



IRS Provides Further Clarity to Employers on Stimulus Tax Credits

Insights

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The Internal Revenue Service recently released a [Notice](#) to further explain its position on certain issues related to the COBRA premium assistance and corresponding tax credits available under [the American Rescue Plan Act of 2021 \(ARPA\)](#). The July 26 Notice expands on [prior IRS guidance](#) to help employers and plan sponsors understand nuances regarding extended COBRA coverage periods, the effect of other disqualifying group health coverage on limited-scope dental and vision benefits, interaction with state continuation coverage, and which entities can claim available IRS tax credits. What do you need to know about Notice 2021-46?

Background

ARPA provides that Assistance Eligible Individuals (AEI) who have COBRA continuation coverage during the period starting April 1, 2021 and ending September 30, 2021 (ARPA Premium Assistance Period) can maintain COBRA coverage without having to make premium payments. Plan sponsors with plans subject to COBRA generally will make premium payments on an AEI's behalf and then claim a dollar-for-dollar tax credit against certain quarterly Medicare taxes.

Extended COBRA Periods

Under COBRA, a qualified beneficiary may be able to extend continuation coverage beyond the normal 18-month maximum coverage period that applies following a reduction in hours or termination of employment. For example, an individual determined to be disabled by the Social Security Administration (SSA) can elect to extend continuation coverage for up to a maximum of 29 months. Additionally, a qualified beneficiary who has a second qualifying event during the initial COBRA period can extend COBRA coverage for up to 36 months.

The Notice explains that an individual who is entitled to elect COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA can get premium assistance for any extended period of coverage during the ARPA Premium Assistance Period. This is true even if they did not notify the plan or insurance carrier that they intended to elect extended COBRA continuation coverage before the start of that period.

The Notice conveys helpful information through a series of questions and answers. Q&A 1 provides a hypothetical example about an individual who involuntarily terminated employment and elected COBRA continuation coverage effective October 1, 2019 and how they would normally lose COBRA continuation coverage after March 31, 2021. However, if SSA determines they were disabled as of November 1, 2019 and issues a determination letter dated March 1, 2020, they can elect to continue coverage for up to 29 months from October 1, 2019.

Emergency relief guidance issued last year gives the individual one year and 60 days from the date of the disability determination letter to notify the plan of the disability to extend COBRA continuation coverage. If on April 10, 2021 the individual notifies the plan of the disability determination and elects ongoing coverage from April 1, 2021, ARPA premium assistance will apply to the extended COBRA coverage during the ARPA Premium Assistance Period (if they are not eligible for other disqualifying group health plan coverage or Medicare).

Early Premium Assistance Termination

ARPA generally states that an individual is no longer an AEI when they are eligible for other disqualifying group health coverage or Medicare. Prior guidance allows an AEI to get premium assistance for COBRA they might elect under a standalone dental or vision plan. The Notice clarifies that an AEI with such coverage will become ineligible for premium assistance even if the other disqualifying group health coverage does not provide dental or vision benefits.

Comparable State Continuation Coverage

The Notice explains that other comparable state continuation coverage is subject to ARPA even if such coverage applies only to a subset of individuals (e.g., a state or local government unit). If the coverage is comparable to federal COBRA, it can qualify an AEI for premium assistance. So, a state law that requires continuation of coverage for employees of a state or local government could be comparable coverage that entitles AEI to premium assistance.

Claiming Tax Credits for Premium Assistance

Generally, the entity that pays COBRA premiums on behalf of AEI can claim a corresponding tax credit against quarterly Medicare taxes. Stakeholders have questioned whether they can claim the credit in certain scenarios involving plans that cover employees from multiple related or unrelated employers. The Notice answers some of the common questions in this area.

Q&A 4 clarifies that the common law employer that maintains the plan to which ARPA premium assistance applies is the AEI's current common law employer for an AEI whose hours have been reduced or the former common law employer for AEIs who were involuntarily terminated.

Q&A 5 explains that for state-mandated continuation coverage that is comparable to federal COBRA coverage and is subject to both federal and state continuation coverage, the common law employer

is the entity that can receive the tax credit for the state-mandated coverage even if the AEI pays premiums directly to the insurer for state coverage after federal COBRA ends. So, the insurer cannot claim the tax credit in that case.

Employers have questioned who can claim the available tax credit if a group health plan (other than a multiemployer plan) covers employees of several members of a controlled group of companies under IRS rules. Q&A 6 states that each member of a controlled group generally can claim the corresponding credit for its own AEI for whom it pays wages and remits taxes will be entitled to claim the tax credit.

However, if a plan covers employees of two or more unrelated employers – e.g., a Multiple Employer Welfare Arrangement (MEWA) – the Notice extends prior guidance to hold that only the common law employer of the employee receiving premium assistance can claim the credit. However, an exception exists in certain cases where a third-party payer (TPP) pays wages subject to federal employment taxes and reports those wages and taxes on an aggregate employment tax return that it files on behalf of an unrelated employer client (e.g., a professional employer organization (PEO) or certified professional employer organization (CPEO)). In that case, the TPP is entitled to claim the premium assistance tax credit.

The Notice specifically states that a MEWA cannot claim the tax credit unless it also pays and reports employment taxes for a participating employer whose employees receive subsidized COBRA coverage under the plan sponsored by the MEWA. The IRS states that the former employers individually will claim the tax credit for the coverage provided by the MEWA to their former employees who are AEI receiving coverage from the MEWA.

M&A Beneficiaries

Qualified beneficiaries who gain COBRA rights due to a business reorganization are known as M&A qualified beneficiaries. COBRA rules specify which party to a transaction must provide COBRA coverage to M&A qualified beneficiaries. The Notice states that, if the selling group is obligated to make COBRA continuation coverage available to M&A qualified beneficiaries after a business reorganization, the entity in the selling group that maintains the group health plan is entitled to claim the COBRA premium assistance tax credit. If the common law employer (which could be in the buying group) is not obligated to make COBRA continuation coverage available to AEI, the common law employer is not entitled to the COBRA premium assistance credit after the business reorganization.

Conclusion

The IRS has given employers and other interested parties helpful direction on several nuanced situations involving ARPA COBRA premium assistance and available tax credits. We expect further guidance as we get closer to the end of the ARPA Premium Assistance Period and will provide updates as necessary.

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We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Employee Benefits and Tax Practice Group](#).

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