

Publications

IRS Releases New COBRA Subsidy Guidance . . . With Less Than A Week Until Forms 941 Are Due!

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On July 26, 2021, the IRS released [Notice 2021-46](#) (the “Notice”), which provides new guidance on the 100% COBRA premium subsidies (the “Subsidies”) and the related tax credit under the American Rescue Plan Act of 2021 (March 11, 2021) (“ARP”). The Notice supplements previous guidance provided under Notice 2021-31, and addresses additional issues. *See* our previous [alert](#) for a detailed analysis of Notice 2021-31.

The Notice contains some unexpected surprises, which is unfortunate because plans and issuers have spent the past few months implementing the Subsidy in good faith based on the statute and guidance in Notice 2021-31, and they now may need to make amendments and/or last minute changes to their Form 941 filings, with only a few days remaining until the July 31 due date. For example, certain insurers and plan sponsors that thought they would qualify as premium payees, and thus be eligible to claim the tax credit, may longer be able to.

The Notice provides guidance relating to four topics in the form of 11 Q&As. We provide a summary of the key guidance in each of the four topics below.

GROOM INSIGHT: *This is an expansion of the IRS’ earlier guidance on this topic. Specifically, in Notice 2021-31, Q&A-17, the IRS indicated that an individual who has experienced a second qualifying event or disability extension would have to remain enrolled in and receiving COBRA coverage on April 1, 2021 in order to be treated as an AEI. Under this interpretation, employers would not have needed to look back more than 18 months for the extended second election period, if the AEI was not enrolled in and receiving coverage on April 1, 2021. The IRS apparently reconsidered this position after it published Notice 2021-31, and employers now may need to look back more than 18 months for the extended second election opportunity.*