

# LEGAL UPDATE

## Additional IRS Q&As on American Rescue Plan's COBRA Subsidy

On July 26, 2021, the IRS issued [Notice 2021-46](#), providing additional guidance on the application of the American Rescue Plan Act (ARPA) subsidy for continuation health coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) in the form of 11 questions and answers.

The Notice expands on [prior guidance](#) issued on May 18, 2021.

### Background

The ARPA subsidy covers 100% of COBRA and state mini-COBRA premiums from April 1–Sept. 30, 2021, for certain assistance-eligible individuals whose work hours were reduced or whose employment was involuntarily terminated. The subsidy is funded via a tax credit provided to employers, insurers or group health plans, according to the terms of the statute.

### Q&A Topics

The questions addressed include:

- Subsidy availability to individuals eligible for an extension who had not elected it;
- Whether subsidies for vision or dental-only coverage ends due to eligibility for other coverage that does not include vision or dental benefits;
- Subsidy availability under a state statute that limits continuation coverage to government employees;
- Whether employers may claim the tax credit if the Small Business Health Options Program (SHOP) Exchange requires employers to pay COBRA premiums; and
- Which party may claim the tax credit in situations involving parties other than an insurer or former common law employer providing the COBRA coverage.

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### Highlights

- Even if state-mandated continuation coverage would require an assistance-eligible individual to pay premiums directly to the insurer after the period of federal COBRA coverage ends, the insurer is not entitled to claim the premium assistance credit, the common law employer is.
- Although all members of a controlled group are treated as a single employer for employee benefit purposes, each member is a separate common law employer for employment tax purposes.

***Notice 2021-46 provides additional clarification on the entity that may claim the premium assistance tax credit.***

