Proper Use of Premium Credits

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In light of the current pandemic, some carriers are offering premium credits attributable to a portion of the premiums paid in months where COVID-19 limited the benefit available to participants. While this is good news, the availability of such premium credits creates fiduciary issues with respect to plan assets under ERISA. This summary is intended to highlight possible issues and mitigate potential ERISA fiduciary exposure.

The proper usage of the premium credits will depend on the proportion of premium that the employer and the employee paid, respectively.

Generally, the proportion attributable to the employer paid premium can be kept by the employer.

However, the proportion that relates to employee premium should be given back to employees. This can be accomplished as follows:

- Reducing future premiums for current plan participants. This is administratively easy with limited tax issues with respect to participants.
- Providing cash payments to current participants. This is administratively burdensome and results in tax consequences to participants (i.e., premium credits are taxable income).

The employer could also consider, with counsel, whether providing benefit enhancements or payment of reasonable plan expenses would be considered permissible.

With respect to ancillary products (such as dental and vision benefits), the employee often pays 100% of the premium, in which case 100% of the premium credit would be passed on to employees.

Using the principles outlined in DOL Field Assistance Bulletin No. 2006-01, a fiduciary may be able to conclude, after analyzing the relative costs, that no allocation is necessary, when the administrative costs of making correction far exceed the amount of the allocation.

Even though this is not an MLR rebate, the same principles should apply. If you would like further information about the proper usage of an MLR rebate, please reach out to your Account Executive.