

IRS Releases Guidance on COBRA Subsidies



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On May 18, 2021, the Internal Revenue Service (IRS) released highly anticipated guidance on the COBRA subsidies available under the American Rescue Plan Act (ARP). [IRS Notice 2021-31](#) addresses important questions about the ARP COBRA subsidies that were left unanswered by the statute and prior guidance issued by the Department of Labor (DOL).

Section 9501 of the ARP provides for a temporary 100% premium subsidy for certain “assistance eligible individuals” who elect COBRA continuation coverage due to a reduction in hours or an involuntary termination of employment. The subsidy is available for COBRA continuation coverage for the months between April 1, 2021 and September 30, 2021. The person to whom premiums for COBRA continuation coverage are payable (the employer, insurer, or multiemployer plan, as applicable) is entitled to a reimbursement that can be sought through a refundable tax credit against its share of Medicare taxes for the subsidy amounts.

Notice 2021-31 provides guidance for employers, plan administrators, and health insurance issuers regarding a variety of topics related to the subsidy, including:

- Clarification of the meaning of “involuntary termination” and “reduction in hours” for purposes of eligibility for the subsidy;
- The effect of a second COBRA qualifying event on subsidy eligibility;
- Types of health coverage eligible for the subsidy;
- Enrolling in COBRA, both retroactively to the date of the original qualifying event and during the subsidy period;
- The impact of eligibility for, and enrollment in, other health coverage and Medicare on eligibility for the COBRA subsidy;
- Determination of the COBRA premium assistance period for plans that administer COBRA coverage other than on a calendar month basis;
- Calculation of the employer’s tax credit, particularly in the case of employers who subsidize COBRA as a severance benefit or provide taxable cash payments for health expenses in connection with termination of employment;

- Substantiation requirements for claiming the tax credit and an employer’s ability to rely on a qualified beneficiary’s attestation or self-certification of premium assistance eligibility;
- Rules for calculating and claiming the premium subsidy on payroll taxes;
- The role of insurers in paying the premium under “mini-COBRA” laws; and
- The interaction of the subsidy and prior COVID-19 emergency relief notices extending the COBRA election and premium-payment deadlines.

The DOL has separately issued guidance regarding ARP COBRA premium assistance and model notices and instructions for their delivery. Notably, employers and health insurance issuers must issue COBRA notices related to ARP no later than May 31, 2021. See our prior alert on these DOL notice requirements [here](#).

Although the guidance is helpful, there are still a number of open questions. Plan sponsors and health insurance issuers should carefully review both the DOL and IRS guidance to ensure compliance with the ARP COBRA subsidy requirements and rules for substantiating and claiming the tax credit. Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation team for further information.

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