Premium Assistance for COBRA Benefits

Notice 2021-31

This notice provides guidance on the application of § 9501 of the American Rescue Plan Act of 2021 (the ARP), Pub. L. 117-2, 135 Stat. 4 (March 11, 2021), relating to temporary premium assistance for Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation coverage.[1]

BACKGROUND

Section 9501 of the ARP – COBRA Premium Assistance

Section 9501 of the ARP provides for a temporary 100 percent reduction in the premium otherwise payable by certain individuals and their families who elect COBRA continuation coverage through the Internal Revenue Code (Code), the Employee Retirement Income Security Act of 1974 (ERISA), or the Public Health Service Act (PHS Act) due to a loss of coverage as the result of a reduction in hours or an involuntary termination of employment.[2] The temporary premium assistance is also available to individuals enrolled in continuation health coverage under State programs that provide for coverage comparable to COBRA continuation coverage, often referred to as "mini-COBRA." In this notice, continuation of health coverage under all of these provisions is referred to as "COBRA continuation coverage," unless otherwise specified. Also, in this notice, the temporary premium assistance available under the ARP is referred to as "COBRA premium assistance" or "premium assistance," unless otherwise specified.

Under § 9501(a)(3) of the ARP, an "Assistance Eligible Individual" is an individual (1) who is a qualified beneficiary with respect to a period of COBRA continuation coverage during the period from April 1, 2021, through September 30, 2021, and eligible for that COBRA continuation coverage by reason of a qualifying event specified in § 603(2) of ERISA, § 4980B(f)(3)(B) of the Code, or § 2203(2) of PHS Act, except for voluntary termination of employment, and (2) who elects COBRA continuation coverage. The ARP requires that health insurance issuers and group health plans treat Assistance Eligible Individuals as having paid the full amount of their COBRA premium for the specified coverage. The person to whom premiums for COBRA continuation coverage are payable (the employer, insurer, or multiemployer plan, as applicable) is entitled to a refundable tax credit against its share of Medicare taxes under newly added

[1] Employer-sponsored health plans generally are required to offer an employee, spouse, or dependent child covered by the plan the opportunity to continue coverage under the plan for a specified period of time after the occurrence of certain events that otherwise would have terminated the coverage (qualifying events). These continuation of coverage requirements, and corresponding coverage (if elected), are often referred to as "COBRA continuation coverage" or "COBRA" requirements. The COBRA requirements were enacted originally as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272 (April 7, 1986), and are set forth in § 4980B of the Internal Revenue Code.

[2] COBRA continuation coverage under the Code, ERISA, and the PHS Act is also referred to in this notice as "Federal COBRA."

§ 6432 of the Code.[3]

COBRA premium assistance is available as of the first period of coverage beginning on or after April 1, 2021, and will not be available for periods of coverage beginning after September 30, 2021. For each Assistance Eligible Individual, COBRA premium assistance does not extend beyond the period of COBRA continuation coverage in the event that the period ends prior to September 30, 2021. However, premium assistance is not available if an individual is eligible for coverage under any other group health plan[4] or for Medicare. If an individual receiving premium assistance becomes eligible for coverage under any other group health plan or for Medicare, the premium assistance period ends. An individual receiving premium assistance who becomes eligible for coverage under any other group health plan or Medicare is required to notify the group health plan providing COBRA continuation coverage of eligibility for that other coverage. If the individual fails to notify the group health plan, the individual may be subject to a penalty of $250 for each failure. If the individual fraudulently fails to notify the group health plan, the individual is subject to a penalty equal to the greater of $250 or 110 percent of the premium assistance improperly received after the end of eligibility for COBRA premium assistance.

Under § 9501(a)(1)(B) of the ARP, an employer may allow an Assistance Eligible Individual to elect coverage different from the coverage under the plan in which the individual was enrolled before the reduction in hours or involuntary termination of employment, and COBRA premium assistance will apply with respect to that newly elected coverage.[5] The premium for the different coverage option that is offered may not exceed the premium for the coverage the individual had before the reduction in hours or involuntary termination of employment. In addition, the other coverage offered under this option must be coverage offered to similarly situated active employees and may not be coverage that provides only excepted benefits (as defined in § 9832(c) of the Code, § 733(c) of ERISA, and § 2971(c) of PHS Act), a health FSA (as defined by § 106(c)(2) of the Code), or a QSEHRA (as defined in § 9831(d)(2) of the Code). If offered the option to enroll in different coverage, the Assistance Eligible Individual has

[3] Section 6432 was first added to the Code by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (Feb. 17, 2009). It was later stricken by the Tax Technical Corrections Act of 2018, Pub. L. 115-141 (March 23, 2018). The ARP restores § 6432 to the Code with certain modifications.

[4] Eligibility for coverage under any other group health plan does not terminate eligibility for COBRA premium assistance if the other group health plan provides only excepted benefits (as defined in § 9832(c) of the Code, § 733(c) of ERISA, and § 2971(c) of the PHS Act), is a health flexible spending arrangement (FSA) (as defined by § 106(c)(2) of the Code), or is a qualified small employer health reimbursement arrangement (as defined in § 9831(d)(2) of the Code) (QSEHRA). Whenever reference is made in this notice to the end of eligibility for COBRA premium assistance due to eligibility for coverage under any other group health plan, coverage under these plans or arrangements is not taken into account. Additionally, eligibility for other group health plan coverage (that is not an excepted benefit, a health FSA, or a QSEHRA) makes an individual ineligible for COBRA premium assistance even if the offer of other coverage does not provide minimum value or is not affordable for purposes of the premium tax credit under § 36B.

[5] Note that this provision does not modify the general requirement under Federal COBRA that a group health plan must allow a qualified beneficiary to elect to continue the coverage in which the individual was enrolled as of the qualifying event.

90 days after the date of the notice of the option to elect other coverage to elect the other coverage.

Section 9501(a)(4) of the ARP provides an extended election period for certain individuals who did not have an election of COBRA continuation coverage in effect on April 1, 2021, referred to in this notice as the "ARP extended election period." The ARP extended election period is available for an individual who would be an Assistance Eligible Individual if the individual had a COBRA continuation coverage election in effect on April 1, 2021, or an individual who previously elected COBRA continuation coverage and discontinued that coverage before April 1, 2021. The ARP extended election period continues for 60 days after these individuals are provided notice of the extended election period. The resulting COBRA continuation coverage does not extend beyond the maximum period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the individual had elected COBRA continuation coverage initially as required under that applicable COBRA provision, or had not discontinued the elected COBRA continuation coverage.

The plan must treat an Assistance Eligible Individual as having paid the full premium. If the plan does not treat the Assistance Eligible Individual as having paid the full premium, the plan will have failed to meet the applicable continuation coverage requirements. Thus, in the case of a plan subject to COBRA continuation coverage requirements under § 4980B, the failure to treat the Assistance Eligible Individual as having made the full payment is a failure to satisfy the requirements of § 4980B and may result in the imposition of the excise tax under § 4980B(b).

Section 6432 of the Code – COBRA Premium Assistance Credit

The ARP adds § 6432 to the Code, which provides that the "person to whom premiums are payable for continuation coverage" is allowed a "premium assistance credit" for each calendar quarter against the tax imposed by § 3111(b), or against so much of the taxes imposed under § 3221(a) as are attributable to the rate in effect under § 3111(b), of an amount equal to the premiums not paid by Assistance Eligible Individuals for COBRA continuation coverage by reason of § 9501(a)(1) of the ARP with respect to that calendar quarter. If, for the calendar quarter for which the credit is allowed, the amount of the credit allowed is in excess of the tax imposed by § 3111(b), or so much of the taxes imposed under § 3221(a) as are attributable to the rate in effect under § 3111(b), after reduction for any credits allowed under §§ 3131, 3132, and 3134, the excess is treated as an overpayment that is refunded under §§ 6402(a) and 6413(b).

The "person to whom premiums are payable" is (1) the multiemployer plan, in the case of a group health plan that is a multiemployer plan (as defined in § 3(37) of ERISA); (2) the employer, in the case of a group health plan, other than a multiemployer plan, that is (a) subject to Federal COBRA, or (b) under which some or all of the coverage is not provided by insurance (that is, a plan that is self-funded, in whole or in part); or (3) the insurer providing the coverage, in the case of any other group health

plan not described in (1) or (2) (generally, fully insured coverage subject to State continuation coverage requirements, not Federal COBRA). In this notice, the "person to whom premiums are payable" is sometimes referred to as the "premium payee."

Section 6432(c)(2)(C) provides that any penalty under § 6656 for any failure to make a deposit of the tax imposed by § 3111(b), or so much of the taxes imposed under § 3221(a) as are attributable to the rate in effect under § 3111(b), is waived if the Secretary of the Treasury determines that the failure was due to anticipation of the premium assistance credit. Also, Notice 2021-24, 2021-18 IRB 1122, provides that the penalty under § 6656 does not apply for any failure to timely deposit employment taxes (withheld income taxes, taxes under the Federal Insurance Contributions Act (FICA), and taxes under the Railroad Retirement Tax Act (RRTA)) if (1) the employer is a person to whom premiums are payable, (2) the amount of employment taxes that the employer does not timely deposit (after reduction for other credits) is less than or equal to the amount of the employer's anticipated credits under § 6432(a) for the calendar quarter as of the time of the required deposit, and (3) the employer did not seek payment of an advance credit by filing Form 7200 with respect to the anticipated credits it relied upon to reduce its deposits. Section 6432(f) extends the statute of limitations for the assessment of any amount attributable to the credit to 5 years after the later of (1) the date on which the original return which includes the calendar quarter with respect to which the credit is determined is filed, or (2) the date on which that return is treated as filed under § 6501(b)(2). Finally, § 6432(g) provides that the Secretary shall issue such regulations, or other guidance, forms, instructions, and publications, as may be necessary or appropriate to carry out § 6432, including "allowing the credit to third-party payers (including professional employer organizations, certified professional employer organizations, or agents under § 3504)."

Under § 6432(e), the gross income of any person allowed the premium assistance credit is increased, for the taxable year which includes the last day of any calendar quarter with respect to which the credit is allowed, by the amount of the credit. In addition, no credit is allowed with respect to any amount which is taken into account as qualified wages under § 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, 134 Stat. 281 (March 27, 2020), as amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), which was enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (December 27, 2020), § 3134 of the Code, or as qualified health plan expenses under §§ 7001(d) or 7003(d) of the Families First Coronavirus Response Act (FFCRA), Pub. L. 116-127, 134 Stat. 178 (March 18, 2020), as amended by § 286 of the Relief Act, or §§ 3131 or 3132 of the Code.

Finally, the amount of any COBRA premium assistance is excluded from an individual's gross income under new § 139I of the Code.

Emergency Relief Notices

In response to the COVID-19 National Emergency,[6] the Departments of Labor and the Treasury (the Departments) issued the Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak (Joint Notice) (85 FR 26351, published May 4, 2020), which provides extensions of certain timeframes for group health plans and their participants and beneficiaries. The Joint Notice provides that plans must disregard certain periods beginning March 1, 2020 until 60 days after the announced end of the National Emergency or such other date announced by the Departments (Outbreak Period) in determining the time by which certain actions must be taken or are permitted to be completed.

Section 7508A(b) of the Code and § 518 of ERISA limit the Departments' authority to disregard time periods to one year. As the one-year anniversary of the Joint Notice approached, the Department of Labor, with the concurrence of the Treasury Department, issued EBSA Disaster Relief Notice 2021-01 (February 26, 2021). EBSA Disaster Relief Notice 2021-01 clarifies that disregarded periods under the Joint Notice run until the earlier of (1) one year from the date the applicable person was first eligible for relief, or (2) 60 days after the announced end of the National Emergency. The Joint Notice and EBSA Disaster Relief Notice 2021-01 are referred to collectively in this notice as the "Emergency Relief Notices."

The periods and dates subject to the Emergency Relief Notices include, among others: (1) the 60-day election period for COBRA continuation coverage under § 4980B(f)(5); (2) the date for making COBRA premium payments pursuant to § 4980B(f)(2)(B)(iii) and (C); and (3) the date for plans to provide a COBRA election notice under § 4980B(f)(6)(D).

QUESTIONS AND ANSWERS

The following questions and answers address many issues that have arisen with respect to COBRA premium assistance available for COBRA continuation coverage under the ARP. Generally, the questions and answers apply for purposes of all COBRA continuation coverage requirements under the ARP, that is, both Federal COBRA and comparable State mini-COBRA requirements. If a question or answer or a particular part of an answer is applicable only to Federal COBRA, that discussion refers specifically to Federal COBRA. COBRA premium assistance requirements apply to the employer or plan sponsor, group health plan, or issuer, depending on the facts and circumstances. For simplicity, in this notice, references in the questions and answers to an "employer" are considered references to the employer, plan, plan sponsor, group health plan, or issuer, as applicable to a particular situation, whereas references to

[6] On March 13, 2020, the President issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak declaring a national emergency, beginning March 1, 2020, under §§ 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*). By separate letter, also on March 13, 2020, the President declared under § 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.*, that an emergency existed nationwide, as the result of the COVID-19 outbreak (the COVID-19 National Emergency or National Emergency). *See* 85 FR 26351, 26352 (May 4, 2020).

"common law employer" are references to the entity that is the employer under the common law of the Assistance Eligible Individual receiving the COBRA premium assistance.

ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE

Q-1. Who qualifies as an Assistance Eligible Individual?

A-1. An Assistance Eligible Individual is any individual who is (1) a qualified beneficiary as the result of (A) the reduction of hours of a covered employee's employment or (B) the involuntary termination of a covered employee's employment (other than by reason of an employee's gross misconduct), (2) is eligible for COBRA continuation coverage for some or all of the period beginning on April 1, 2021, through September 30, 2021, and (3) elects the COBRA continuation coverage. This includes qualified beneficiaries who are the spouse or dependent child of the employee who had the reduction in hours or involuntary termination of employment resulting in a loss of coverage, as well as the employee, if that reduction in hours or involuntary termination of employment caused the qualified beneficiary to lose coverage and the other requirements are satisfied.

Q-2. Who qualifies as a qualified beneficiary for purposes of becoming an Assistance Eligible Individual?

A-2. In order to be a qualified beneficiary who is eligible to become an Assistance Eligible Individual, an individual must (1) be covered under the group health plan on the day before the reduction in hours or involuntary termination of the covered employee's employment, and (2) lose eligibility for the coverage due to the reduction in hours or involuntary termination of the covered employee's employment.[7] An individual who loses group health coverage in connection with the termination of a covered employee's employment by reason of the employee's gross misconduct is not a qualified beneficiary and, thus, cannot be an Assistance Eligible Individual.

Q-3. Can an individual become an Assistance Eligible Individual more than once?

A-3. Yes. An individual who becomes a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment, and who otherwise meets the requirements to be an Assistance Eligible Individual, is treated as an Assistance Eligible Individual regardless of whether the individual was also treated as an Assistance Eligible Individual at an earlier date.

Example: On April 1, 2021, the individual's employment is terminated, and the individual becomes a qualified beneficiary. The individual elects COBRA continuation

[7] There are exceptions to this rule in the case of a child born to or adopted by a covered employee during a period of COBRA continuation coverage or in certain circumstances where coverage was wrongfully denied to the individual (see § 54.4980B-3, Q&A-1).

coverage and becomes an Assistance Eligible Individual with COBRA continuation coverage beginning on April 1, the date the individual lost coverage. On July 1, 2021, the individual becomes eligible for coverage under a group health plan sponsored by the employer of the individual's spouse and ceases to be an Assistance Eligible Individual. The individual ceases COBRA continuation coverage as of July 1, 2021, and enrolls in coverage in the group health plan sponsored by the employer of the individual's spouse. On August 1, 2021, the individual's spouse has an involuntary termination of employment and as a result the individual and spouse lose coverage. The individual and spouse become qualified beneficiaries due to the loss of coverage and elect COBRA continuation coverage with the plan sponsored by the spouse's employer. The individual and spouse become Assistance Eligible Individuals with respect to COBRA continuation coverage as of August 1, 2021.

Q-4. May the employer require individuals to self-certify or attest that they are eligible for COBRA continuation coverage with COBRA premium assistance due to a reduction in hours or involuntary termination of employment and, if so, may the self-certification or attestation be used to assist the employer in substantiating its entitlement to the premium assistance credit?

A-4. Yes. Employers may require individuals to provide a self-certification or attestation regarding their eligibility status with respect to a reduction in hours or involuntary termination of employment, which may assist the employer in substantiating its entitlement to the credit. Employers are not required to obtain a self-certification or attestation; however, employers who claim the credit must retain in their records either a self-certification or attestation from the individual regarding the individual's eligibility status, or other documentation to substantiate that the individual was eligible for the COBRA premium assistance (see Q&A-7; see also Q&A-84).

Q-5. May the employer require individuals to self-certify or attest as to their eligibility status regarding other disqualifying group health plan coverage or Medicare, and if so, may the self-certification or attestation be used to assist the employer in substantiating its entitlement to the premium assistance credit?

A-5. Yes. Employers may require individuals to provide a self-certification or attestation as to their eligibility status for other disqualifying group health plan coverage or Medicare, which may assist the employer in substantiating its entitlement to the premium assistance credit. Employers are not required to obtain a self-certification or attestation; however, employers who claim the credit must retain in their records either a self-certification or attestation from the individual regarding the individual's eligibility status, or other documentation to substantiate that the individual was eligible for the COBRA premium assistance (see Q&A-7; see also Q&A-84).

Q-6. May an employer rely on an individual's attestation regarding a reduction in hours or involuntary termination of employment, or regarding eligibility for other disqualifying coverage, for the purpose of substantiating eligibility for the premium assistance credit?

A-6. Yes. An employer may rely on an individual's attestation regarding a reduction in hours or involuntary termination of employment, and eligibility for other disqualifying coverage, for the purpose of substantiating eligibility for the credit, unless the employer has actual knowledge that the individual's attestation is incorrect.

Q-7. Must an employer keep a record of an individual's attestation?

A-7. Yes. If the employer is relying on an individual's attestation regarding a reduction in hours or involuntary termination of employment, or regarding eligibility for other disqualifying coverage, the employer must keep a record of the attestation in order to substantiate eligibility for the premium assistance credit. An employer may rely on other evidence to substantiate eligibility, such as records concerning a reduction in hours or involuntary termination of employment.

Q-8. Does a qualifying event other than a reduction in hours or an involuntary termination of employment qualify an individual for COBRA premium assistance?

A-8. No. Qualifying events other than a reduction in hours or an involuntary termination of employment, such as divorce or a covered dependent child ceasing to be a dependent child under the generally applicable terms of the plan (such as loss of dependent status due to aging out of eligibility), are not events qualifying an individual for COBRA premium assistance.

Q-9. If a potential Assistance Eligible Individual was eligible for other group health plan coverage before April 1, 2021, but on and after April 1, 2021, has not been permitted to enroll in that other group health plan coverage, is COBRA premium assistance available for the individual's COBRA continuation coverage?

A-9. Yes. COBRA premium assistance is available to a potential Assistance Eligible Individual until the individual is permitted to enroll in coverage under any other group health plan (including during a waiting period for any other plan).

Example 1: An individual's employment was involuntarily terminated and as a result the individual lost health coverage on October 1, 2020. On November 1, 2020, the individual was eligible to enroll in the group health plan provided by the employer of the individual's spouse as part of that group health plan's annual open enrollment period, but the individual did not enroll. The open enrollment period for the spouse's group health plan ended December 1, 2020, and the individual has not been permitted to enroll in coverage under the spouse's group health plan at any time on or after April 1, 2021. Under these facts, the individual is not considered eligible for coverage under the plan of the spouse's employer until the first available enrollment period, if any, that begins on or after April 1, 2021. Therefore, the individual may elect COBRA continuation coverage under the plan of the individual's former employer during the ARP extended election period and may receive COBRA premium assistance as an Assistance Eligible Individual under the plan of the individual's former employer,

beginning on or after April 1, 2021.

Example 2: Same facts as Example 1, except that the spouse's group health plan has an open enrollment period from June 1, 2021, to June 14, 2021, with coverage elected during the open enrollment period beginning July 1, 2021. The spouse does not elect coverage for the individual under the plan of the spouse's employer, and the individual continues COBRA continuation coverage under the plan of the individual's former employer. Under these facts, COBRA premium assistance is not available for the individual's COBRA continuation coverage under the plan of the individual's former employer for periods of coverage beginning on or after July 1, 2021 (the date on which the individual was first eligible to enroll in the group health plan of the spouse's employer).

Example 3: An individual's employment was involuntarily terminated and as a result the individual lost health coverage on October 1, 2020. The individual received a COBRA notice on October 1, 2020. The individual qualified for a special enrollment period for loss of coverage under the group health plan of the spouse's employer. Under the Emergency Relief Notices, the individual remains eligible to elect COBRA continuation coverage or enroll in the spouse's plan. Additionally, on November 1, 2020, the individual was eligible to enroll in the spouse's plan under that plan's annual open enrollment period. The open enrollment period for the spouse's plan ended December 1, 2020. However, the individual remains eligible to enroll in coverage under the spouse's plan under the loss of coverage special enrollment period due to the Emergency Relief Notices. Under these facts, the individual is considered eligible for coverage under the plan of the spouse's employer due to the special enrollment period for loss of coverage as extended by the Emergency Relief Notices. Therefore, while the individual could elect COBRA continuation coverage from the former employer's plan, the individual may not receive COBRA premium assistance as an Assistance Eligible Individual under the plan of the individual's former employer.

Q-10. If a potential Assistance Eligible Individual does not elect COBRA continuation coverage and enrolls in coverage under another group health plan, but has ceased to be covered by the other group health plan as of April 1, 2021, is COBRA premium assistance available if the individual elects COBRA continuation coverage under the ARP extended election period?

A-10. Yes. Enrollment in other group health plan coverage before electing COBRA continuation coverage does not end the period of eligibility for COBRA continuation coverage. If the individual is no longer covered by (or eligible to enroll in) the other group health plan coverage as of April 1, 2021, that prior coverage by a group health plan does not disqualify the individual from COBRA premium assistance. However, beginning on April 1, 2021, coverage by (or eligibility to enroll in) another group health plan would disqualify the individual from COBRA premium assistance, even though it does not end the period of eligibility for COBRA continuation coverage.

Q-11. If an Assistance Eligible Individual is eligible for other disqualifying group

health plan coverage or Medicare beginning on or after April 1, 2021, but does not enroll in either, is COBRA premium assistance available for the individual's COBRA continuation coverage for periods of coverage beginning on or after the date the individual is first eligible for the other coverage?

A-11. No. (However, if the other coverage for which the individual is eligible is COBRA continuation coverage, that coverage will not cause the individual to be ineligible for the COBRA premium assistance.)

Example 1: An Assistance Eligible Individual enrolled in COBRA continuation coverage begins employment with a new employer and is eligible to enroll in the employer's group health plan, with coverage effective the first day of the next month. The Assistance Eligible Individual declines the coverage and continues COBRA continuation coverage. Although eligibility for other group health coverage does not end the individual's eligibility for Federal COBRA continuation coverage, eligibility for COBRA premium assistance ends as of the first day of the next month.

Example 2: Same facts as Example 1, except that the new employer's group health plan imposes a 2-month waiting period, with coverage starting as of the first day of the month immediately following the end of the waiting period. The individual's eligibility for COBRA premium assistance ends as of the first day of the month immediately following the end of the waiting period, even though the individual declined coverage under the new employer's group health plan. The result is the same if the individual enrolls in the new employer's group health plan; the individual is not eligible for COBRA premium assistance as of the first day of the month immediately following the end of the waiting period.

Example 3: Two Assistance Eligible Individuals who are spouses are enrolled in COBRA continuation coverage. One spouse begins employment with a new employer and is eligible to enroll in the employer's group health plan with self-only or family coverage, with coverage effective the first day of the next month. That spouse enrolls in self-only coverage, and the other spouse continues COBRA continuation coverage. Although the individual is allowed to continue Federal COBRA continuation coverage, the individual is no longer eligible for COBRA premium assistance as of the first day of the next month because the individual is eligible for coverage under the group health plan of the spouse's employer.

Q-12. Is an individual currently enrolled in Medicare who is a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment able to elect COBRA continuation coverage and receive COBRA premium assistance?

A-12. No. An individual currently enrolled in Medicare who becomes a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment may be eligible to elect COBRA continuation coverage but is not eligible for COBRA premium assistance.

Q-13. Is an individual who is a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment but who is currently enrolled in individual health insurance coverage through a Health Insurance Exchange eligible to elect COBRA continuation coverage and receive COBRA premium assistance?

A-13. Yes. An individual who is a qualified beneficiary as the result of a reduction in hours or involuntary termination of employment but who is currently enrolled in individual health insurance coverage through a Health Insurance Exchange may be eligible to elect COBRA continuation coverage and for COBRA premium assistance. However, an individual is not eligible for a premium tax credit to help pay for the cost of Exchange coverage during any month that the individual is enrolled in COBRA continuation coverage. An individual who elects COBRA continuation coverage (with or without COBRA premium assistance) and who is enrolled in coverage through a Health Insurance Exchange with advance payments of the premium tax credit (APTC) may be required to repay the APTC for the overlap months. See Q&A-44 for information regarding the waiver of COBRA continuation coverage, which may assist individuals in this situation.

Q-14. Does a reduction in hours or involuntary termination of employment that follows an earlier qualifying event, such as a divorce, make the qualified beneficiary from the first qualifying event a potential Assistance Eligible Individual?

A-14. No. If COBRA continuation coverage is based on a qualifying event other than a reduction in hours or involuntary termination of employment, the later reduction in hours or involuntary termination of employment of the employee does not cause a loss of coverage, and the qualified beneficiary therefore does not become a potential Assistance Eligible Individual.

Example: An employee is divorced and the divorce results in a loss of health coverage for the spouse of the employee (but not the employee) on November 1, 2020. The spouse is eligible for and timely elects COBRA continuation coverage. On December 1, 2020, the employee's employment is involuntarily terminated and, as a result, the employee loses health coverage. The employee elects COBRA continuation coverage that begins December 1, 2020. The spouse is not an Assistance Eligible Individual because the qualifying event with respect to the spouse's COBRA continuation coverage is the divorce, rather than the employee's involuntary termination of employment. Moreover, the employee's involuntary termination of employment is not a qualifying event for the spouse. The employee is an Assistance Eligible Individual, however, because the qualifying event with respect to the employee is the involuntary termination of employment.

Q-15. If, as the result of an involuntary termination of employment, an individual loses coverage under a health plan that is not subject to COBRA continuation coverage requirements (as defined under the ARP) and the individual is then offered and elects continuation coverage provided voluntarily by the employer, is COBRA premium

assistance available with respect to that continuation coverage?

A-15. No. In order for COBRA premium assistance and the related premium assistance credit to be available, the plan must be subject to COBRA continuation coverage requirements as defined under the ARP. Examples of health plans that may not be subject to either Federal COBRA or State mini-COBRA include a self-insured church plan or a small employer plan. (Treas. Reg. § 54.4980B-2, Q&A-5 provides that a small-employer plan excluded from Federal COBRA is a group health plan maintained by an employer that normally employed fewer than 20 employees during the preceding calendar year.)

Q-16. Is COBRA premium assistance available with respect to temporary continuation coverage elected under the Federal Employees Health Benefits (FEHB) program pursuant to 5 U.S. Code § 8905a by an individual who lost coverage due to a reduction in hours or an involuntary termination of employment?

A-16. No. Continuation coverage elected under the FEHB program pursuant to 5 U.S. Code § 8905a is not COBRA continuation coverage for purposes of § 9501 of the ARP and so COBRA premium assistance is not available with respect to that coverage.

Q-17. Is COBRA premium assistance available to individuals who have elected and remained on COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA, to the extent those additional periods of coverage fall between April 1, 2021, and September 30, 2021, if the original qualifying event was a reduction in hours or an involuntary termination of employment?

A-17. Yes. If the original qualifying event was a reduction in hours or an involuntary termination of employment, COBRA premium assistance is available to individuals who have elected and remained on COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA, to the extent the additional periods of coverage fall between April 1, 2021, and September 30, 2021.

Q-18. If retiree health coverage (that is not COBRA continuation coverage) is offered to a potential Assistance Eligible Individual, how does that offer affect eligibility for COBRA premium assistance?

A-18. The effect on eligibility for COBRA premium assistance depends on whether the retiree health coverage is offered under the same group health plan as the COBRA continuation coverage or under a separate group health plan. If offered under the same group health plan, the offer of the retiree health coverage has no effect on a potential Assistance Eligible Individual's eligibility for COBRA premium assistance under the ARP. However, a potential Assistance Eligible Individual is not eligible for COBRA premium assistance if the individual is offered retiree health coverage that is not COBRA continuation coverage and is coverage under a separate group health plan

than the plan under which the COBRA continuation coverage is offered.

The COBRA regulations provide rules for determining whether health benefits provided by an employer or employee organization constitute one or more group health plans for purposes of Federal COBRA. See Treas. Reg. § 54.4980B-2, Q&A-6. Under those rules, all health benefits provided by an organization constitute a single group health plan unless it is clear from the instruments governing the arrangement or arrangements that the benefits are being provided under separate plans, and the arrangement or arrangements are operated pursuant to such instruments as separate plans. (See Q&A-36 for more information regarding retiree health coverage.)

Q-19. Does COBRA premium assistance apply to portions of the premium attributable to COBRA continuation coverage for individuals who are not qualified beneficiaries?

A-19. No. COBRA premium assistance is limited to premiums attributable to COBRA continuation coverage for Assistance Eligible Individuals. For purposes of Federal COBRA, a qualified beneficiary with respect to a covered employee under a group health plan is the spouse of the employee or a dependent child of the employee if the spouse or dependent child was a beneficiary under the plan on the day before the qualifying event. A child who is born to or adopted by the covered employee during the period of COBRA continuation coverage may also be a qualified beneficiary. Otherwise, a spouse or dependent child who was not a beneficiary under the plan before the qualifying event is not a qualified beneficiary. In addition, if an individual does not meet the definition of a qualified beneficiary under Federal COBRA, the individual's coverage is not eligible for COBRA premium assistance, even though the individual may continue to be covered or be eligible to continue coverage under a plan by its terms, or as required by State law. (If there are additional individuals enrolled in COBRA continuation coverage who are ineligible for COBRA premium assistance, see Q&A-68 for information regarding calculation of the premium assistance credit.)

Q-20. If an individual makes or owes COBRA premium payments for retroactive COBRA continuation coverage elected under the Emergency Relief Notices for which the payment due date has been extended, does that make the individual ineligible for premium assistance?

A-20. No. If an individual elected retroactive COBRA continuation coverage under the Emergency Relief Notices, neither making nor owing COBRA premium payments for retroactive COBRA continuation coverage for which the payment due date has been extended makes an individual ineligible for COBRA premium assistance. However, an individual may lose retroactive COBRA continuation coverage (as noted in Q&A-58) for the months for which the premium is not timely paid under the Emergency Relief Notices. Any late or unpaid premiums for retroactive COBRA continuation coverage will not affect an individual's eligibility for COBRA premium assistance.

REDUCTION IN HOURS

Q&A-21 through Q&A-23 apply solely for purposes of determining whether there is a reduction in hours under § 9501 of the ARP and § 6432 of the Code, and other provisions of the Code added or amended by § 9501 of the ARP, but not for any other purposes of the Code or any other law.

Q-21. May a qualified beneficiary whose qualifying event is a voluntary reduction in hours be a potential Assistance Eligible Individual who qualifies for COBRA premium assistance?

A-21. Yes. An employee's reduction in hours would cause the qualified beneficiary to be a potential Assistance Eligible Individual regardless of whether the reduction in hours is voluntary or involuntary.

Q-22. Is a qualified beneficiary whose qualifying event is a furlough a potential Assistance Eligible Individual who qualifies for COBRA premium assistance?

A-22. Yes. In this notice, the term "furlough" means a temporary loss of employment or complete reduction in hours with a reasonable expectation of return to employment or resumption of hours (for example, due to an expected business recovery of the employer) such that the employer and employee intend to maintain the employment relationship. A furlough may be a reduction in hours regardless of whether the employer initiated the furlough, or the individual participated in a furlough process analogous to a window program (see Q&A-29).

Q-23. Does a reduction in hours include a work stoppage as the result of a lawful strike initiated by employees or their representatives or a lockout initiated by the employer?

A-23. Yes. A reduction in hours includes a work stoppage, either as the result of a lawful strike initiated by employees or their representatives or a lockout initiated by the employer, as long as at the time the work stoppage or the lawful strike commences the employer and employee intend to maintain the employment relationship.

INVOLUNTARY TERMINATION OF EMPLOYMENT

Q&A-24 through Q&A-34 apply solely for purposes of determining whether there is an involuntary termination of employment under § 9501 of the ARP and § 6432 of the Code, and other provisions of the Code added or amended by § 9501 of the ARP, but not for any other purposes under the Code or any other law.

Q-24. What circumstances constitute an involuntary termination of employment for purposes of the definition of an Assistance Eligible Individual?

A-24. An involuntary termination of employment means a severance from employment due to the independent exercise of the unilateral authority of the employer

to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. For application of the involuntary termination of employment standard with respect to the failure to renew an employment agreement or similar contract, see Q&A-34. In addition, an employee-initiated termination of employment constitutes an involuntary termination of employment for purposes of COBRA premium assistance if the termination of employment constitutes a termination for good reason due to employer action that results in a material negative change in the employment relationship for the employee analogous to a constructive discharge.

The determination of whether a termination is involuntary is based on the facts and circumstances. For example, if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that the employee was willing and able to continue performing services, so that, absent the voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary.

Q-25. Does involuntary termination of employment include an employer's action to end an individual's employment while the individual is absent from work due to illness or disability, if that action would otherwise constitute an involuntary termination of employment?

A-25. Yes. Involuntary termination of employment occurs when the employer takes action to terminate the individual's employment, if before the action there is a reasonable expectation that the employee will return to work after the illness or disability has subsided. However, mere absence from work due to illness or disability before the employer has taken action to end the individual's employment is not an involuntary termination of employment (see Q&A-32). Whether the absence from work is a reduction in hours potentially resulting in COBRA continuation coverage depends on whether the absence from work results in a loss of coverage.

Q-26. Does an involuntary termination of employment include retirement?

A-26. Generally, no. In general, a retirement is a voluntary termination of employment. However, if the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's employment, that the employee was willing and able to continue employment, and that the employee had knowledge that the employee would be terminated absent the retirement, the retirement is an involuntary termination of employment.

Q-27. Does involuntary termination of employment include involuntary termination of employment for cause?

A-27. Yes. However, if the termination of employment is due to gross misconduct of the employee, the termination is not a qualifying event and the loss of the health coverage of the employee and other family members by reason of the

employee's termination of employment does not lead to eligibility for COBRA continuation coverage. Therefore, the loss of coverage due to a termination of employment for gross misconduct will not result in an individual becoming a potential Assistance Eligible Individual.

Q-28. Does an involuntary termination of employment include a resignation as the result of a material change in the geographic location of employment for the employee?

A-28. Yes.

Q-29. Does an involuntary termination of employment include participation by an employee in a window program under which employees with impending terminations of employment are offered a severance arrangement to terminate employment within a specified period of time (the "window")?

A-29. Yes. An involuntary termination of employment includes participation in a window program that meets the requirements of Treas. Reg. § 31.3121(v)(2)-1(b)(4)(v). See those regulations for further information including certain time limits applicable to the window and limits on the ability to have successive windows.

Q-30. Does an involuntary termination of employment occur because the termination of employment is for "good reason" if an employee terminates employment because of concerns about workplace safety due to a health condition of the employee or a family member of the employee?

A-30. In general, an employee's termination of employment due to general concerns about workplace safety is not treated as an involuntary termination of employment. However, a termination of employment would be involuntary if the employee can demonstrate that the employer's actions (or inactions) resulted in a material negative change in the employment relationship analogous to a constructive discharge. A departure due to the personal circumstances of the employee unrelated to an action or inaction of the employer, such as a health condition of the employee or a family member, inability to locate daycare, or other similar issues, generally will not rise to the level of being analogous to a constructive discharge absent the employer's failure to either take a required action or provide a reasonable accommodation.

Q-31. Is an individual whose qualifying event is an employee-initiated termination of employment because a child is unable to attend school or because another childcare facility is closed due to the COVID-19 National Emergency a potential Assistance Eligible Individual?

A-31. No. However, if the individual maintains the ability to return to work, and the facts and circumstances indicate that the qualifying event is a temporary leave of absence such that the employer and employee intend to maintain the employment relationship, the qualifying event is a voluntary reduction in hours and the individual

would be a potential Assistance Eligible Individual.

Q-32. Does an involuntary termination of employment include a termination of employment initiated by the employee in response to an involuntary material reduction in hours that did not result in a loss of coverage?

A-32. Yes. For purposes of COBRA premium assistance, an employee-initiated termination of employment in response to an involuntary material reduction in hours is treated as a termination for good reason. Thus, an employee-initiated termination of employment due to an involuntary material reduction in hours would be an involuntary termination of employment for purposes of COBRA premium assistance.

Q-33. Is the death of an employee an involuntary termination of employment that makes qualified beneficiaries such as the spouse and dependent children of the employee potential Assistance Eligible Individuals?

A-33. No. The death of an employee is not a reduction in hours or an involuntary termination of employment, so a loss of coverage due to the employee's death would not result in the spouse and dependent children of the employee being potential Assistance Eligible Individuals.

Q-34. Does an involuntary termination of employment include an employer's decision not to renew an employee's contract, including for an employee whose employer is a staffing agency?

A-34. Generally, yes. An employer's decision not to renew an employee's contract will be considered an involuntary termination of employment if the employee was otherwise willing and able to continue the employment relationship and was willing either to execute a contract with terms similar to those of the expiring contract or to continue employment without a contract. However, if the parties understood at the time they entered into the expiring contract, and at all times when services were being performed, that the contract was for specified services over a set term and would not be renewed, the completion of the contract without it being renewed is not an involuntary termination of employment.

COVERAGE ELIGIBLE FOR COBRA PREMIUM ASSISTANCE

Q-35. Is COBRA premium assistance available for COBRA continuation coverage under a vision-only or dental-only plan?

A-35. Yes. COBRA premium assistance is available for COBRA continuation coverage of any group health plan, except a health FSA under § 106(c) offered under a § 125 cafeteria plan. Group health plans include vision-only and dental-only plans, regardless of whether the employer pays for a portion of the premiums for active employees. COBRA premium assistance is not available for continuation coverage offered by employers for non-health benefits that are not subject to Federal COBRA

continuation coverage requirements, such as group-term life insurance. (See Q&A-55 regarding eligibility for COBRA continuation coverage for distinct benefit options).

Q-36. May retiree health coverage be treated as COBRA continuation coverage for which COBRA premium assistance is available?

A-36. Yes, but only if the retiree coverage is offered under the same group health plan as the coverage made available to similarly situated active employees, though the amount charged for the retiree coverage may be higher than that charged to active employees. In that case, the retiree coverage may still be eligible for the COBRA premium assistance as long as the amount charged to a retiree does not exceed the maximum amount allowed under Federal COBRA.

Q-37. Is COBRA premium assistance available for COBRA continuation coverage under a health reimbursement arrangement (HRA)?

A-37. Yes. Note that, for purposes of the ARP, COBRA continuation coverage does not include a health FSA provided through a § 125 cafeteria plan paid for with salary reduction amounts. Even though, under some circumstances, an HRA may qualify as a health FSA under § 106(c)(2), such an HRA would not be excluded from the ARP's definition of COBRA continuation coverage because the HRA would be paid for with employer contributions, not salary reduction amounts contributed through a § 125 cafeteria plan.

Q-38. Does eligibility for coverage under an HRA end the period of COBRA premium assistance under the ARP in the same way as eligibility for coverage under any other group health plan?

A-38. Yes, unless the HRA qualifies as a health FSA under § 106(c)(2). Under § 106(c)(2)(B), a health FSA is health coverage under which the maximum amount of reimbursement that is reasonably available to a participant for the coverage is less than 500 percent of the value of the coverage. For this purpose, the maximum amount of reimbursement that is reasonably available generally would be the balance of the HRA, and the value of the HRA coverage generally would be the applicable premium for COBRA continuation of the HRA coverage, not taking into account COBRA premium assistance.

Q-39. Is COBRA premium assistance available for COBRA continuation coverage under an HRA integrated with individual health insurance coverage (an individual coverage HRA)?

A-39. Yes. In the case of an individual coverage HRA, the COBRA continuation coverage applies only to the individual coverage HRA and not to the underlying individual health insurance coverage. The qualified beneficiary with COBRA continuation coverage must still incur and substantiate covered medical care expenses (which may include health insurance premiums) to be reimbursed by the individual

coverage HRA. Although an individual coverage HRA may include an HRA integrated with Medicare, a qualified beneficiary eligible for Medicare cannot be an Assistance Eligible Individual; thus, COBRA premium assistance is not available if the COBRA continuation coverage is under an individual coverage HRA integrated with Medicare. (See Q&A-70 regarding the calculation of the premium assistance credit in the case of an individual coverage HRA.)

Q-40. Is COBRA premium assistance available for coverage under a QSEHRA as defined in § 9831(d)?

A-40. No. A QSEHRA is not a group health plan eligible for COBRA continuation coverage.

Q-41. Pursuant to § 9501(a)(1)(B) of the ARP, a plan sponsor allows an Assistance Eligible Individual to enroll in coverage under a plan that is different than the coverage the individual was enrolled in at the time of the qualifying event. Does the requirement that the premium for the different coverage elected not exceed the premium for coverage that the individual was enrolled in at the time of the qualifying event simply limit the amount of the COBRA premium assistance, thereby allowing the individual to elect a plan with a higher premium but restricting the amount of COBRA premium assistance to the amount of the premium for the coverage that the individual was enrolled in at the time of the qualifying event (with the individual or employer paying the excess over the COBRA premium assistance)?

A-41. No. Unless otherwise allowed under the COBRA regulations or other applicable law, coverage with a premium greater than the premium for the coverage that the individual was enrolled in at the time of the qualifying event is not eligible for the COBRA premium assistance. However, the requirements in § 9501(a)(1)(B) of ARP do not apply to a situation in which the plan in which the individual was enrolled at the time of the qualifying event is not available (see Q&A-42).

Example: An individual is an Assistance Eligible Individual who was enrolled in a plan with an $800 per month COBRA premium at the time of the qualifying event. The employer sponsoring the plan permits Assistance Eligible Individuals to enroll in other coverage pursuant to § 9501(a)(1)(B) of the ARP. Three other coverages are offered to active employees similarly situated to the individual, none of which are excepted benefits, a QSEHRA or a health FSA. The COBRA premiums for the other coverages are $700, $750 or $1,000 per month. The individual may enroll in the $700 or $750 per month options with COBRA premium assistance. If the employer allows, the individual may enroll in the $1,000 per month coverage option but that coverage will not be eligible for the COBRA premium assistance. (But see Q&A-69 regarding the availability of COBRA premium assistance for an Assistance Eligible Individual electing a different benefit package in compliance with § 54.4980B-8, Q&A-2(c), such as during open enrollment.)

Q-42. If a potential Assistance Eligible Individual elects COBRA continuation

coverage during the ARP extended election period but the employer no longer offers the health plan that previously covered the individual, must the employer place that individual in the plan most similar to the prior plan, provided the employer offers other health plans?

A-42. Yes. If an employer no longer offers the health plan that previously covered the potential Assistance Eligible Individual, the individual must be offered the opportunity to elect the plan that a similarly situated active employee would have been offered that is most similar to the previous plan that covered the individual, even if the premium for the plan is greater than the premium for the previous plan. In this case, the other coverage elected by the individual is eligible for the COBRA premium assistance, regardless of the premium for that coverage.

BEGINNING OF COBRA PREMIUM ASSISTANCE PERIOD

Q-43. When is an Assistance Eligible Individual first entitled to receive COBRA premium assistance?

A-43. An Assistance Eligible Individual is entitled to receive COBRA premium assistance as of the first applicable period of coverage beginning on or after April 1, 2021. For this purpose, a period of coverage is a monthly or shorter period with respect to which premiums are normally charged by the plan or issuer with respect to such coverage provided to employees and qualified beneficiaries. The start date of the first period of coverage beginning on or after April 1, 2021, depends on the period with respect to which premiums would have been normally charged by the plan if the individual had paid the premium.

Example: Plan provides that employees and qualified beneficiaries pay premiums for health coverage, including COBRA continuation coverage, on a biweekly basis for a corresponding two-week period of coverage. For March 2021, the last two-week period of coverage is from March 28 through April 10, 2021, followed by a period of coverage from April 11 through April 24, 2021. COBRA premium assistance could apply with respect to the premium for the period of coverage beginning April 11, 2021.

Q-44. Must an Assistance Eligible Individual electing COBRA continuation coverage under the ARP extended election period begin coverage as of the first period of coverage beginning on or after April 1, 2021?

A-44. No. While a group health plan must make COBRA continuation coverage with COBRA premium assistance available as of the first period of coverage beginning on or after April 1, 2021, in the case of an Assistance Eligible Individual electing COBRA continuation coverage under the ARP extended election period, the Assistance Eligible Individual 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.

Example: An individual's employment was involuntarily terminated and as a result the individual lost health coverage on October 1, 2020. The individual received the COBRA election notice on October 1, 2020. The individual enrolls in an individual health insurance policy on the Health Insurance Exchange, effective on November 1, 2020. The individual receives the notice of the ARP extended election period on May 1, 2021. At that time, the individual is not eligible to enroll in any other group health plan or Medicare. The individual may elect COBRA continuation coverage either retroactively to October 1, 2020, retroactively to April 1, 2021, or prospectively. The individual elects COBRA continuation coverage prospectively from June 1, 2021, and contacts the Health Insurance Exchange to end the Exchange health insurance policy as of May 31, 2021. The individual is an Assistance Eligible Individual as of June 1, 2021. Because there is no overlapping coverage, the individual is not required to repay any APTC when the individual files his or her 2021 tax return.

Q-45. If an employer is no longer subject to Federal COBRA due to a reduction in the number of employees, is the employer still required to provide the ARP extended election period to individuals who had a qualifying event that was a reduction in hours or involuntary termination of employment while the employer was subject to COBRA, and are those qualified beneficiaries potential Assistance Eligible Individuals?

A-45. Yes. Whether a qualified beneficiary is eligible to elect Federal COBRA continuation coverage is determined by the employer's status at the time of the qualifying event, and whether a qualified beneficiary is a potential Assistance Eligible Individual who may elect COBRA continuation coverage during the ARP extended election period is determined by whether the qualified beneficiary was eligible to elect COBRA continuation coverage at the time of the qualifying event.

Example: Based on the number of employees from the preceding calendar year, an employer is not a small employer for the 2020 calendar year, but is a small employer for calendar year 2021. As a result, Federal COBRA requirements apply to the employer for calendar year 2020 but not calendar year 2021. An individual has a qualifying event that is an involuntary termination of employment in November of 2020. Because the qualified beneficiary's qualifying event occurred during the 2020 calendar year when the employer was not a small employer and the plan was subject to Federal COBRA requirements, the employer is required to provide the ARP extended election period and the qualified beneficiary is eligible to elect Federal COBRA continuation coverage with COBRA premium assistance.

Q-46. Is COBRA premium assistance available for periods of coverage from April 1, 2021, through September 30, 2021, if the election for COBRA continuation coverage is made after September 30, 2021?

A-46. Yes, but only if the individual makes the election within the applicable 60-day election period. A qualified beneficiary who is a potential Assistance Eligible Individual has 60 days to elect COBRA continuation coverage after being provided either the general notice under § 9501(a)(5)(A) of the ARP (for a qualifying event after

April 1, 2021), or the notice regarding the ARP extended election period under § 9501(a)(5)(C) (with respect to a qualifying event before April 1, 2021). If the individual makes the COBRA election after September 30, 2021, but within the applicable 60-day period, then the individual is entitled to COBRA premium assistance through the earlier of the last period of coverage beginning on or before September 30, 2021, or the date that COBRA continuation coverage expires. COBRA premium assistance would start with the later of the first period of coverage beginning on or after April 1, the date of the qualifying event, or the date the qualified beneficiary elects to begin COBRA continuation coverage.

END OF COBRA PREMIUM ASSISTANCE PERIOD

Q-47. For how long is COBRA premium assistance available to an Assistance Eligible Individual?

A-47. COBRA premium assistance applies until the earliest of (1) the first date the Assistance Eligible Individual becomes eligible for other group health plan coverage (with certain exceptions) or Medicare coverage, (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.

Example: A plan provides that employees and qualified beneficiaries pay premiums for health coverage, including COBRA continuation coverage, on a biweekly basis for a corresponding two-week period of coverage. For September 2021, the last two-week period of coverage is from September 19 through October 2, 2021. COBRA premium assistance would apply with respect to the entire period of coverage beginning September 19, even though the period of coverage includes coverage for October 1 and October 2, 2021.

Q-48. Once subsidized COBRA continuation coverage ends with the period of coverage including September 30, 2021, does coverage for a qualified beneficiary who was an Assistance Eligible Individual automatically continue with unsubsidized COBRA and, if so, when is the payment for the first subsequent period of coverage due?

A-48. COBRA continuation coverage automatically continues, and the payment for the first period of coverage after September 30, 2021 will be timely if paid according to the terms of the plan or coverage, subject to applicable COBRA continuation coverage requirements taking into account the Emergency Relief Notices.

Q-49. What are the consequences if an Assistance Eligible Individual fails to provide notice that the individual is no longer eligible for COBRA premium assistance due to eligibility for coverage under another group health plan or Medicare?

A-49. An Assistance Eligible Individual who fails to provide notice may be subject to a Federal tax penalty of $250 for each failure to notify the employer, plan, or issuer. If the failure to provide notice is fraudulent, the penalty will be the greater of

$250 or 110 percent of the COBRA premium assistance improperly received. The penalty will not apply if the individual's failure to provide notice was due to reasonable cause and not to willful neglect. The employer, plan, or issuer who received the premium assistance credit in the amount of the excess COBRA premium assistance has no right to the penalty payment.

Q-50. Does the death of an employee who has had a reduction in hours or involuntary termination of employment end the eligibility for COBRA premium assistance of any qualified beneficiary spouse and dependent children?

A-50. No.

EXTENDED ELECTION PERIOD

Q&A-51 through Q&A-55 apply only for purposes of Federal COBRA, unless the Q&A indicates otherwise.

Q-51. If an employee had a reduction in hours or an involuntary termination of employment before April 1, 2021 and elected self-only COBRA continuation coverage, may a spouse or a dependent child who is a qualified beneficiary in connection with the reduction in hours or involuntary termination of employment elect COBRA continuation coverage and receive COBRA premium assistance under the ARP extended election period?

A-51. Yes. A qualified beneficiary who does not have an election of COBRA continuation coverage in effect on April 1, 2021, but who would have been an Assistance Eligible Individual if the election were in effect, may elect COBRA continuation coverage under the ARP extended election period. A spouse or dependent child who is a beneficiary under a group health plan that covers an employee on the day before the reduction in hours or involuntary termination of employment of the employee also would have been an Assistance Eligible Individual if the spouse or dependent child had elected COBRA continuation coverage. Thus, a spouse or dependent child in this situation has a second election opportunity, notwithstanding the prior election of self-only COBRA continuation coverage by the employee.

Q-52. Is the ARP extended election period available to an individual if the continuation coverage is provided only under State law (and not Federal COBRA)?

A-52. No. The ARP extended election period under § 9501(a)(4)(A) applies only to a group health plan that is subject to Federal COBRA. It does not apply to plans subject to continuation coverage requirements under a State program that provides comparable continuation coverage. However, if a State law or program provides for a similar extended election right and an individual otherwise satisfies the requirements to be an Assistance Eligible Individual, COBRA premium assistance is available for any resulting period of COBRA continuation coverage for periods of coverage from April 1, 2021, through September 30, 2021.

Q-53. May a potential Assistance Eligible Individual whose qualifying event occurred before April 1, 2021, who still has an open COBRA continuation coverage election period independent of the ARP (including an extended period for electing coverage under the Emergency Relief Notices), elect COBRA continuation coverage under the ARP extended election period and receive COBRA continuation coverage with COBRA premium assistance that starts with a period of coverage beginning only on or after April 1, 2021?

A-53. Yes. The extended election period for electing COBRA continuation coverage is available for a potential Assistance Eligible Individual if the qualifying event occurred before April 1, 2021, and if the individual has not yet elected COBRA continuation coverage, including for an individual who has an open COBRA election period as of April 1, 2021. If the individual elects retroactive COBRA continuation coverage under the original COBRA election period available prior to the ARP extended election period under Federal COBRA, COBRA continuation coverage is retroactive to that individual's loss of coverage. COBRA premium assistance, however, does not apply to periods of coverage prior to the first period of coverage beginning on or after April 1, 2021.

Example: An individual is involuntarily terminated from employment on December 15, 2020 and receives the COBRA election notice on January 4, 2021. As of April 1, 2021, the individual has not elected COBRA continuation coverage. The individual must receive a notice of the ARP extended election period for COBRA continuation coverage. The individual may elect COBRA continuation coverage under the original COBRA election period (as extended by the Emergency Relief Notices) but will be eligible for COBRA premium assistance only for periods of coverage beginning on or after April 1, 2021. Alternatively, the individual may decline to elect COBRA continuation coverage under the original COBRA election period (as extended by the Emergency Relief Notices) and instead elect COBRA continuation coverage under the ARP extended election period only for periods of coverage beginning on or after April 1, 2021.

Q-54. How does an election of COBRA continuation coverage under the ARP extended election period apply in the case of an HRA if the Assistance Eligible Individual elects COBRA continuation coverage solely under the ARP extended election period, and declines to elect coverage that is retroactive to the qualifying event?

A-54. With respect to an election of COBRA continuation coverage for an HRA solely under the ARP extended election period, the HRA may no longer reimburse expenses incurred after the qualifying event that led to the loss of coverage and before the first day of the first period of coverage beginning on or after April 1, 2021. Generally, qualified beneficiaries electing COBRA continuation coverage with respect to HRA coverage have access to the same level of reimbursements during COBRA continuation coverage as was available immediately before the qualifying event. Thus, a qualified beneficiary electing COBRA continuation coverage with respect to an HRA under the ARP extended election period will have access to the same level of reimbursements as

the qualified beneficiary had immediately before the qualifying event based on the amount originally available for the HRA plan year and reimbursements for expenses incurred before the qualifying event, reduced by the amount of any reimbursements made after the qualifying event; for example, reimbursements for expenses incurred before the qualifying event that were submitted and reimbursed after the qualifying event.

Q-55. If a qualified beneficiary due to a reduction of hours or an involuntary termination of employment was previously offered COBRA continuation coverage with respect to both comprehensive health coverage and dental-only or vision-only coverage and the qualified beneficiary elected COBRA continuation coverage only with respect to the dental-only or vision-only coverage, is the qualified beneficiary still a potential Assistance Eligible Individual who must be offered the ARP extended election with respect to the comprehensive health coverage?

A-55. Yes. A qualified beneficiary whose qualifying event was a reduction in hours or an involuntary termination of employment is a potential Assistance Eligible Individual and must be offered the ARP extended election period with respect to any health coverage the qualified beneficiary was enrolled in prior to the qualifying event and for which the individual does not have a COBRA election in effect on April 1, 2021, even if the qualified beneficiary previously elected COBRA continuation coverage with respect to other coverage in which the qualified beneficiary was previously enrolled. If the qualified beneficiary elects additional COBRA continuation coverage pursuant to the ARP extended election period, the qualified beneficiary is an Assistance Eligible Individual with respect to all elected COBRA continuation coverage.

EXTENSIONS UNDER THE EMERGENCY RELIEF NOTICES

Q-56. What is the election period for a potential Assistance Eligible Individual to make the election for COBRA premium assistance if the individual is also eligible to elect COBRA continuation coverage under the Emergency Relief Notices?

A-56. If a qualified beneficiary received a COBRA notice under § 4980B before April 1, 2021, and also receives the notice of the ARP extended election period, then, within 60 days of receiving the notice of the ARP extended election period, the qualified beneficiary may elect COBRA continuation coverage with COBRA premium assistance for periods of coverage beginning on or after April 1, 2021. If a qualified beneficiary elects COBRA continuation coverage with COBRA premium assistance, the individual must also elect or decline COBRA continuation coverage retroactive to the loss of coverage, if eligible, within 60 days of receiving the notice of the ARP extended election period. If the qualified beneficiary elects retroactive COBRA continuation coverage, the qualified beneficiary may be required to pay COBRA premiums for periods of coverage beginning before April 1, 2021.

Q-57. Do the extensions of timeframes available under the Emergency Relief Notices apply to the required furnishing of the notice of an ARP extended election

period under § 9501(a)(5)(C), or to the ARP extended election period to elect COBRA continuation coverage with COBRA premium assistance beginning on or after April 1, 2021, under § 9501(a)(4)?

A-57. No. The extensions of timeframes available under the Emergency Relief Notices do not apply to either the required furnishing of a notice of an ARP extended election period under § 9501(a)(5)(C) or to the ARP extended election period. The notice of the ARP extended election period under § 9501(a)(5)(C) must be furnished by May 31, 2021 (60 days after April 1, 2021). An individual receiving the notice must elect COBRA continuation coverage no later than 60 days after the notice is provided in order to receive COBRA premium assistance.

Q-58. If a potential Assistance Eligible Individual elects retroactive COBRA continuation coverage, how do the Emergency Relief Notices apply to payment of the premiums for the retroactive coverage and what are the consequences if the premiums are not timely paid?

A-58. The extensions of timeframes under the Emergency Relief Notices remain available for premium payments for the retroactive periods of coverage for potential Assistance Eligible Individuals and those who have enrolled in COBRA continuation coverage with COBRA premium assistance. If an Assistance Eligible Individual also elects retroactive coverage for a period beginning before April 1, 2021, the employer may require the individual to pay the premiums for that period of COBRA continuation coverage consistent with the timeframes as extended under the Emergency Relief Notices. If, by an applicable deadline, the individual fails to pay any amount towards the total premiums due for periods of retroactive COBRA continuation coverage, the employer may treat the individual as having not elected COBRA coverage until the first period of coverage beginning on or after April 1, 2021. If, by the applicable deadline, the individual pays only a portion of the total premiums due for retroactive coverage, the plan may credit those premiums to the earliest months of the retroactive COBRA continuation coverage and resume providing COBRA continuation coverage as of the first period of coverage beginning on or after April 1, 2021.

Example: On November 1, 2020, an individual becomes a qualified beneficiary as the result of an involuntary termination of employment and receives the COBRA election notice under § 4980B(f)(6)(D). On April 30, 2021, the individual receives the notice of the ARP extended election period. On May 31, 2021, the individual elects both retroactive COBRA continuation coverage beginning on November 1, 2020, and COBRA continuation coverage with premium assistance for the first period of coverage beginning on or after April 1, 2021. The individual pays premiums for only three months of retroactive COBRA within the applicable payment deadlines. The individual makes no other premium payments before the applicable deadlines. The plan may treat the individual as having retroactive COBRA continuation coverage only for November 2020, December 2020, and January 2021, and as having no retroactive COBRA coverage for February 2021 and March 2021 (because only three months of premiums were paid). Because the individual also elected COBRA continuation coverage with premium

assistance for the first period of coverage beginning on or after April 1, 2021, the individual has COBRA continuation coverage with premium assistance for the first period of coverage beginning on or after April 1, 2021 through the end of the period of coverage that includes September 30, 2021, assuming the individual remains eligible for premium assistance throughout that period.

Q-59. May a potential Assistance Eligible Individual who elects COBRA continuation coverage with COBRA premium assistance and who declines to elect retroactive COBRA continuation coverage at that time later elect retroactive COBRA continuation coverage?

A-59. No. If a potential Assistance Eligible Individual elects COBRA continuation coverage with COBRA premium assistance but declines to elect COBRA continuation coverage that would begin at the time of a qualifying event that occurred before April 1, 2021, that individual may not, after the 60-day extended election period for electing COBRA continuation coverage under the ARP has ended, later elect COBRA continuation coverage that begins at the time of the qualifying event.

Example: An individual has a qualifying event that is an involuntary termination of employment on March 1, 2021, and receives the COBRA election notice the same day. The individual receives the notice of the ARP extended election period on May 31, 2021, and elects COBRA continuation coverage with COBRA premium assistance starting April 1, 2021. Assuming the Outbreak Period has not ended, the individual does not remain eligible after July 30, 2021 (60 days from the receipt of the individual's notice of the ARP extended election period), to elect COBRA continuation coverage starting March 1, 2021, despite the extensions available under the Emergency Relief Notices.

PAYMENTS TO INSURERS UNDER FEDERAL COBRA

Q-60. In the case of an insured plan subject to Federal COBRA that is not a multiemployer plan, if the insurer and the employer have agreed that the insurer will collect the COBRA premiums directly from the qualified beneficiaries, is the insurer required to treat an Assistance Eligible Individual as having paid the full premium?

A-60. Yes. If the insurer fails to treat the Assistance Eligible Individual as having made a payment of the full premium, the insurer may be liable for the excise tax under § 4980B(e)(1)(B), which applies to each person responsible (other than in a capacity as an employee) for administering or providing benefits under the plan and whose act or failure to act caused (in whole or in part) the failure, if the person assumed responsibility for the performance of the act to which the failure relates. Notwithstanding the agreement between the employer and the insurer, the employer is required to pay the premium to the insurer for the months of COBRA premium assistance with respect to the individual.

COMPARABLE STATE CONTINUATION COVERAGE

Q-61. Does a State continuation coverage program fail to provide comparable coverage qualifying for COBRA premium assistance under the ARP solely because the maximum period of continuation coverage under the program differs from the maximum period available under Federal COBRA?

A-61. No. A different period of continuation coverage under a State continuation coverage program does not by itself mean a State program fails to provide comparable coverage to Federal COBRA continuation coverage under the ARP. For example, the fact that a State continuation coverage program provides only six months of continuation coverage (instead of 18 months) would not by itself result in the State program failing to provide comparable coverage. Similarly, State programs providing for different qualifying events, different qualified beneficiaries, or different maximum premiums generally do not fail to provide comparable coverage solely for those reasons.

Q-62. In the case of an insured plan subject solely to State law requiring the insurer to provide continuation coverage, is the employer eligible to take the premium assistance credit directly if the employer pays the full premium to the insurer?

A-62. No. Under § 6432(b)(3), in the case of an insured plan subject solely to State law with respect to the requirement to provide continuation coverage, the premium payee is the insurer providing the coverage under the group health plan. The Treasury Department and the IRS are aware that this requirement may create administrative issues for certain Small Business Health Options Program (SHOP) exchanges that aggregate premiums paid by participating employers or where State rules require full payment of premiums by the employer; the Treasury Department and the IRS are continuing to consider this issue.

CALCULATION OF COBRA PREMIUM ASSISTANCE CREDIT

Q-63. As a general rule, what is the amount of the premium assistance credit for a quarter?

A-63. If the employer does not subsidize COBRA premium costs for similarly situated qualified beneficiaries who are not Assistance Eligible Individuals, the credit for a quarter is the amount equal to the premiums not paid by Assistance Eligible Individuals for COBRA continuation coverage due to the application of § 9501(a)(1) of the ARP for the quarter. In this case, the amount of the premiums not paid by the Assistance Eligible Individuals is the premium amount charged for COBRA continuation coverage to other similarly situated covered employees and qualified beneficiaries (for example, coverage for a single individual, individual plus one, or family who are not Assistance Eligible Individuals). The premium amount also includes any administrative costs otherwise allowed (that is, generally 102 percent of the applicable premium under § 4980B(f)(4)) (see Q&A-64).

Q-64. What is the amount of the premium assistance credit if the employer

subsidizes the COBRA premium costs for similarly situated covered employees and qualified beneficiaries who are not Assistance Eligible Individuals?

A-64. The amount of the credit is the premium that would have been charged to an Assistance Eligible Individual in the absence of the premium assistance, and does not include any amount of subsidy that the employer would have otherwise provided. Thus, absent the premium assistance, if the premium that the employer would have charged to an Assistance Eligible Individual is less than the maximum COBRA premium—for example, if the employer would have subsidized the coverage by paying all or part of the premium—the credit is equal to the amount that the employer actually would have charged to the Assistance Eligible Individual.

For the following examples, assume 102 percent of the applicable premium for COBRA continuation coverage is $1,000 per month, and the premium payee is the common law employer maintaining the plan.

Example 1: Absent the COBRA premium assistance, the common law employer requires individuals electing COBRA continuation coverage to pay $500 per month. The credit is $500 per month.

Example 2: The common law employer requires active employees to pay $200 per month for health coverage. Absent the COBRA premium assistance, for involuntarily terminated employees, severance benefits include continued health coverage at the cost of $200 per month for three months after termination. After the three-month severance period, the terminated employee must pay $1,000 per month for the remainder of COBRA continuation coverage. The common law employer considers the loss of coverage to occur on the last day coverage is in effect before the severance benefits begin; that is, the common law employer considers the three-month severance period (during which the employer pays $800 toward the cost of the terminated employee's COBRA continuation coverage) to be part of the terminated employee's COBRA continuation period of coverage.

A potential Assistance Eligible Individual has an involuntary termination of employment as of April 1, 2021, and makes the COBRA continuation election effective as of that date. For April, May, and June 2021, the credit is $200 per month. For July, August, and September 2021, the credit is $1,000 per month.

Example 3: Same facts as Example 2, except that the common law employer considers the loss of health coverage and the beginning of the terminated employee's COBRA continuation period of coverage to occur at the end of the three-month severance period. For the first three months after termination of employment, the terminated employee is not eligible for COBRA continuation coverage and is not an Assistance Eligible Individual. Instead, the employee pays $200 for coverage that is not a premium for COBRA continuation coverage. The employee receives severance benefits for health coverage beginning on April 1, 2021, and then elects COBRA continuation coverage beginning on July 1, 2021 (after the end of the three-month

severance period) and becomes an Assistance Eligible Individual. The credit is $0 per month for April, May, and June 2021, and $1,000 per month for July, August, and September 2021.

Example 4: Same facts as Example 2, except that for involuntarily terminated employees, the severance benefits include continued health coverage at no cost for the three months after termination of employment.

Because the monthly premium (absent the COBRA premium assistance) during April, May, and June 2021 is zero, COBRA premium assistance is not available and there is no credit for those months. After the severance period, the terminated employee is entitled to COBRA continuation coverage with COBRA premium assistance for July, August, and September 2021. The credit is $1,000 per month for July, August, and September 2021.

Q-65. If a plan that previously charged less than the maximum premium allowed under the COBRA continuation provisions increases the premium for similarly situated covered employees and qualified beneficiaries pursuant to § 54.4980B-8, Q&A-2(b)(1) (or similar authority under comparable State law or other Federal law), does the COBRA premium assistance apply to the increased premium amount?

A-65. Yes.

Example: Under the plan, 102 percent of the applicable premium for COBRA continuation coverage is $1,000 per month. For periods of coverage before April 1, 2021, the plan charged $500 per month for COBRA continuation coverage. Pursuant to § 54.4980B-8, Q&A-2(b)(1) and the applicable notice requirements, beginning April 1, 2021, the plan charges $1,000 per month for COBRA continuation coverage for all covered employees and qualified beneficiaries. The COBRA premium assistance and the premium assistance credit are $1,000 per Assistance Eligible Individual per month for the coverage beginning April 1, 2021.

Q-66. If a plan that previously charged less than the maximum premium allowed under the COBRA continuation provisions increases the premium pursuant to § 54.4980B-8, Q&A-2(b)(1), and the employer provides a separate taxable payment to the Assistance Eligible Individual, does the premium assistance credit apply to the increased premium amount?

A-66. Yes.

Example: Under a group health plan, 102 percent of the applicable premium for COBRA continuation coverage is $1,000 per month. Before April 1, 2021, the plan charged $400 per month for COBRA continuation coverage. Pursuant to § 54.4980B-8, Q&A-2(b)(1), and the applicable notice requirements, the plan charges all covered employees and qualified beneficiaries $1,000 per month for COBRA continuation coverage for periods of coverage beginning April 1, 2021. In addition, beginning April 1,

2021, the employer provides a taxable severance benefit of $600 per month to employees who are Assistance Eligible Individuals. An Assistance Eligible Individual is entitled to COBRA continuation coverage without payment of any premium. The credit is $1,000.

Q-67. If COBRA continuation coverage is provided under a State program that provides comparable continuation coverage, does the premium assistance credit apply to portions of the premium attributable to COBRA continuation coverage for those individuals who would not be qualified beneficiaries under Federal COBRA?

A-67. No. While § 9501(a)(9)(B) of the ARP defines the COBRA continuation coverage eligible for COBRA premium assistance to include comparable State continuation coverage, a qualified beneficiary is defined under § 9501(a)(9)(E) by cross-reference to § 607(3) of ERISA. Thus, COBRA premium assistance is limited to the premium attributable to the coverage of the employee who was involuntarily terminated (other than by reason of such employee's gross misconduct) or had a reduction in hours as a qualifying event and that employee's spouse or dependent children who are qualified beneficiaries under Federal COBRA, even if the State law requires a group health plan to provide continuation coverage to a broader group of individuals (for example, another member of the individual's household who is not the spouse or a dependent child).

Q-68. If COBRA continuation coverage of one or more Assistance Eligible Individuals also covers one or more individuals who are not Assistance Eligible Individuals, how is the premium for the COBRA continuation coverage allocated among the Assistance Eligible Individuals and the other individuals in determining the premium assistance credit?

A-68. The premium amounts for COBRA continuation coverage for one or more individuals who are Assistance Eligible Individuals and one or more individuals who are not Assistance Eligible Individuals are allocated first to the premiums for the Assistance Eligible Individuals, based on the cost of COBRA continuation coverage (without COBRA premium assistance) for only Assistance Eligible Individuals, and then to the premiums for the individuals who are not Assistance Eligible Individuals. Thus, if the total cost of the coverage for all covered individuals does not exceed the premium costs for the Assistance Eligible Individuals alone, then the premium for the individual who is not an Assistance Eligible Individual is zero, and the COBRA premium assistance is the full applicable premium amount of the COBRA continuation coverage. If the coverage of an individual who is not an Assistance Eligible Individual increases the total COBRA premium for all individuals, that incremental additional cost is not COBRA premium assistance for purposes of the credit.

Example 1: An employee and the employee's two dependent children are Assistance Eligible Individuals and have COBRA continuation coverage. COBRA continuation coverage also covers an individual who lives in the same household who is not an Assistance Eligible Individual. The amount the plan requires to be paid for

COBRA continuation coverage for self-plus-two-or-more-dependents (which includes the individual who is not an Assistance Eligible Individual) is $1,000 per month.

The amount the employee would pay (absent the COBRA premium assistance) for coverage for the employee and the two children (the Assistance Eligible Individuals) for COBRA continuation coverage is $1,000 per month. The additional premium amount for coverage of the individual who is not an Assistance Eligible Individual is $0 per month. The employee is entitled to apply the COBRA premium assistance for the full $1,000 premium amount per month. The credit is $1,000 per month.

Example 2: Same facts as Example 1, except the employee has only one dependent child, and the plan charges $800 per month for self-plus-one-dependent COBRA continuation coverage. The portion of the premium attributable to coverage for the individual and the individual's dependent child (both Assistance Eligible Individuals) is $800 per month.

The employee is entitled to apply the COBRA premium assistance to the $800 per month attributable to the Assistance Eligible Individuals. The incremental amount the employee pays for COBRA continuation coverage for the individual who is not an Assistance Eligible Individual is $200 per month, so the employee's total premium payment is $200 per month. The credit is $800 per month.

Example 3: An employee is an Assistance Eligible Individual who has self-only coverage that would cost $450 per month (absent the COBRA premium assistance). During the ARP extended election period, the plan has an open enrollment period during which it allows active employees and qualified beneficiaries to add spouses and dependents to their health coverage. The employee adds the employee's spouse and dependent child, who were not covered before the employee's qualifying event, to the employee's COBRA continuation coverage. Without regard to the COBRA premium assistance, COBRA continuation coverage for self-plus-two-or-more-dependents is $1,000 per month.

The spouse and the dependent child are not Assistance Eligible Individuals because they were not covered by the plan on the day before the employee's qualifying event. The amount the employee pays for the spouse and the dependent child is $550 per month ($1,000 less $450). The employee is entitled to COBRA premium assistance with respect to $450 per month. The credit is $450 per month.

Q-69. Does the premium assistance apply to the increased premium if the plan, in compliance with § 54.4980B-8, Q&A-2(c), allows the Assistance Eligible Individual to change coverage from the benefit package that covered the individual before a reduction in hours or involuntary termination of employment to a different benefit package with a higher applicable premium that allows for an increase in the premium amount charged to the Assistance Eligible Individual?

A-69. Yes. (But see Q&A-42 regarding the ability of an Assistance Eligible

Individual to enroll in coverage under a plan that is different than the coverage in which the individual was enrolled at the time of the qualifying event pursuant to § 9501(a)(1)(B) of the ARP.)

Q-70. How is the premium assistance credit calculated for an individual coverage health HRA?

A-70. The credit for an individual coverage HRA is limited to 102 percent of the amount actually reimbursed with respect to an Assistance Eligible Individual.

Example: An individual coverage HRA provides a monthly benefit of the lesser of the premium for the individual health insurance coverage purchased by the employee or $1,000 and charges the maximum allowable administrative fee for COBRA continuation coverage, for a total maximum COBRA premium of $1,020. Individual A and Individual B are Assistance Eligible Individuals and are enrolled in COBRA continuation coverage. For April 2021, Individual A is reimbursed for a premium payment for individual health insurance coverage of $900; Individual B is reimbursed for $1,000 of a $2,000 premium payment for individual health insurance coverage. The credit for April is $918 with respect to Individual A and $1,020 with respect to Individual B.

CLAIMING THE COBRA PREMIUM ASSISTANCE CREDIT

Q-71. Who is eligible for the premium assistance credit under § 6432(a) of the Code?

A-71. Under § 6432(a) of the Code, the premium payee for continuation coverage under § 9501(a)(1) of the ARP is eligible for the credit.

Q-72. Who is the premium payee under § 9501(a)(1) of the ARP?

A-72. The premium payee is:

(1) The multiemployer plan, in the case of a group health plan that is a multiemployer plan (as defined in § 3(37) of ERISA);

(2) The common law employer maintaining the plan, in the case of a group health plan, other than a multiemployer plan, that is (a) subject to Federal COBRA, or (b) under which some or all of the coverage is not provided by insurance (that is, a plan that is self-funded, in whole or in part);

(3) The insurer providing the coverage, in the case of any other group health plan not described in (1) or (2) (generally, fully insured coverage subject to State continuation coverage requirements).

Q-73. May a governmental entity be a premium payee, and therefore eligible for the premium assistance credit?

A-73. Yes. A premium payee may include the government of any State or political subdivision thereof, any Indian tribal government (as defined in § 139E(c)(1)), any agency or instrumentality of any of the foregoing, and any agency or instrumentality of the Government of the United States that is described in § 501(c)(1) and exempt from taxation under § 501(a).

Q-74. When does the premium payee become entitled to the premium assistance credit?

A-74. As of the date on which the premium payee receives the potential Assistance Eligible Individual's election of COBRA continuation coverage, the premium payee is entitled to the credit for premiums not paid by an Assistance Eligible Individual by reason of § 9501(a)(1) for any periods of coverage that began before that date.[8] The premium payee is entitled to the credit for the premiums not paid by an Assistance Eligible Individual for each subsequent period of coverage as of the beginning of each period of coverage that the individual does not pay the premiums by reason of § 9501(a)(1) in accordance with the individual's election, without regard to when the premium payee could have required the payment of any premium. (See Q&A-86 for information regarding entitlement to the credit if an Assistance Eligible Individual erroneously pays the premium.)

Example: A premium payee's COBRA period of coverage is a calendar month with COBRA premium payments due on the tenth day of each calendar month. The premium payee pays its employees semi-monthly, with payroll periods ending on the fifteenth of the month and the last day of the month. On June 17, 2021, the premium payee receives a COBRA election from a potential Assistance Eligible Individual who elects COBRA continuation coverage as of April 1, 2021. The premium payee is entitled to a credit as of June 17, 2021, for the premiums not paid by the Assistance Eligible Individual for the periods of coverage April 1, 2021, through April 30, 2021, May 1, 2021, through May 31, 2021, and June 1, 2021, through June 30, 2021. Assuming the Assistance Eligible Individual does not notify the premium payee that the Assistance Eligible Individual is no longer eligible for COBRA premium assistance (and the premium payee does not otherwise become aware that the Assistance Eligible Individual is ineligible), the premium payee becomes entitled to the credit as of July 1, 2021, for the premiums not paid by the Assistance Eligible Individual for the period of coverage of July 1, 2021, through July 31, 2021. (Assuming the facts remain as stated, the premium payee would be entitled to the credit on (i) August 1, 2021, for the period of coverage of August 1, 2021, through August 31, 2021, and (ii) September 1, 2021, for the period of coverage of September 1, 2021, through September 30, 2021.)

Q-75. How does a premium payee claim the premium assistance credit?

A-75. A premium payee claims the credit by reporting the credit (both the

[8] A period of coverage is defined under § 9501(a)(9)(H) as a monthly or a shorter period with respect to which premiums are charged by the plan or issuer.

nonrefundable and refundable portions of the credit, as applicable) and the number of individuals receiving COBRA premium assistance on the designated lines of its federal employment tax return(s), usually Form 941, Employer's Quarterly Federal Tax Return.

In anticipation of receiving the credit to which it is entitled, the premium payee may (1) reduce the deposits of federal employment taxes, including withheld taxes, that it would otherwise be required to deposit, 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 Form 7200, Advance Payment of Employer Credits Due to COVID-19. See Notice 2021-24 for more information regarding the reduction in deposits for the credit and other employment tax credits.

Example 1: Under the facts in the Example in Q&A-74, the premium payee should report the credit for April through June 2021 on the Form 941 for the second quarter of 2021.

Example 2: Same facts as in the Example in Q&A-74, except that the premium payee receives a COBRA election from an Assistance Eligible Individual on July 17, 2021, and the individual elects COBRA continuation coverage as of June 1, 2021. The premium payee becomes entitled to a corresponding credit as of July 17, 2021, for the premiums not paid by the Assistance Eligible Individual for the periods of coverage of (1) June 1 through June 30, 2021, and (2) July 1 through July 31, 2021. The premium payee should report the total credit on the Form 941 for the third quarter of 2021, including the credit for the periods of coverage from June 1, 2021 through June 30, 2021.

Q-76. When may a premium payee reduce its deposits of federal employment taxes and, if applicable, file Form 7200 to request an advance of the anticipated premium assistance credit that exceeds the federal employment tax deposits available for reduction for a quarter?

A-76. A premium payee may reduce its deposits of federal employment taxes in anticipation of the credit to which the premium payee has become entitled with regard to a period of coverage as of the date the premium payee is entitled to the credit as described in Q&A-74. If the anticipated credit exceeds the federal employment tax deposits available for reduction, the premium payee may file Form 7200 to request an advance payment of the credit. The Form 7200 may be filed after the end of the payroll period in which the premium payee became entitled to the credit.

Deposits may not be reduced, and advances may not be requested, for a credit for a period of coverage that has not begun. Form 7200 must be filed before the earlier of (1) the day the employment tax return for the quarter in which the premium payee is entitled to the credit is filed, or (2) the last day of the month following that quarter. The premium payee entitled to the credit should also report any advance payments received in anticipation of the credit for the quarter on the employment tax return.

Example: Same facts as in the Example in Q&A-74. The premium payee may reduce its federal employment tax deposits as of June 17, 2021, the date the Assistance Eligible Individual elected COBRA continuation coverage, in anticipation of the credit to which the premium payee has become entitled. However, if the credit exceeds the available reduction in deposits, the premium payee may file Form 7200 to request an advance for the remaining credit after the end of the semi-monthly payroll period in which the premium payee became entitled to the credit. Thus, because the Assistance Eligible Individual elected COBRA continuation coverage on June 17, 2021, the premium payee may seek an advance beginning on July 1, 2021, the day after the end of the payroll period of June 16 through June 30, 2021.

Assuming the Assistance Eligible Individual did not notify the premium payee that the Assistance Eligible Individual is no longer eligible for COBRA continuation coverage (and the premium payee did not otherwise become aware of the Assistance Eligible Individual's ineligibility), the premium payee becomes entitled to an additional credit as of July 1, 2021, for the premiums not paid by the Assistance Eligible Individual for the period of coverage of July 1 through July 30, 2021. The premium payee may reduce its federal employment deposits as of July 1, 2021, in anticipation of the credit to which the premium payee has become entitled. If the anticipated credit exceeds the federal employment tax deposits available for reduction, the premium payee may file Form 7200 to request an advance for the remaining credit. However, because the semi-monthly payroll period in which the premium payee becomes entitled to the credit does not end until July 15, the premium payee may not seek an advance for the credit until July 16, 2021, even though it may reduce deposits on July 1, 2021, the day the premium payee is entitled to the credit.

Q-77. How is the premium assistance credit claimed if the premium payee does not have any employment tax liability, for example, in the case of a multiemployer plan with no employees?

A-77. If the premium payee entitled to claim the credit does not have any employment tax liability, the premium payee should claim the credit on the Form 941 for the quarter in which the premium payee becomes entitled to the credit. The premium payee entitled to the credit should also report any advance payments received in anticipation of the credit on the same Form 941. The premium payee should enter zero on all remaining non-applicable lines so that the overpayment amount on the Form 941 is the amount of the credit reduced by any advance payment received.

Q-78. If an Assistance Eligible Individual receiving COBRA premium assistance fails to provide notice of the individual's eligibility for coverage under any other disqualifying group health plan or Medicare and continues receiving COBRA premium assistance, is the premium payee required to refund to the IRS the premium assistance credit arising from the period after the individual's eligibility for COBRA premium assistance ended due to eligibility for the other coverage?

A-78. No. If an Assistance Eligible Individual fails to provide notice that the

individual is no longer eligible for the COBRA premium assistance due to eligibility for other disqualifying group health plan coverage or Medicare, the premium payee is still entitled to the credit received for that period of ineligibility, unless the premium payee knew of the individual's eligibility for the other coverage. If the premium payee learns that the individual is eligible for other coverage (and thus of the individual's ineligibility for COBRA premium assistance), the premium payee is not entitled to the credit from that point forward.

Q-79. Is the premium assistance credit included in gross income?

A-79. Yes. Under § 6432(e), the gross income of any premium payee allowed a credit is increased by the amount of the credit for the taxable year which includes the last day of any quarter with respect to which the credit is allowed.

Q-80. May a premium payee claim the premium assistance credit with respect to amounts that are taken into account as qualified wages under § 2301 of the CARES Act or § 3134 of the Code, or as qualified health plan expenses under §§ 7001(d) or 7003(d) of the FFCRA or §§ 3131 or 3132 of the Code?

A-80. No. Under § 6432(e), a premium payee may not claim a double benefit with respect to these amounts.

Q-81. May a premium payee that uses a third-party payer to report and pay employment taxes to the IRS receive the premium assistance credit?

A-81. Yes. The premium payee is entitled to the credit, regardless of whether it uses a third-party payer (such as a reporting agent, payroll service provider, professional employer organization (PEO), certified professional employer organization (CPEO), or § 3504 agent) to report and pay its federal employment taxes. Thus, unless the third-party payer is treated as the premium payee for purposes of the credit in accordance with Q&A-82, the third-party payer is not entitled to the credit, regardless of whether the third party is considered an "employer" for other purposes of the Code. However, the third-party payer may report the credit on behalf of a client that is the premium payee with respect to any federal employment taxes it reports and pays on the premium payee's behalf. Different rules apply depending on the type of third-party payer the premium payee uses, as follows.

If a premium payee uses a reporting agent to file its federal employment tax returns, the reporting agent will need to reflect the credit on the federal employment tax returns it files on behalf of the premium payee. If a premium payee uses a CPEO or a § 3504 agent that received its designation as an agent by submitting Form 2678, Employer/Payer Appointment of Agent, to report its federal employment taxes on an aggregate Form 941, the CPEO or § 3504 agent will report the credit on its aggregate Form 941 and Schedule R, Allocation Schedule for Aggregate Form 941 Filers.

If a premium payee uses a non-certified PEO or other third-party payer (other

than a CPEO or § 3504 agent that submitted Form 2678) that reports and pays the premium payee's federal employment taxes under the third-party payer's Employer Identification Number (EIN), the PEO or other third-party payer will need to report the credit on an aggregate Form 941 and separately report the credit allocable to the premium payees for which it is filing the aggregate Form 941 on an accompanying Schedule R.

A premium payee that uses a third-party payer to report and pay employment taxes to the IRS must nonetheless submit its own Form 7200 to request any advance payment of the credit. The premium payee will need to provide a copy of the Form 7200 to the CPEO, § 3504 agent, or other third-party payer that reports and pays the premium payee's federal employment taxes under the third-party payer's EIN, so the third-party payer can properly report the credit on the employment tax return.

Q-82. May a third-party payer (such as a PEO, CPEO, or § 3504 agent) be treated as a premium payee for purposes of claiming the premium assistance credit?

A-82. Yes, but only under certain circumstances. A third-party payer is treated as the premium payee for purposes of the credit if the third-party payer: (i) maintains the group health plan, (ii) is considered the sponsor of the group health plan and is subject to the applicable DOL COBRA guidance, including providing the COBRA election notices to qualified beneficiaries (the TPP Plan Administrator), and (iii) would have received the COBRA premium payments directly from the Assistance Eligible Individuals were it not for the COBRA premium assistance. In this case, the third-party payer's client is not treated as a premium payee and is, therefore, not eligible for the credit. However, in circumstances in which a third-party payer files an aggregate employment tax return to report and pay employment taxes for individuals who are common law employees of the third-party payer's clients, and the conditions set forth in (i) through (iii) above are not satisfied, the third-party payer is not treated as the premium payee and may claim the credit only on behalf of its clients (See Q&A-81).

As the premium payee, the TPP Plan Administrator claims the credit on the applicable lines on Form 941 and, if the TPP Plan Administrator otherwise has to complete Schedule R, the TPP Plan Administrator would report the credit that it is claiming in that capacity on line 8 of the Schedule R, rather than separately with respect to each client for which it was acting as TPP Plan Administrator. (If the third-party payer was not a TPP Plan Administrator for all of its clients, the third-party payer may also claim the credit on behalf of its clients that are premium payees, but would be required to separately report the credit with respect to each of those premium payee clients on Schedule R.)

TPP Plan Administrators may reduce the deposits of federal employment taxes relating to their own employees (that is, those employees for whom they are filing as the common law employer rather than as a third-party payer) in anticipation of the credit in accordance with the procedures described in Q&A-76. If the anticipated credit exceeds the available reduction of these deposits, the TPP Plan Administrator may file Form

7200 to request an advance payment of the credit in accordance with the procedures described in Q&A-76.

The TPP Plan Administrator is subject to § 6432(e) and must, correspondingly, increase its gross income for the taxable year that includes the last day of any calendar quarter with respect to which the credit is allowed to the TPP plan administrator. The TPP Plan Administrator is not allowed a credit with respect to any amount that is taken into account (by any person, including a client for whom it files returns as a third-party payer) as qualified wages under § 2301 of the CARES Act or § 3134 of the Code, or as qualified health plan expenses under §§ 7001(d) or 7003(d) of the FFCRA, or §§ 3131 or 3132 of the Code.

Example: A third-party payer maintains and is the sponsor of a group health plan on behalf of all of its clients. Due to the nature of the arrangement with each client, the third-party payer is responsible for providing its clients' covered employees with the COBRA election notices, and the third-party payer requires individuals enrolled in COBRA continuation coverage to pay the COBRA premiums directly to the third-party payer. Consequently, this third-party payer is treated as a TPP Plan Administrator and is the premium payee that is entitled to any credit.

The plan's COBRA period of coverage is a calendar month with COBRA premium payments due on the first day of each calendar month. The TPP Plan Administrator pays its own employees that perform services for the TPP Plan Administrator on a semi-monthly basis, with payroll periods ending on the fifteenth of the month and the last day of the month, respectively. On June 17, 2021, the TPP Plan Administrator receives a COBRA election from a client's potential Assistance Eligible Individual who elects COBRA continuation coverage as of April 1, 2021. The TPP Plan Administrator is entitled to a credit as of June 17, 2021, for the premiums not paid by the Assistance Eligible Individual for the periods of coverage of April 1 through April 30, 2021, May 1 through May 31, 2021, and June 1 through June 31, 2021. Assuming the Assistance Eligible Individual does not notify the TPP Plan Administrator that the individual is no longer eligible for COBRA premium assistance (and the TPP Plan Administrator does not otherwise become aware that the Assistance Eligible Individual is ineligible), the TPP Plan Administrator becomes entitled to the credit as of July 1, 2021, for the premiums not paid by the Assistance Eligible Individual for the period of coverage of July 1 through July 30, 2021. (Assuming the facts continue as stated, the TPP Plan Administrator would be entitled to the credit on (i) August 1, 2021, for the period of coverage of August 1 through August 31, 2021, and (ii) September 1, 2021, for the period of coverage of September 1 through September 30, 2021.)

Q-83. What information must a third-party payer obtain from its clients that are premium payees to claim the premium assistance credit on their behalf?

A-83. If a third-party payer (such as a CPEO, PEO, or other § 3504 agent) is claiming the credit on behalf of a client that is a premium payee, it must obtain from the premium payee any information that would have been necessary for the premium payee

to accurately claim the credit on its own behalf.

Q-84. Must a premium payee or a third-party payer claiming the premium assistance credit on behalf of a premium payee maintain records to substantiate eligibility for the credit?

A-84. Yes. Records substantiating the premium payee's eligibility for the credit must be maintained, either by the third-party payer or the premium payee. A premium payee, or a third-party payer that is claiming the credit on behalf of a client that is a premium payee, must, at the IRS's request, provide to the IRS records that substantiate eligibility for the credit, including documentation demonstrating that individuals were eligible for the COBRA premium assistance. The premium payee and the third-party payer will be liable for employment taxes that are due as a result of any improper claim of premium assistance credits in accordance with their liability under the Code and applicable regulations for the employment taxes reported on the federal employment tax return filed by the third-party payer on which the credits were claimed.

Q-85. If an Assistance Eligible Individual pays premiums for which the individual should have received COBRA premium assistance under § 9501(a)(1)(A), and the premium payee reimburses the Assistance Eligible Individual for that amount, when is the premium payee entitled to the premium assistance credit with respect to the reimbursement?

A-85. The premium payee is entitled to the credit on the date the premium payee reimburses the Assistance Eligible Individual for the premium amounts for which the individual should have received COBRA premium assistance.

Q-86. If a third party (such as a charity) paid premium charges on behalf of an Assistance Eligible Individual for which the individual should have received COBRA premium assistance, should the premium payee reimburse the third party or the Assistance Eligible Individual for the premium amounts for which the individual should have received COBRA premium assistance?

A-86. The premium payee is responsible for ensuring that reimbursements are made and should reimburse the Assistance Eligible Individual, unless the premium payee is aware that the individual has assigned the right to the reimbursed premium payments to the third party.

ADDITIONAL ISSUES

The Treasury Department and the IRS are aware of certain additional issues related to the COBRA premium assistance provisions in the ARP that are not addressed in this notice, in particular as noted in Q&A-62. The Treasury Department and the IRS are continuing to consider these issues and the possibility of issuing guidance with respect to them.

DRAFTING INFORMATION

The principal author of this notice is Jason Sandoval of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), and other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact Jason Sandoval at (202) 317-5500 (not a toll-free number). For further information on topics addressed in the section of this notice titled Claiming the COBRA Premium Assistance Credit, contact Mikhail Zhidkov at (202) 317-4774 (not a toll-free number).