

## Subtitle F—Preserving Health Benefits For Workers

### **SEC. 9501. PRESERVING HEALTH BENEFITS FOR WORKERS.**

(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage during the period beginning on the first day of the first month beginning after the date of the enactment of this Act, and ending on September 30, 2021, for COBRA continuation coverage with respect to any assistance eligible individual described in paragraph (3), such individual shall be treated for purposes of any COBRA continuation provision as having paid in full the amount of such premium.

(B) PLAN ENROLLMENT OPTION.—

(i) IN GENERAL.—Solely for purposes of this subsection, the COBRA continuation provisions shall be applied such that any assistance eligible individual who is enrolled in a group health plan offered by a plan sponsor may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by such plan sponsor that is different than coverage under the plan in which such individual was enrolled at the time, in the case of any assistance eligible individual described in paragraph (3), the qualifying event specified in section 603(2) of the Employee Retirement Income Security Act of 1974, [section 4980B\(f\)\(3\)\(B\)](#) of the Internal Revenue Code of 1986, or section 2203(2) of the Public Health Service Act, except for the voluntary termination of such individual's employment by such individual, occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

(ii) REQUIREMENTS.—Any assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

(I) the employer involved has made a determination that such employer will permit such assistance eligible individual to enroll in different coverage as provided under this subparagraph;

(II) the premium for such different coverage does not exceed the premium for coverage in which such individual was enrolled at the time such qualifying event occurred;

(III) the different coverage in which the individual elects to enroll is coverage that is also offered to similarly situated active employees of the employer at the time at which such election is made; and

(IV) the different coverage in which the individual elects to enroll is not—

(aa) coverage that provides only excepted benefits as defined in [section 9832\(c\)](#) of the Internal Revenue Code of 1986, section 733(c) of the Employee Retirement Income Security Act of 1974, and section 2791(c) of the Public Health Service Act;

(bb) a qualified small employer health reimbursement arrangement (as defined in [section 9831\(d\)\(2\)](#) of the Internal Revenue Code of 1986); or

(cc) a flexible spending arrangement (as defined in [section 106\(c\)\(2\)](#) of the Internal Revenue Code of 1986).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) ELIGIBILITY FOR ADDITIONAL COVERAGE.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual described in paragraph (3) for months of coverage beginning on or after the earlier of—

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only excepted benefits (as defined in [section 9832\(c\)](#) of the Internal Revenue Code of 1986, section 733(c) of the Employee Retirement Income Security Act of 1974, and section 2791(c) of the Public Health Service Act), coverage under a flexible spending arrangement (as defined in [section 106\(c\)\(2\)](#) of the Internal Revenue Code of 1986), coverage under a qualified small employer health reimbursement arrangement (as defined in [section 9831\(d\)\(2\)](#) of the Internal Revenue Code of 1986), or eligible for benefits under the Medicare program under title XVIII of the Social Security Act; or

(ii) the earlier of—

(I) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision; or

(II) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) NOTIFICATION REQUIREMENT.—Any assistance eligible individual shall notify the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of clause (i) of subparagraph (A) (as applicable). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term “assistance eligible individual” means, with respect to a period of coverage during the period beginning on the first day of the first month beginning after the date of the enactment of this Act, and ending on September 30, 2021, any individual that is a qualified beneficiary who—

(A) is eligible for COBRA continuation coverage by reason of a qualifying event specified in section 603(2) of the Employee Retirement Income Security Act of 1974, [section 4980B\(f\)\(3\)\(B\)](#) of the Internal Revenue Code of 1986, or section 2203(2) of the Public Health Service Act, except for the voluntary termination of such individual’s employment by such individual; and

(B) elects such coverage.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—For purposes of applying section 605(a) of the Employee Retirement Income Security Act of 1974, [section 4980B\(f\)\(5\)\(A\)](#) of the Internal Revenue Code of 1986, and section 2205(a) of the Public Health Service Act, in the case of—

(i) an individual who does not have an election of COBRA continuation coverage in effect on the first day of the first month beginning after the date of the enactment of this Act but who would be an assistance eligible individual described in paragraph (3) if such election were so in effect; or

(ii) an individual who elected COBRA continuation coverage and discontinued from such coverage before the first day of the first month beginning after the date of the enactment of this Act,

such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such provisions during the period beginning on the first day of the first month beginning after the date of the enactment of this Act and ending 60 days after the date on which the notification required under paragraph (5)(C) is provided to such individual.

(B) COMMENCEMENT OF COBRA CONTINUATION COVERAGE.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

(i) shall commence (including for purposes of applying the treatment of premium payments under paragraph (1)(A) and any cost-sharing requirements for items and services under a group health plan) with the first period of coverage beginning on or after the first day of the first month beginning after the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision or had not been discontinued.

(5) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(a)(4) of the Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1166\(4\)](#)), [section 4980B\(f\)\(6\)\(D\)](#) of the Internal Revenue Code of 1986, or section 2206(4) of the Public Health Service Act ([42 U.S.C. 300bb-6\(4\)](#)), with respect to individuals who, during the period described in paragraph (3), become entitled to elect COBRA continuation coverage, the requirements of such provisions shall not be treated as met unless such notices include an additional written notification to the recipient in clear and understandable language of—

(I) the availability of premium assistance with respect to such coverage under this subsection; and

(II) the option to enroll in different coverage if the employer permits assistance eligible individuals described in paragraph (3) to elect enrollment in different coverage (as described in paragraph (1)(B)).

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in consultation with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium assistance under this subsection;

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance;

(iii) a description of the extended election period provided for in paragraph (4)(A);

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(B) and the penalty provided under [section 6720C](#) of the Internal Revenue Code of 1986 for failure to carry out the obligation;

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

(C) NOTICE IN CONNECTION WITH EXTENDED ELECTION PERIODS.—In the case of any assistance eligible individual described in paragraph (3) (or any individual described in paragraph (4)(A)) who became entitled to elect COBRA continuation coverage before the first day of the first month beginning after the date of the enactment of this Act, the administrator of the applicable group health plan (or other entity) shall provide (within 60 days after such first day of such first month) for the additional notification required to be provided under subparagraph (A) and failure to provide such notice shall be treated as a failure to meet the notice requirements under the applicable COBRA continuation provision.

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, with respect to any assistance eligible individual described in paragraph (3), the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph.

(6) NOTICE OF EXPIRATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) IN GENERAL.—With respect to any assistance eligible individual, subject to subparagraph (B), the requirements of section 606(a)(4) of the Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1166\(4\)](#)), [section 4980B\(f\)\(6\)\(D\)](#) of the Internal Revenue Code of 1986, or section 2206(4) of the Public Health Service Act ([42 U.S.C. 300bb-6\(4\)](#)), shall not be treated as met unless the plan administrator of the individual, during the period specified under subparagraph (C), provides to such individual a written notice in clear and understandable language—

(i) that the premium assistance for such individual will expire soon and the prominent identification of the date of such expiration; and

(ii) that such individual may be eligible for coverage without any premium assistance through—

(I) COBRA continuation coverage; or

(II) coverage under a group health plan.

(B) EXCEPTION.—The requirement for the group health plan administrator to provide the written notice under subparagraph (A) shall be waived if the premium assistance for such individual expires pursuant to clause (i) of paragraph (2)(A).

(C) PERIOD SPECIFIED.—For purposes of subparagraph (A), the period specified in this subparagraph is, with respect to the date of expiration of premium assistance for any assistance eligible individual pursuant to a limitation requiring a notice under this paragraph, the period beginning on the day that is 45 days before the date of such expiration and ending on the day that is 15 days before the date of such expiration.

(D) MODEL NOTICES.—Not later than 45 days after the date of enactment of this Act, with respect to any assistance eligible individual, the Secretary of Labor, in consultation with the Secretary of the Treasury and

the Secretary of Health and Human Services, shall prescribe models for the notification required under this paragraph.

(7) REGULATIONS.—The Secretary of the Treasury and the Secretary of Labor may jointly prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this subsection, including the prevention of fraud and abuse under this subsection, except that the Secretary of Labor and the Secretary of Health and Human Services may prescribe such regulations (including interim final regulations) or other guidance as may be necessary or appropriate to carry out the provisions of paragraphs (5), (6), and (8).

(8) OUTREACH.—

(A) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium assistance provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (5)(C). Information on such premium assistance, including enrollment, shall also be made available on websites of the Departments of Labor, Treasury, and Health and Human Services.

(B) ENROLLMENT UNDER MEDICARE.—The Secretary of Health and Human Services shall provide outreach consisting of public education. Such outreach shall target individuals who lose health insurance coverage. Such outreach shall include information regarding enrollment for Medicare benefits for purposes of preventing mistaken delays of such enrollment by such individuals, including lifetime penalties for failure of timely enrollment.

(9) DEFINITIONS.—For purposes of this section:

(A) ADMINISTRATOR.—The term “administrator” has the meaning given such term in section 3(16)(A) of the Employee Retirement Income Security Act of 1974, and includes a COBRA administrator.

(B) COBRA CONTINUATION COVERAGE.—The term “COBRA continuation coverage” means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, or [section 4980B](#) of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of [section 125](#) of the Internal Revenue Code of 1986.

(C) COBRA CONTINUATION PROVISION.—The term “COBRA continuation provision” means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term “covered employee” has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term “qualified beneficiary” has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term “group health plan” has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(H) PERIOD OF COVERAGE.—Any reference in this subsection to a period of coverage shall be treated as a reference to a monthly or shorter period of coverage with respect to which premiums are charged with respect to such coverage.

(I) PLAN SPONSOR.—The term “plan sponsor” has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(J) PREMIUM.—The term “premium” includes, with respect to COBRA continuation coverage, any administrative fee.

(10) IMPLEMENTATION FUNDING.—In addition to amounts otherwise made available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Labor for fiscal year 2021, \$10,000,000, to remain available until expended, for the Employee Benefits Security Administration to carry out the provisions of this subtitle.

(b) COBRA PREMIUM ASSISTANCE.—

(1) ALLOWANCE OF CREDIT.—

(A) IN GENERAL.—Subchapter B of [chapter 65](#) of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

**“SEC. 6432. CONTINUATION COVERAGE PREMIUM ASSISTANCE.**

“(a) IN GENERAL.—The person to whom premiums are payable for continuation coverage under section 9501(a)(1) of the American Rescue Plan Act of 2021 shall be allowed as a credit against the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for each calendar quarter an amount equal to the premiums not paid by assistance eligible individuals for such coverage by reason of such section 9501(a)(1) with respect to such calendar quarter.

“(b) PERSON TO WHOM PREMIUMS ARE PAYABLE.—For purposes of subsection (a), except as otherwise provided by the Secretary, the person to whom premiums are payable under such continuation coverage shall be treated as being—

“(1) in the case of any group health plan which is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), the plan,

“(2) in the case of any group health plan not described in paragraph (1)—

“(A) which is subject to the COBRA continuation provisions contained in—

“(i) the Internal Revenue Code of 1986,

“(ii) the Employee Retirement Income Security Act of 1974, or

“(iii) the Public Health Service Act, or

“(B) under which some or all of the coverage is not provided by insurance, the employer maintaining the plan, and

“(3) in the case of any group health plan not described in paragraph (1) or (2), the insurer providing the coverage under the group health plan.

“(c) LIMITATIONS AND REFUNDABILITY.—

“(1) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for such calendar quarter (reduced by any credits allowed against such taxes under sections 3131, 3132, and 3134) on the wages paid with respect to the employment of all employees of the employer.

“(2) REFUNDABILITY OF EXCESS CREDIT.—

“(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (1) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

“(B) CREDIT MAY BE ADVANCED.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a) through the end of the most recent payroll period in the quarter.

“(C) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

“(D) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

“(3) OVERSTATEMENTS.—Any overstatement of the credit to which a person is entitled under this section (and any amount paid by the Secretary as a result of such overstatement) shall be treated as an underpayment by such person of the taxes described in paragraph (1) and may be assessed and collected by the Secretary in the same manner as such taxes.

“(d) GOVERNMENTAL ENTITIES.—For purposes of this section, the term ‘person’ includes the government of any State or political subdivision thereof, any Indian tribal government (as defined in section 139E(c)(1)), any agency or instrumentality of any of the foregoing, and any agency or instrumentality of the Government of the United States that is described in section 501(c)(1) and exempt from taxation under section 501(a).

“(e) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1, the gross income of any person allowed a credit under this section shall be increased for the taxable year which includes the last day of any calendar quarter with respect to which such credit is allowed by the amount of such credit. No credit shall be allowed under this section with respect to any amount which is taken into account as qualified wages under

section 2301 of the CARES Act or section 3134 of this title or as qualified health plan expenses under section 7001(d) or 7003(d) of the Families First Coronavirus Response Act or section 3131 or 3132 of this title.

“(f) EXTENSION OF LIMITATION ON ASSESSMENT.—Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

“(1) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

“(2) the date on which such return is treated as filed under section 6501(b)(2).

“(g) REGULATIONS.—The Secretary shall issue such regulations, or other guidance, forms, instructions, and publications, as may be necessary or appropriate to carry out this section, including—

“(1) the requirement to report information or the establishment of other methods for verifying the correct amounts of reimbursements under this section,

“(2) the application of this section to group health plans that are multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

“(3) to allow the advance payment of the credit determined under subsection (a), subject to the limitations provided in this section, based on such information as the Secretary shall require,

“(4) to provide for the reconciliation of such advance payment with the amount of the credit at the time of filing the return of tax for the applicable quarter or taxable year, and

“(5) allowing the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504).”.

(B) CLERICAL AMENDMENT.—The table of sections for subchapter B of [chapter 65](#) of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 6432. Continuation coverage premium assistance.”.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies and wages paid on or after April 1, 2021.

(D) SPECIAL RULE IN CASE OF EMPLOYEE PAYMENT THAT IS NOT REQUIRED UNDER THIS SECTION.—

(i) IN GENERAL.—In the case of an assistance eligible individual who pays, with respect any period of coverage to which subsection (a)(1)(A) applies, any amount of the premium for such coverage that the individual would have (but for this Act) been required to pay, the person to whom such payment is payable shall reimburse such individual for the amount of such premium paid.

(ii) CREDIT OF REIMBURSEMENT.—A person to which clause (i) applies shall be allowed a credit in the manner provided under [section 6432](#) of the Internal Revenue Code of 1986 for any payment made to the employee under such clause.

(iii) PAYMENT OF CREDITS.—Any person to which clause (i) applies shall make the payment required under such clause to the individual not later than 60 days after the date on which such individual made the premium payment.

(2) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Part I of subchapter B of [chapter 68](#) of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

**“SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR CONTINUATION COVERAGE PREMIUM ASSISTANCE.**

“(a) IN GENERAL.—Except in the case of a failure described in subsection (b) or (c), any person required to notify a group health plan under section 9501(a)(2)(B) of the American Rescue Plan Act of 2021 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of \$250 for each such failure.

“(b) INTENTIONAL FAILURE.—In the case of any such failure that is fraudulent, such person shall pay a penalty equal to the greater of—

“(1) \$250, or

“(2) 110 percent of the premium assistance provided under section 9501(a)(1)(A) of the American Rescue Plan Act of 2021 after termination of eligibility under such section.

“(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.”.

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68 of such Code is amended by adding at the end the following new item:

“Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for continuation coverage premium assistance.”.

(3) COORDINATION WITH HCTC.—

(A) IN GENERAL.—[Section 35\(g\)\(9\)](#) of the Internal Revenue Code of 1986 is amended to read as follows:

“(9) CONTINUATION COVERAGE PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium assistance for continuation coverage under section 9501(a)(1) of the American Rescue Plan Act of 2021 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.”.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(4) EXCLUSION OF CONTINUATION COVERAGE PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of [chapter 1](#) of the Internal Revenue Code of 1986 is amended by inserting after section 139H the following new section:

**“SEC. 139I. CONTINUATION COVERAGE PREMIUM ASSISTANCE.**

“In the case of an assistance eligible individual (as defined in subsection (a)(3) of section 9501 of the American Rescue Plan Act of 2021), gross income does not include any premium assistance provided under subsection (a)(1) of such section.”.

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139H the following new item:

“Sec. 139I. Continuation coverage premium assistance.”.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act.