



Rewards Policy Insider 2021-11



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IRS (Finally) Issues COBRA Premium Subsidy Guidance - Part II

The American Rescue Plan Act's (ARPA) 100% COBRA premium subsidy took effect for periods of coverage beginning on and after April 1, 2021, but IRS guidance on a number of key questions relating to who qualifies for the subsidy, when the subsidy is and is not available, etc., was not issued until May 18, 2021. IRS Notice 2021-31, in conjunction with frequently asked questions (FAQs) and Model Notices the Department of Labor (DOL) issued in April, address numerous issues big and small to help plan sponsors and COBRA administrators make sure the subsidy is being administered appropriately.

Background

In general, for the period from April 1, 2021 through September 30, 2021 the ARPA provides that "Assistance Eligible Individuals" (AEIs) will not be required to pay any COBRA premiums. AEIs are those COBRA beneficiaries whose COBRA qualifying event was due to a reduction in hours or an involuntary termination of employment. Employers are required to offer a 60-day Extended Election Period to individuals who would be AEIs during any part of the period from April 1 through September 30, 2021, but for the fact they failed to elect COBRA or prematurely dropped COBRA coverage.

Employers (or insurers or multiemployer plans, in certain cases) will be able to claim an advanceable, refundable credit (the "COBRA premium assistance credit") against their Hospital Insurance payroll tax liability to subsidize the COBRA premiums these AEIs otherwise would pay.

Rewards Policy Insider 2021-10 included an overview of the guidance in Notice 2021-31 relating to determining who is eligible for the COBRA premium subsidy, what constitutes an involuntary termination from employment, when the COBRA premium assistance period begins and ends, and the extended election period, among other things. The following focuses on the Notice's guidance relating to calculating and claiming the COBRA premium assistance credit.

Calculating the COBRA Premium Assistance Credit

In general, the Notice provides that the quarterly premium assistance credit amount is equal to premiums not paid by AEIs for COBRA coverage during the quarter due to the ARPA COBRA premium subsidy. The amount of premium not paid is the COBRA premium charged to other similarly situated qualified beneficiaries who are not AEIs, plus any otherwise allowed administrative fee. In most cases the administrative fee will be 2% of the applicable COBRA premium; although, for AEIs on a disability extension it could be as high as 50% of the applicable premium.

Consistent with the above, employers that subsidize COBRA premiums for AEIs can only claim the premium amount the AEIs otherwise would have paid for purposes of the COBRA premium assistance credit. Current Treasury Regulations do permit employers to reduce or eliminate COBRA premium subsidies during a 12-month determination period (i.e., the 12-month period for which COBRA premiums must be set in advance and generally cannot be changed), but other rules or contractual obligations (e.g., severance agreements) might limit an employer's ability to take advantage of this opportunity.

Another complicating factor could be if an AEI's COBRA coverage includes non-AEIs, such as a parent or domestic partner. In such cases, the Notice provides that the premium is first allocated to the AEIs for purposes of calculating the COBRA premium assistance credit. Any part of the premium that remains is allocated to non-AEIs and may not be claimed for purposes of the COBRA premium assistance credit.

Claiming the COBRA Premium Assistance Credit

The individual entitled to the COBRA premium assistance credit is the "premium payee," which for single-employer group health plans subject to Federal COBRA is the common law employer maintaining the plan. A State or local government can also be a premium payee and claim the COBRA premium assistance credit.

Once a premium payee receives an AEI's COBRA election, the premium payee is entitled to the credit for any premiums the AEI was not required to pay due to ARPA with respect to periods of coverage that started before the date of the COBRA election. From that point forward, the premium payee becomes entitled to the credit as of the beginning of each subsequent period of coverage for which the AEI is not required to pay due to ARPA.

In the event an AEI pays premiums she was not required to pay due to ARPA, the premium payee is entitled to the premium assistance credit as of the date it reimburses the AEI for those amounts.

A premium payee claims the credit by reporting the credit and the number of individuals receiving COBRA premium assistance on its federal employment tax return, usually Form 941.

Premium payees can reduce their federal employment tax deposits, including withheld taxes, by the amount of the anticipated credit. They also can request an advance of the anticipated credit to the extent it exceeds the federal employment tax deposits available for reduction by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

The full text of Notice 2021-31 is available [here](#).

IRS Announces Inflation-Adjusted Health Savings Account (HSA) Limits for 2022

The IRS has issued Revenue Procedure 2021-25 to provide inflation-adjusted contribution and other limits relating to HSAs and high-deductible health plans (HDHPs). The Revenue Procedure also sets the maximum amount that can be made newly available in 2022 in an excepted benefit health reimbursement arrangement (HRA).

The updated HSA limits for 2022, as well as the limits in effect for 2021, are summarized in the following table:

	2022	2021
Maximum Contribution – Self-only	\$3,650	\$3,600

Maximum Contribution – Family	\$7,300	\$7,200
Age 55 Catch-up Contribution	\$1,000	\$1,000
HDHP Minimum Deductible – Self-Only	\$1,400	\$1,400
HDHP Minimum Deductible – Family	\$2,800	\$2,800
HDHP Maximum OOP – Self Only	\$7,050	\$7,000
HDHP Maximum OOP – Family	\$14,100	\$14,000

Note that the age 55 catch-up contribution limit is set by statute and is not subject to annual inflation adjustment.

Excepted Benefit HRAs

An excepted benefit HRA is a type of standalone HRA that can be used to reimburse certain out-of-pocket medical expenses but not individual market health insurance premiums. Additionally, an excepted benefit HRA – unlike other HRAs – has a specific annual limit on how much employers can add to a participant’s account.

For 2022, the annual limit for an excepted benefit HRA will be \$1,800. This is the same as the annual limit for 2021 and 2020, when excepted benefit HRAs were first permitted to be offered.

The full text of Rev. Proc. 2021-25 is available [here](#).

Equal Employment Opportunity Commission (EEOC) Updates Guidance on Employers Offering Incentives for Employees to Get the COVID-19 Vaccine

With the Biden Administration pushing for at least 70 percent of Americans to be at least partially vaccinated by July 4, the EEOC has updated its “Technical Assistance Questions and Answers” (Q&As) to clarify certain questions about employers offering incentives for employees to get the COVID-19 vaccine.

In addition to the guidance on employer incentives, the Q&As clarify that:

- The Americans with Disabilities Act (ADA) does not prohibit employers from requiring employees to be vaccinated for COVID-19 before physically returning to work, although issues may arise if the employer requires employees to be vaccinated by the employer or the employer’s agent.
- Employers can ask employees to provide proof of vaccination without violating the ADA or Title II of the Genetic Information Nondiscrimination Act (GINA).
- Employers may have to make accommodations for employees who do not want to be vaccinated due to a disability, pregnancy, or sincerely held religious beliefs.

Specific Guidance on Incentives

The EEOC previously confirmed that employers could offer incentives to employees to get vaccinated without violating the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA). If the vaccine is provided by a third-party health care provider, there is no limit on the incentive amount.

The updated Q&As further clarify that asking employees to voluntarily provide proof that they received the vaccine from a third-party is not a disability-related inquiry under the ADA and does not violate GINA's prohibition on employers acquiring genetic information. However, the ADA does require employers to keep employees' vaccination information confidential.

A slightly different situation is presented if the employer or its agent is administering the vaccine. In that case, the incentive the employer is offering must not be "so substantial as to be coercive." The reason is that the pre-vaccination screening questions include disability-related inquiries, and if the incentive is too substantial employees could feel pressured to disclose protected health information. As noted previously, this limitation on incentives does not apply to employers asking employees to voluntarily provide proof of vaccination administered by a third-party. The Q&As do not provide guidance on when an incentive is big enough to be considered "coercive."

The Q&As also address questions about employers or their agents administering vaccines to employees' family members. The Q&As clarify this is okay so long as the employer takes steps to comply with GINA. Specifically, according to the Q&As:

Employers must not require employees to have their family members get vaccinated and must not penalize employees if their family members decide not to get vaccinated. Employers must also ensure that all medical information obtained from family members during the screening process is only used for the purpose of providing the vaccination, is kept confidential, and is not provided to any managers, supervisors, or others who make employment decisions for the employees. In addition, employers need to ensure that they obtain prior, knowing, voluntary, and written authorization from the family member before the family member is asked any questions about his or her medical conditions. If these requirements are met, GINA permits the collection of genetic information.

Regarding incentives for employees' *family members* to be vaccinated by the employer or its agent, the Q&As provide these are not allowed pursuant to GINA Title II. The reason is that the pre-vaccine screening questions lead to the employer receiving the employee's genetic information in the form of the employee's family medical history.

Ironically, employers or their agents can administer the COVID-19 vaccine to employees and provide the employee an incentive without violating GINA. According to the Q&As, the pre-screening questions do not ask for the individual to provide any genetic information.

The full text of the EEOC's Q&As can be accessed [here](#).

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