

EMPLOYEE BENEFIT ALERT



JULY 30, 2021

IRS RELEASES ADDITIONAL COBRA SUBSIDY FAQ

The Internal Revenue Service (IRS) has issued new COBRA subsidy guidance in Notice 2021-46 (the Notice) which supplements guidance released earlier in Notice 2021-31. The new Notice principally addresses issues related to the process plan sponsors use to recover lost COBRA premium payments through a payroll tax credit.

Overview

Employers and plan sponsors will recover missed COBRA premiums through a process of taking a credit against payroll taxes due. However, questions have arisen regarding who is eligible to claim the payroll tax credit when different entities are involved in providing the health plan coverage (e.g., when a plan is set up to offer coverage to employees of multiple employers that are part of a controlled group). The Notice includes 11 questions and answers, 8 of which provide clarification regarding which entity is entitled to collect the premium assistance payroll tax credit.

New Guidance Included in the Notice

Clarifying the Entity that May Claim the Payroll Tax Credit

- For continuation coverage that is subject to both federal COBRA and state continuation law, it will generally be the employer/plan sponsor who is entitled to claim the tax credit – not the health insurance company (as would be the case for coverage that is subject to only state continuation law).

- When a plan covers employees of separate employers who are part of a controlled group based on IRS Section 414 rules, each separate employer should claim the tax credit for their employees covered by the plan.
- In the case of a merger or acquisition, if the selling entity is responsible to provide COBRA coverage to merger and acquisition qualified beneficiaries, then the selling entity would be entitled to claim the tax credit.

Additional questions address tax credit issues for more limited situations such as employees of state agencies, PEO relationships, and Multiple Employer Welfare Arrangements (MEWAs).

Other Issues Addressed

- The notice clarifies that individuals with extended continuation eligibility due to disability determinations, second qualifying events, or extensions available under state continuation laws, are eligible for the subsidy if these extended periods fall within the subsidy period (April 1 through September 30, 2021). These individuals are eligible for the subsidy even if they had not notified the plan sponsor of these extended events under the timeframes normally required.
- If an assistance eligible individual (AEI) has elected subsidized COBRA coverage for dental or vision only, and subsequently becomes eligible for other group health plan coverage, the subsidy ends for the dental or vision coverage even if the new plan does not provide separate dental or vision coverage.

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Summary

The Notice can be found at <https://www.irs.gov/pub/irs-drop/n-21-46.pdf>

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