



Employee Benefits Alert

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IRS ISSUES ADDITIONAL Q&As ON COBRA SUBSIDY

By Susan Relland, Michael Lloyd, and Marianna Dyson

The IRS released **additional guidance today** in the form of additional Q&As regarding the COBRA subsidy contained in the American Recovery and Reinvestment Act of 2009. Importantly, the IRS verified its prior informal statements that the amount of the COBRA subsidy will be treated as arising on the first day of the quarter in which it is claimed. The IRS cautioned, however, that employers must still make timely deposits when the amount of the COBRA subsidy does not exceed the required payroll deposits for the quarter.

Payroll Returns the Proper Mechanism for Claiming the Subsidy

In certain situations, the legislation requires certain non-employers (*i.e.*, multiemployer plans and insurers) to provide the subsidy to involuntarily terminated workers. Although multiemployer plans and insurers are often not the actual employer, the IRS stated that the Form 941 is the appropriate form to use to claim the COBRA subsidy. Entities authorized to file annual payroll tax returns (Forms 933 or 944) may use such annual forms to claim the COBRA credit.

Form 941 Schedule B Rules Unchanged

Schedule B is used by semiweekly depositors to report an employer's payroll tax liability for each pay period during the quarter. The IRS confirmed that the

liability amounts reportable on Schedule B should reflect only an employer's employment tax liability without offset for the COBRA subsidy.

COBRA Subsidy Claims May Be Made in Subsequent Quarters

Many employers have asked whether they may claim the COBRA subsidy in subsequent quarters to the quarter in which a COBRA subsidy arises. The new guidance permits employers to claim the COBRA subsidy on the Form 941 for the quarter in which it arises or on subsequent Forms 941 within the same calendar year. Nevertheless, an employer that reduces its payroll tax deposits during a particular quarter for the COBRA subsidy must claim the credit for that subsidy in the same quarter. If an employer fails to timely claim a COBRA subsidy in the quarter in which it arises, the employer may alternatively amend its previously filed Form 941 by filing the newly released Form 941-X.

Employers Must Maintain Supporting Documentation

The IRS again cautioned employers to maintain documentation to support its COBRA credits. The supporting documents that employers must maintain are listed in our **prior alert** and in the Q&As.

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