the anticipated credit that exceeds the Federal employment tax deposits available for reduction by filing a Form 7200.

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