

Extension of COBRA election and premium payment deadlines under section 7508A(b)

NOTICE 2021-58

I. Purpose

This notice clarifies the application of certain extensions under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) for the election of COBRA coverage and payment of COBRA premiums under the Joint Notification of Extensions of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak (Joint Notice)¹ issued by the Department of Labor (DOL), the Department of the Treasury (Treasury Department), and the Internal Revenue Service (IRS), collectively the “Agencies”, and the additional guidance provided by Employee Benefits Security Administration (EBSA) Disaster Relief Notice 2021-01, released by the DOL.² The Joint Notice and EBSA Disaster Relief Notice 2021-01 are referred to collectively in this notice as the “Emergency Relief Notices.” This notice also addresses the interaction of COBRA continuation coverage under the Emergency Relief Notices with the COBRA premium assistance available for certain individuals under the American Rescue Plan Act of 2021³ (the ARP). Terms used in this notice have the same meanings as those terms have when used in the guidance referenced in this notice.

This guidance has been coordinated with, and reviewed by, DOL and the Department of Health and Human Services (HHS).⁴ DOL and HHS have advised the Treasury Department and the IRS that they concur with the guidance provided in this notice as applicable to the laws under their respective jurisdictions.

II. Background

A. COBRA continuation coverage

COBRA permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage during the 60-day period after receipt of a COBRA election notice. Section 4980B(f)(5). The group health plan under which continuation

¹ 85 FR 26351 (May 4, 2020).

² EBSA Disaster Relief Notice 2021-01 (Feb. 26, 2021), available at: <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>.

³ Pub. L. 117-2, 135 Stat. 4, (March 11, 2021).

⁴ HHS also released non-binding, temporary relaxed enforcement guidance in conjunction with the Joint Notice that extended similar timeframes otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, their participants and beneficiaries, and Small Business Health Options Program (SHOP) issuers offering a qualified health plan through a SHOP. See Insurance Bulletin titled “*Temporary Period of Relaxed Enforcement of Certain Timeframes Related to Group Market Requirements under the Public Health Service Act in Response to the COVID-19 Outbreak*”, available at: <https://www.cms.gov/files/document/Temporary-Relaxed-Enforcement-Of-Group-Market-Timeframes.pdf>.

coverage is provided may not require the payment of any premium before the day that is 45 days after the day on which the qualified beneficiary makes the initial election for continuation coverage. Section 4980B(f)(2)(C)(ii). Additionally, the group health plan must treat COBRA premium payments as timely paid if made within 30 days after the due date or within any longer period as applied to or under the plan. Section 4980B(f)(2)(B)(iii).

B. Summary of Emergency Relief Notices and the ARP

On May 4, 2020, in response to the National Emergency concerning the Novel Coronavirus Disease (COVID-19) Outbreak (National Emergency),⁵ the Agencies published the Joint Notice, which extended certain timeframes otherwise applicable to group health plans, disability and other welfare plans, pension plans, and their participants and beneficiaries under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (Code). The Joint Notice extended these timeframes by requiring that plans subject to ERISA or the Code disregard the period for certain action from March 1, 2020, until 60 days after the announced end of the National Emergency or such other date announced by the Agencies in a future notification (the Outbreak Period), subject to a maximum disregarded period of one year.⁶

On February 26, 2021, DOL, with the concurrence of HHS, the Treasury Department, and the IRS, issued EBSA Disaster Relief Notice 2021-01, which clarified that the disregarded periods apply from the date each individual or plan was first eligible for relief under the Joint Notice. Under EBSA Disaster Relief Notice 2021-01, the applicable periods under the Emergency Relief Notices for individuals and plans are therefore disregarded until the earlier of (1) one year from the date the individuals and plans were first eligible for relief,⁷ or (2) 60 days after the announced end of the National Emergency (the end of the Outbreak Period). At the end of an individual's or plan's

⁵ 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 sections 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 section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. section 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.

⁶ The Joint Notice provided that, subject to the one-year limit under section 518 of ERISA and section 7508A(b) of the Code, all group health plans, disability and other employee welfare benefit plans, and employee pension benefit plans subject to ERISA or the Code were required to disregard the period for certain timeframes because of the National Emergency. The disregarded period applies to specific employee benefit timeframes applicable to plan participants, beneficiaries, qualified beneficiaries, and claimants. The Joint Notice also provided relief for group health plans regarding the requirement to provide a COBRA election notice.

⁷ The first date upon which an individual or plan could be eligible for relief was March 1, 2020, the first day of the National Emergency. Therefore, the earliest date upon which a disregarded period could begin to run again was March 1, 2021, including for periods beginning before March 1, 2020, during which an action was required or permitted to be completed.

disregarded period, the applicable timeframes that were disregarded under the Joint Notice resume.

On March 11, 2021, the ARP was enacted. Section 9501 of the ARP provides for temporary COBRA premium assistance for certain “Assistance Eligible Individuals”⁸ for periods of coverage beginning on or after April 1, 2021, through periods of coverage beginning on or before September 30, 2021. On May 18, 2021, the IRS and the Treasury Department issued Notice 2021-31⁹ providing guidance regarding COBRA continuation coverage and COBRA premium assistance under the ARP.

On July 26, 2021, the Treasury Department and the IRS issued Notice 2021-46,¹⁰ providing further guidance regarding COBRA continuation coverage and COBRA premium assistance under the ARP.

C. COBRA relief under the Emergency Relief Notices

The Joint Notice provided extensions¹¹ for the following COBRA timeframes:

- (1) The 60-day election period for COBRA continuation coverage under section 605 of ERISA and section 4980B(f)(5) of the Code,¹²
- (2) The dates for making COBRA premium payments under section 602(2)(C) and (3) of ERISA and section 4980B(f)(2)(B)(iii) and (C) of the Code,¹³
- (3) The date for individuals to notify the plan of a qualifying event or determination of disability under section 606(a)(3) of ERISA and section 4980B(f)(6)(C) of the Code, and
- (4) The date for providing a COBRA election notice under section 606(c) of ERISA and section 4980B(f)(6)(D) of the Code for group health plans and their sponsors and administrators.

⁸ Under section 9501 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 section 603(2) of ERISA, section 4980B(f)(3)(B) of the Code, or section 2203(2) of the Public Health Service Act, except for voluntary termination of employment, and (2) who elects COBRA continuation coverage.

⁹ Notice 2021-31, 2021-23 IRB 1173 (June 7, 2021).

¹⁰ Notice 2021-46, 2021-33 IRB 303 (August 16, 2021).

¹¹ The Joint Notice provided extensions for other employee benefit timeframes in addition to the COBRA timeframes addressed in this notice. For more information, see the Joint Notice at 85 FR 26351 (May 4, 2020).

¹² The term “election period” is defined as “the period which—(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event, (B) is of at least 60 days’ duration, and (C) ends not earlier than 60 days after the later of—(i) the date described in subparagraph (A), or (ii) in the case of any qualified beneficiary who receives notice under section 1166(a)(4) of this title, the date of such notice.” Section 605(a)(1) of ERISA; section 4980B(f)(5) of the Code.

¹³ Regarding coverage during the election period and before an election is made, see Treas. Reg. § 54.4980B-6, Q&A-3; regarding coverage during the period between the election and payment of the premium, see Treas. Reg. § 54.4980B-8, Q&A-5(c).

The Emergency Relief Notices provide that these COBRA timeframes are disregarded until the earlier of (1) one year from the date that individuals and plans were first eligible for relief, or (2) the end of the Outbreak Period.¹⁴

III. Guidance and Application of the extensions under the Emergency Relief Notices to COBRA elections and payment of COBRA premiums

Under the Emergency Relief Notices, up to one year must be disregarded in determining the due dates for individuals to elect COBRA continuation coverage and pay COBRA premiums during the Outbreak Period. This notice clarifies that the disregarded period for an individual to elect COBRA continuation coverage and the disregarded period for the individual to make initial and subsequent COBRA premium payments generally run concurrently.

The following rules illustrate the timeframes that apply to individuals making initial COBRA premium payments under the Emergency Relief Notices during the Outbreak Period. For purposes of these rules, the phrase the “initial 60-day COBRA election timeframe” refers to the 60-day election timeframe under section 605 of ERISA and section 4980B(f)(5) of the Code without regard to the Emergency Relief Notices.

- If an individual elected COBRA continuation coverage outside of the initial 60-day COBRA election timeframe, that individual generally will have one year and 105¹⁵ days after the date the COBRA notice was provided to make the initial COBRA premium payment.
- If an individual elected COBRA continuation coverage within the initial 60-day COBRA election timeframe, that individual will have one year and 45 days after the date of the COBRA election to make the initial COBRA premium payment.

Individuals must make the initial COBRA election by the earlier of (1) one year and 60 days after the individual’s receipt of the COBRA election notice, or (2) the end of the Outbreak Period.

Applying the disregarded periods in this way means that individuals who delay electing COBRA may not have more than one year of total disregarded time for the COBRA election and initial COBRA payment.¹⁶ However, these timeframes are subject to the transition relief provided in section IV of this notice, which provides that in no event will

¹⁴ For an individual with a right to COBRA continuation coverage, the date of the applicable event will be the date the individual action would otherwise have been required or permitted. For group health plans, the date of the applicable event will be the date the plan would otherwise be required to provide a COBRA election notice.

¹⁵ The 105-day period is derived by adding together the 60 days to make an initial COBRA election under section 4980B(f)(5) and the 45 days to make the initial COBRA premium payment under section 4980B(f)(2)(C)(ii).

¹⁶ For example, an individual generally may not delay electing COBRA continuation coverage for 6 months and then add another full year to the disregarded period for purposes of determining the deadline for making the initial COBRA premium payment (resulting in a total of 18 months of disregarded time for both the COBRA election and initial COBRA payment). Instead, the maximum disregarded period of one year is applied concurrently to the timeframe for the COBRA election and initial COBRA premium payment.

an initial COBRA premium payment be due before November 1, 2021, as long as the individual makes the initial COBRA premium payment within one year and 45 days after the election date.

For each subsequent COBRA premium payment, the maximum time an individual has to make a payment while the Outbreak Period continues is one year from the date the payment originally would have been due in the absence of the Emergency Relief Notices, including the mandatory 30-day grace period, but subject to the transition relief provided below.

IV. Transition relief for COBRA premium payments due before November 1, 2021 under the Emergency Relief Notices

Because some individuals may have assumed that the disregarded period for making the initial premium payment begins on the date of the COBRA election, individuals who made elections more than 60 days after receipt of the election notice may have less time than they anticipated to make the initial premium payment. Therefore, to avoid inequitable outcomes, in no event will an individual be required to make the initial premium payment before November 1, 2021, even if November 1, 2021 is more than one year and 105 days after the date the election notice was received, provided that the individual makes the initial premium payment within one year and 45 days after the date of the election. This transition relief does not result in an individual having a disregarded period related to a particular COBRA timeframe that is more than one year. This transition relief is an exception to the general rule that disregarded periods for COBRA elections and initial COBRA payments run concurrently with respect to each individual.

V. Interaction with the ARP COBRA premium assistance

The extensions of the timeframes under the Emergency Relief Notices do not apply to the periods for providing the required notice of the ARP extended election period or for electing COBRA continuation coverage with COBRA premium assistance under the ARP. See Notice 2021-31, Q&A-57. An individual who has a disregarded period under the Emergency Relief Notices may elect retroactive COBRA continuation coverage, subject to the guidance in this notice, and may elect COBRA continuation coverage with COBRA premium assistance for any period for which the individual is eligible for COBRA premium assistance. However, the disregarded periods under the Emergency Relief Notices continue to apply to payments of COBRA premiums after the end of the ARP COBRA premium assistance period, to the extent that the individual is still eligible for COBRA continuation coverage and the Outbreak Period has not ended.

VI. Examples

The following examples illustrate how COBRA elections and premium payments are treated under this notice. All of the examples assume that the Outbreak Period has not ended during the periods specified and that individuals are not eligible for COBRA premium assistance under the ARP unless stated otherwise. The examples also assume that the group health plans have calendar month coverage periods, with premium payments due by the first of the month, and that the plans provide that

qualified beneficiaries must make COBRA premium payments within the statutory 30-day grace period.

A. Examples applying the extensions under the Emergency Relief Notices to COBRA elections and payment of COBRA premiums

Example 1. COBRA election made more than 60 days after receipt of COBRA election notice under the Emergency Relief Notices.

(i) Facts. Individual A participates in Employer X's group health plan. On August 1, 2020, Individual A has a qualifying event and receives a COBRA election notice. Individual A elects COBRA continuation coverage on February 1, 2021, retroactive to August 1, 2020. When must Individual A make the initial COBRA premium payment and subsequent monthly COBRA premium payments?

(ii) Conclusion. Individual A has until November 14, 2021 to make the initial COBRA premium payment (one year and 105 days after August 1, 2020), because Individual A did not elect COBRA continuation coverage under the Emergency Relief Notices within 60 days after receipt of the election notice. The initial COBRA premium payment would include monthly premium payments for August 2020 through October 2020. The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months that Individual A is eligible for COBRA continuation coverage.

Example 2. COBRA election made within 60 days of the receipt of COBRA election notice under the Emergency Relief Notices.

(i) Facts. Individual B participates in Employer Y's group health plan. Individual B has a qualifying event and receives a COBRA election notice on October 1, 2020. Individual B elects COBRA continuation coverage on October 15, 2020 retroactive to October 1, 2020. When must Individual B make the initial COBRA premium payment and subsequent monthly COBRA premium payments?

(ii) Conclusion. Individual B has until November 29, 2021, to make the initial COBRA premium payment (one year and 45 days after October 15, 2020) because Individual A elected COBRA within 60 days of receiving the election notice. The initial COBRA premium payment would include only the monthly premium payment for October 2020. The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months Individual B is eligible for COBRA continuation coverage.

Example 3. Timeframe for electing COBRA under the Emergency Relief Notices.

(i) Facts. Individual C participates in Employer Z's group health plan. Individual C has a qualifying event and is provided a COBRA election notice on August 1, 2020. When must Individual C elect COBRA continuation coverage and, if Individual C elects COBRA continuation coverage, when must Individual C make the initial COBRA premium payment?

(ii) Conclusion. Individual C has until September 30, 2021 (one year and 60 days after August 1, 2020) to elect COBRA continuation coverage. If Individual C elects COBRA continuation coverage after September 30, 2020 (but on or before September 30, 2021) Individual C has until November 14, 2021 to make the initial COBRA premium payment (one year and 105 days after receipt of the election notice). If Individual C makes the initial COBRA premium payment on November 14, 2021, that premium payment would include the monthly premiums for August 2020 through October 2020. The November 2020 monthly COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months Individual C is eligible for COBRA continuation coverage.

Example 4. Failure to make COBRA premium payments under the Emergency Relief Notices.

(i) Facts. The facts are the same as in Example 1. In addition, Individual A timely makes the initial COBRA premium payment covering the months of August 2020 through October 2020, as well as the payment for the November 2020 monthly premium. Individual A does not make a payment for the December 2020 monthly premium as of December 31, 2021. For how many months does Individual A have COBRA continuation coverage?

(ii) Conclusion. Individual A is entitled to COBRA continuation coverage for the months of August 2020 through November 2020, but Individual A is not entitled to COBRA continuation coverage for any month after November 2020 because Individual A did not pay the December 2020 premium by the end of the applicable grace period. Benefits and services provided by the group health plan (for example, doctor's visits or filled prescriptions) that occurred on or before November 30, 2020, would be covered under the terms of the plan. The plan would not be obligated to cover benefits or services for Individual A that were incurred after November 30, 2020.

Example 5. Applying the transition relief for COBRA premium payments due before November 1, 2021.

(i) Facts. The facts are the same as in Example 1, except that Individual A has a qualifying event on April 1, 2020. Individual A receives the COBRA election notice on April 1, 2020 and elects COBRA continuation coverage on October 1, 2020, retroactive to April 1, 2020. As of July 15, 2021, Individual A has not made the initial premium payment. When must Individual A make the initial premium payment for COBRA continuation coverage retroactive to April 1, 2020 under the Emergency Relief Notices?

(ii) Conclusion. Under the transition relief provided in this notice, Individual A has until November 1, 2021 to make the initial premium payment, even though November 1, 2021 is more than one year and 105 days after April 1, 2020. Although the disregarded periods for the COBRA election and the initial premium payment run concurrently, under the transition relief provided in this notice, an individual will not be required to make the initial premium payment before November 1, 2021, as long as the individual makes the initial premium payment within one year and 45 days after the date of election. November 1, 2021 is less than one year and 45 days after October 1, 2020. Therefore,

Individual A remains eligible to make the initial premium payment by November 1, 2021. The initial COBRA premium payment would include the monthly premium payments for April 2020 through October 2020. The November 2020 COBRA premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months Individual A is eligible for COBRA continuation coverage.

Example 6. Failure to make initial premium payment within one year and 45 days of election.

(i) Facts. The facts are the same as in Example 5, except that Individual A elects COBRA continuation coverage on May 1, 2020. As of October 1, 2021, Individual A has not made the initial premium payment for COBRA continuation coverage beginning April 1, 2020. On October 1, 2021 is Individual A eligible to make the initial premium payment for COBRA continuation coverage retroactive to April 1, 2020 under the Emergency Relief Notices?

(ii) Conclusion. No. October 1, 2021 is more than one year and 45 days after May 1, 2020. The maximum disregarded period related to a particular COBRA timeframe cannot be more than one year. Therefore, Individual A is no longer eligible to timely make the initial COBRA premium payment for COBRA continuation coverage retroactive to May 1, 2020 under the Emergency Relief Notices, despite the availability of transition relief. However, if Individual A is an Assistance Eligible Individual, Individual A has COBRA continuation coverage with COBRA premium assistance for the periods of coverage beginning April 1, 2021. Individual A may continue to pay for COBRA continuation coverage after September 2021 through the end of the period that Individual A is eligible for COBRA continuation coverage, if Individual A remains eligible for COBRA continuation coverage.

B. Examples applying the ARP COBRA premium assistance

Example 7. Deadline for retroactive COBRA continuation coverage under the Emergency Relief Notices for a potential Assistance Eligible Individual under the ARP.

(i) Facts. Individual A works for Employer X and participates in Employer X's group health plan. On August 1, 2020, Individual A has a qualifying event that is an involuntary termination of employment, and, therefore, is a potential Assistance Eligible Individual under the ARP. Individual A receives a COBRA election notice on August 1, 2020, but, as of September 1, 2021, has not yet elected COBRA continuation coverage. Individual A also receives the notice of the ARP extended election period on May 31, 2021, but does not elect COBRA continuation coverage with premium assistance under the ARP. When is the last date for Individual A to elect COBRA continuation coverage retroactive to August 1, 2020 under the Emergency Relief Notices?

(ii) Conclusion. Individual A has until September 30, 2021 (one year and 60 days after August 1, 2020) to elect COBRA continuation coverage retroactive to August 1, 2020 under the Emergency Relief Notices. Provided Individual A elects COBRA continuation coverage by September 30, 2021, Individual A would have until November 14, 2021 to make the initial COBRA premium payment (one year and 105 days after

August 1, 2020). The initial COBRA premium payment would include monthly premium payments for August 2020 through October 2020. The November 2020 premium payment would be due by December 1, 2021 (one year and 30 days after November 1, 2020), with premium payments due every month after that for the months Individual A is eligible for COBRA continuation coverage.

Example 8. Failure to elect retroactive COBRA continuation coverage under the Emergency Relief Notices by a potential Assistance Eligible Individual under the ARP.

(i) Facts. Individual B works for Employer Y and participates in Employer Y's group health plan. On March 1, 2021, Individual B has a qualifying event that is an involuntary termination of employment, and, therefore, is a potential Assistance Eligible Individual under the ARP. Individual B receives the COBRA election notice the same day. Individual B receives the COBRA election notice for the ARP extended election period on May 31, 2021, and elects COBRA continuation coverage with COBRA premium assistance beginning April 1, 2021 but does not elect COBRA continuation coverage retroactive to March 1, 2021. Must Individual B be permitted on or after August 1, 2021, to elect retroactive COBRA continuation coverage beginning March 1, 2021?

(ii) Conclusion. No. Because Individual B elected COBRA coverage with premium assistance under the ARP, Individual B remained eligible only until July 30, 2021 (60 days after the receipt of the notice of the ARP extended election period) to elect COBRA continuation coverage retroactive to March 1, 2021. Employer Y's group health plan may require Individual B to elect COBRA continuation coverage retroactive to the loss of coverage within 60 days of receiving the notice of the ARP extended election period or lose eligibility for retroactive coverage under the Emergency Relief Notices. Because Individual B did not elect retroactive COBRA continuation coverage (beginning March 1, 2021) under the Emergency Relief Notices by July 30, 2021, Employer Y's plan is not required to permit Individual B to elect COBRA continuation coverage retroactive to March 1, 2021 under the Emergency Relief Notices. If Individual B had not elected COBRA continuation coverage with premium assistance under the ARP, Individual B would remain eligible to elect COBRA continuation coverage retroactive to March 1, 2021, until April 30, 2022 (one year and 60 days after March 1, 2021). However, COBRA premium assistance under the ARP would not be available for this coverage.

Example 9. Payment for retroactive COBRA continuation coverage under the Emergency Relief Notices by a potential Assistance Eligible Individual under the ARP.

(i) Facts. On November 1, 2020, Individual C has a qualifying event that is an involuntary termination of employment, and, therefore, is a potential Assistance Eligible Individual under the ARP. Individual C receives the COBRA election notice on the same date. On April 30, 2021, Individual C receives the notice of the ARP extended election period. On May 31, 2021, Individual C 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. When are the deadlines for Individual C to make the initial COBRA premium payment and subsequent monthly COBRA premium payments?

(ii) Conclusion. Individual C has until February 14, 2022 to make the initial COBRA premium payment (one year and 105 days after November 1, 2020). The initial COBRA premium payment would include premium payments for November 2020 through January 2021. The February 2021 premium payment would be due by March 3, 2022 (one year and 30 days after February 1, 2021), and the March 2021 premium payment would be due by March 31, 2022 (one year and 30 days after March 1, 2021). Premium payments would be due every month after that for the months Individual C is eligible for COBRA continuation coverage, except that no payments would be due for the periods beginning on or after April 1, 2021, through September 30, 2021.

Example 10. COBRA premium payment after the end of the period of COBRA premium assistance by an Assistance Eligible Individual under the ARP and application of the Emergency Relief Notices.

(i) Facts. The facts are the same as in Example 9, except that Individual C makes the initial COBRA premium payment by February 14, 2022, fails to make the premium payment for the February 2021 period of coverage by March 3, 2022, and fails to make the premium payment for the March 2021 period of coverage by March 31, 2022. Individual C then makes a COBRA premium payment on May 1, 2022. For which months does Individual C have COBRA continuation coverage?

(ii) Conclusion. Individual C has retroactive COBRA continuation coverage for November 2020, December 2020, and January 2021 because Individual C made a timely initial COBRA premium payment under the Emergency Relief Notices. Individual C does not have coverage for the months of February or March 2021 because Individual C did not make timely COBRA premium payments by March 3, 2022 (one year and 30 days after February 1, 2021) or March 31, 2022 (one year and 30 days after March 1, 2021). Individual C has COBRA continuation coverage with COBRA premium assistance for the periods of coverage from April 1, 2021 through September 30, 2021 because Individual C is an Assistance Eligible Individual and made a timely election under the ARP. Individual C also has COBRA continuation coverage for October 2021 (because Individual C made a premium payment on May 1, 2022) unless Individual C indicates that the May 1, 2022 premium payment was intended to pay premiums for a period during which Individual C was eligible for COBRA premium assistance.¹⁷ If the premium payment was not erroneously paid for coverage during a premium assistance period, the COBRA premium payment made on May 1, 2022 must be credited to the period following the ARP COBRA period because that COBRA premium payment is timely under the Emergency Relief Notices (the payment on May 1, 2022 is made within one year and 30 days after October 1, 2021). Individual C may continue to pay for COBRA continuation coverage for the period after October 2021 until Individual C has paid for the last of the months that Individual C is eligible for COBRA continuation coverage.

¹⁷ Section 9501(b)(1)(D) of the ARP requires premium payees (as described in Notice 2021-31) to reimburse Assistance Eligible Individuals for premium amounts that those individuals would have been required to pay if not for the COBRA premium assistance available under the ARP.

VII. Effect on other Documents

This document clarifies the relief for COBRA continuation coverage elections, COBRA premium payments, and COBRA notices provided in the Joint Notification of Extensions of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak and EBSA Disaster Relief Notice 2021-01.

VIII. Effective Date

This notice is effective upon release.

IX. Drafting Information

The principal author of this notice is William Fischer 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 Mr. Fischer at (202) 317-5500 (not a toll-free number).