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**EMPLOYER GUIDE FOR CLAIMING COBRA**

**SUBSIDY TAX CREDIT**

In response to the COVID-19 pandemic, the American Rescue Plan Act of 2021 (“ARPA”) mandated group health plan sponsors/Employers[[1]](#endnote-1) to temporarily provide certain qualified beneficiaries (known as assistance eligible individuals, or “AEI”s) with fully subsidized COBRA premiums during the six months from April 1, 2021, through September 30, 2021.  From the AEI’s perspective, these are “free” COBRA premiums which are covered by their employer. From the employer’s perspective these are employer-paid amounts that may be reimbursed via an available tax credit (the “Tax Credit”).

In order to receive reimbursement, the *Employer* (versus the plan) must obtain the Tax Credit. The purpose of this guide is to assist employers with the steps needed for claiming the Tax Credit. The Tax Credit is intended to be offset against Medicare tax liability.  If the amount of COBRA premium assistance provided to qualifying individuals exceeds the Medicare tax payable, a refund of the excess amount can be requested.

**How to Claim the Tax Credit**

Step 1 (below) must be followed in order to claim the Tax Credit. If the Employer wants the Tax Credit paid in advance, then Step 2 (and potentially Step 3) should be followed. In any event, all employers seeking the Tax Credit must complete Step 1.

**Step 1**. ***Complete Form 941***. Employers claim the Tax Credit by reporting the credit on their federal quarterly employment tax returns (usually Form 941).[[2]](#endnote-2) The IRS has updated [Form 941](https://www.irs.gov/pub/irs-pdf/f941.pdf) (and the [Instructions](https://www.irs.gov/pub/irs-pdf/i941.pdf) ) to reflect the availability of this Tax Credit. Employers are required to report (a) the nonrefundable portion of COBRA subsidy, and (b) the refundable portion of COBRA subsidy (if any). Both of these items are explained below. The updated Instructions include a new worksheet (“Worksheet 5,” see last page (p.29) of Instructions (and attached as Appendix A) that Employers can use to determine their ARPA tax credit. The following are the relevant lines from Form 941:

1. **Line 11e (Nonrefundable Portion of Tax Credit)**: Employers should enter the “nonrefundable” portion of the Tax Credit (which generally is the amount of COBRA subsidies provided during the quarter that does not exceed their Medicare tax obligations). This amount is listed under line 2g, in [Worksheet 5](https://www.irs.gov/pub/irs-pdf/i941.pdf).
2. **Line 11f (Number of Individual Provided COBRA Subsidy)**: Employers should enter the number of AEIs for which they provided a COBRA subsidy during the quarter. NOTE: Count each AEI as one individual even if that AEI has dependents. For example, if COBRA coverage is for a former employee, spouse, and two children, the Employer should count all of them as one individual.
3. **Line 13f (Refundable Portion of Tax Credit)**: If an employer’s Tax Credit exceeds it’s Medicare taxes, then the Employer should enter this amount (i.e., the refundable portion of the COBRA Tax Credit) in line 13f. This amount is listed under, line 2h, in [Worksheet 5](https://www.irs.gov/pub/irs-pdf/i941.pdf).

**Step 2**. ***Anticipate Payment of Tax Credit***. An Employer may anticipate payment of the Tax Credit by withholding the amount of the Tax Credit from the Medicare tax obligations it would otherwise be required to deposit. Please note the following:

1. An Employer will not be subject to a penalty for withholding these amounts.

1. An Employer cannot withhold for a period of COBRA Premium coverage that has not yet started.

1. See Step 3 if the Tax Credit amounts exceed the amount that can be withheld (i.e., because it exceeds the Employer’s quarterly Medicare tax obligations), and the Employer wants an advance payment of this amount.
2. If an Employer/Plan does not have any Medicare tax obligations to withhold (for example, in the case of a multiemployer plan that does not have employees and does not make any benefit payments subject to withholding), the Employer/Plan can go straight to Step 3 and file IRS Form 7200 to request the anticipated tax credit.

**Step 3**. ***Advance Payment of Refundable Portion of Tax Credit***. If an Employer’s anticipated quarterly Tax Credit exceeds it’s quarterly Medicare tax obligations (see Step 2), and the Employer wishes to receive an advance payment of that refundable portion of the Tax Credit, then it should use [Form 7200](https://www.irs.gov/pub/irs-pdf/f7200.pdf). Please note the following:

1. Employers cannot withhold for a period of COBRA Premium coverage that has not yet started.
2. Form 7200 must be faxed to the IRS.

**When Can the Tax Credit be Claimed?**

**Initial COBRA Election**. The Employer is eligible to claim the Tax Credit for a particular AEI starting on the date that it first receives the AEI’s COBRA election.

**EXAMPLE**: If the Employer receives a COBRA election on September 15, 2021, but the AEI has not paid premiums starting July 1, 2021, then September 15, 2021 is the earliest the Employer can claim the Tax Credit (and this can be claimed for the period of coverage from July 1, 2021 through September 30, 2021).

**Ongoing Months of Coverage**. At the beginning of each month of coverage, the Employer is eligible to claim a Tax Credit for that month.

**EXAMPLE**: As of August 15, 2021, AEI has COBRA coverage. August 15, 2021 is the earliest the Employer can claim a Tax Credit for that AEI for the month of August. Employer cannot, on August 15, 2021, claim Tax Credit for month of September.

**Specific Housing Authority Examples**

This Guide was prepared for the Housing Benefit Plan and its member Housing Authorities (“Authorities”) to assist with claiming the tax credit that certain Authorities might be entitled to based on their COBRA practices. The purpose of this section of the Guide is to address the various ways that certain Authorities handle COBRA premium payments.

***General Note***: Only the “premium payee” (i.e., the entity to whom COBRA premium payments are usually made) is entitled to the tax credit. The amount of the tax credit will depend on what amounts the Authority actually subsidized. The examples below illustrate this point:

1. **Authority A**. Prior to the subsidy mandate, participants were required to pay their entire COBRA premium for up to 18 months of COBRA. Here, Authority A subsidized 100% of an eligible participant’s COBRA premium and can claim 100% of any subsidized premiums during the period April 1, 202, through September 30, 2021.
2. **Authority B**. Prior to the subsidy mandate, participants were required to pay 60% of their COBRA premium for up to 18 months of COBRA. Here, Authority B subsidized 40% of an eligible participant’s COBRA premium and can claim 40% of any subsidized premiums during the period April 1, 2021, through September 30, 2021.
3. **Authority C**. Prior to the subsidy mandate, Authority C paid entire COBRA premium for the first 6 months of COBRA coverage with participants paying the entire COBRA premium for the remaining 12 months of COBRA. Here, Authority C subsidized 0% of COBRA premium for the first 6 months and 100% of the COBRA premium for the next 12 months. Authority C cannot claim a tax credit for the first 6 months but can claim a tax credit of 100% for the remaining 12 months (but only to the extent those months overlapped the period April 1, 2021, through September 30, 2021).
4. **Authority D**. Prior to the subsidy mandate, Authority D paid 40% of the COBRA premium for the first 3 months of COBRA coverage with participants paying the entire COBRA premium for the remaining 15 months of COBRA. Here, Authority D subsidized 60% of COBRA premium for the first 3 months and 100% of the COBRA premium for the next 15 months. Authority D can therefore claim a tax credit of 60% for the first 3 months of COBRA coverage premiums and 100% of the COBRA premium for the remaining 15 months (but only to the extent those months overlapped the period April 1, 2021, through September 30, 2021).
5. **Authority E**. Prior to the subsidy mandate, Authority E did not handle COBRA Premiums (instead they were handled by UHC). Authority E is not entitled to claim any tax credit.

**Appendix A**

**Worksheet #5 to Form 941 Instructions,  
 Calculation of COBRA Premium Assistance Credit**

**Worksheet 5. COBRA Premium Assistance Credit** *Keep for Your Records*



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| --- | --- | --- | --- | --- | --- |
| **Determine how you will complete this worksheet. (If you’re a third-party payer, you must complete this worksheet for each client for which it is applicable, on a client-by-client basis. If you're a third-party payer that is treated as the person to whom premiums are payable, you must complete this worksheet for yourself as well.)**  If you provided COBRA premium assistance in the quarter, complete Step 1 and Step 2. If you’re claiming the credit for qualified sick and family leave wages this quarter for leave taken after March 31, 2021, complete Worksheet 3 before starting this worksheet. If you’re claiming this credit for the third or fourth quarter of 2021 and you are also claiming an employee retention credit for wages paid in the same quarter of 2021, complete Worksheet 4 before starting this worksheet. | | | | | |
| **Step 1.** | **Determine the employer share of Medicare tax** | | | | |
| 1a | If you completed Worksheet 3 or Worksheet 4, enter the amount listed on Worksheet 3,  line 1f, or Worksheet 4, line 1a or 1g (as applicable). If you’re not claiming either of these  credits this quarter, continue by completing lines 1b–1g below and then go to Step  2 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |  |  | 1a |  |
| 1b | Enter the amount of Medicare tax from Form 941, Part 1, line 5c, column 2 . . . . . . . . . . . | 1b |  |  | |
| 1c | Multiply line 1b by 50% (0.50) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 1c |  |  | |
| 1d | If you’re a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of Medicare tax included on  Form 941, Part 1, line 8 (enter as a positive number) . . . . . . . . . . . . . . . . . . . . . . . . . . . | 1d |  |  | |
| 1e | Subtract line 1d from line 1c . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 1e |  |  | |
| 1f | If you received a Section 3121(q) Notice and Demand during the quarter, enter the amount  of the employer share of Medicare tax from the notice . . . . . . . . . . . . . . . . . . . . . . . . . . | 1f |  |  | |
| 1g | **Employer share of Medicare tax.** Add lines 1e and 1f . . . . . . . . . . . . . . . . . . . . . . . . . |  |  | 1g |  |
|  |  |  |  |  | |
| **Step 2.** | **Figure the COBRA premium assistance credit** |  |  |  | |
| 2a | Enter the COBRA premium assistance that you provided this quarter . . . . . . . . . . . . . . . | 2a |  |  | |
| 2b | Enter the amount of the employer share of Medicare tax from Step 1, line 1a, or, if  applicable, Step 1, line 1g . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 2b |  |  | |
| 2c | Enter any amount of the nonrefundable portion of the credit for qualified sick and family  leave wages for leave taken after March 31, 2021, from Worksheet 3, Step 2,  line 2r . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 2c |  |  | |
| 2d | Enter any amount of the nonrefundable portion of the employee retention credit from Worksheet 4, Step 2, line 2h . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 2d |  |  | |
| 2e | **Other nonrefundable credits used against the employer share of Medicare tax.** Add  lines 2c and 2d . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 2e |  |  | |
| 2f | Subtract line 2e from line 2b . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 2f |  |  | |
| 2g | **Nonrefundable portion of the COBRA premium assistance credit.** Enter the smaller  of line 2a or line 2f. Enter this amount on Form 941, Part 1, line 11e . . . . . . . . . . . . . . . . |  |  | 2g |  |
| 2h | **Refundable portion of the COBRA premium assistance credit.** Subtract line 2g from  line 2a and enter this amount on Form 941, Part 1, line 13f . . . . . . . . . . . . . . . . . . . . . . . |  |  | 2h |  |
|  |  |  |  |  | |

1. For purposes of this guide, we refer to the “Employer” as the entity entitled to the Tax Credit for subsidized premiums. However, note that ARPA provides that a “person to whom premiums are payable” is the entity entitled to claim the Tax Credit.  In Notice 2021-31, the IRS calls the “person to whom premiums are payable” the “Premium Payee.” Premium Payees eligible to claim the Tax Credit are: (a) in the case of any group health plan which is a multiemployer plan, the *plan*; (b) for other self-funded plans, and insured plans that are subject to federal COBRA, the *employer* maintaining the plan; (c) in the case of any group health plan not listed above (such as insured plans sponsored by small employers that are not subject to federal COBRA, but are subject to state continuation coverage requirements), the *insurer* providing the coverage. [↑](#endnote-ref-1)
2. Employers that do not normally file the IRS Form 941 because they do not have federal employment tax liability will have to do so to claim the Tax Credit. [↑](#endnote-ref-2)