



UNITED STATES DEPARTMENT OF LABOR
Employee Benefits Security Administration

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FAQs For Employers About COBRA Premium Reduction Under ARRA

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Q1: What is the new COBRA subsidy provision contained in the stimulus package signed by the President?

The stimulus package, which was enacted as the American Recovery and Reinvestment Act of 2009 (ARRA) temporarily reduces the premium for COBRA coverage for eligible individuals. COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) allows certain people to extend employer-provided group health coverage, if they would otherwise lose the coverage due to certain events such as divorce or loss of a job.

Individuals who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred from September 1, 2008 through December 31, 2009 and who elect COBRA, may be eligible to pay a reduced premium. Eligible individuals pay only 35% of the full COBRA premiums under their plans for up to 9 months. The employer (or other responsible entity) may recover the remaining 65% of the premium by taking the subsidy amount as a credit on its quarterly employment tax return. This premium reduction is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under state continuation coverage laws.

If the individual was offered Federal COBRA continuation coverage as a result of an involuntary termination of employment that occurred at any time from September 1, 2008 through February 16, 2009, and that individual declined to take COBRA at that time, or elected COBRA and later discontinued it, he/she may have another opportunity to elect COBRA coverage and pay a reduced premium.

Q2: What plans are subject to the premium reduction provisions?

The COBRA premium reduction provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by State or local governments subject to the continuation provisions under the Public Health Service Act, and plans in the Federal Employee Health Benefits Program (FEHBP). The premium reduction is also available for group health insurance that is required by State law to provide comparable continuation coverage (such as "mini-COBRA").

Q3: Who is eligible to receive the COBRA premium reduction?

ARRA makes the premium reduction available for "assistance eligible individuals." An Assistance Eligible Individual is a COBRA qualified beneficiary who meets the following requirements:

- Is eligible for COBRA continuation coverage at any time during the period from September 1, 2008 through December 31, 2009;
- Elects COBRA coverage (when first offered or during the additional election period provided by ARRA); and
- The COBRA election opportunity relates to an involuntary termination of employment that occurred at some time from September 1, 2008 through December 31, 2009.

However, if the individual is eligible for other group health coverage (such as through a new employer's plan or a spouse's plan) or Medicare he/she is not eligible for the premium reduction.

If the employee's termination of employment was for gross misconduct, the employee and any dependents generally would not qualify for COBRA or the premium reduction.

Electing the premium reduction disqualifies the individual for the Health Coverage Tax Credit. Additionally, certain

high-income individual may have to repay the amount of the premium reduction through an increase in their income taxes. If the amount earned for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), individuals may have to repay all or part of the premium reduction through an increase in their income tax liability for the year. For more information, visit the [IRS web page](#) on ARRA.

Q4: Who is eligible for the second election opportunity for COBRA coverage?

Qualified beneficiaries whose qualifying event was an involuntary termination of employment during the period from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA but are no longer enrolled (for example, those who dropped COBRA coverage because they were unable to continue paying the premium) have a new, second election opportunity. Individuals eligible for the extended COBRA election period must receive a notice informing them of this opportunity. This notice must be provided by April 18, 2009 and individuals have 60 days after the notice is provided to elect COBRA. However, this special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009.

Under ARRA, this special election period opportunity is not required to be provided with respect to State continuation coverage that is provided pursuant to State insurance law. A State can take action, however, to provide an additional election period in its continuation coverage program for individuals involuntarily terminated from September 1, 2008 through February 16, 2009 in order for them to request premium assistance based upon involuntary termination occurring during that period. For more information on rights and responsibilities regarding election periods under State law, contact your State insurance commissioner's office or [CMS](#).

Q5: Does ARRA impose any new notice requirements?

Yes, plans and issuers are required to notify qualified beneficiaries regarding the premium reduction and other information about their rights under ARRA as follows:

- A general notice to all qualified beneficiaries, whether they are currently enrolled in COBRA coverage or not, who have a qualifying event during the period from September 1, 2008 through December 31, 2009. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event.
- A notice of the extended COBRA election period to any Assistance Eligible Individual (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect); who had a qualifying event at any time from September 1, 2008 through February 16, 2009; and who either did not elect COBRA continuation coverage or who elected but subsequently discontinued COBRA. This notice must be provided within 60 days following February 17, 2009.

Unless specifically modified by ARRA, the existing COBRA notice manner and timing requirements continue to apply.

Under the State programs, the issuer of the group health plan must provide the notice to qualified beneficiaries with the information on how to apply for the premium reduction. These notices must be provided within the time required by State law.

Q6: What information must the notices include?

The notices must include the following information:

- The forms necessary for establishing eligibility for the premium reduction;
- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium reduction;
- A description of the second election period (if applicable to the individual);
- A description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan or Medicare and the penalty for failing to do so;
- A description of the right to receive the premium reduction and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

Q7: Has the DOL developed model notices?

Yes. The Department of Labor has developed [model notices](#) that are available.

Q8: Can employees currently enrolled in COBRA continuation coverage switch to a different coverage option offered by the plan?

Yes. Group health plans are permitted, but not required, to allow qualified beneficiaries to enroll in coverage that is different than the coverage they had at the time of the qualifying event. ARRA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium reduction, provided that:

- The premium for the different coverage is the same or lower than the coverage the individual had at the time of the qualifying event;
- The different coverage is also offered to active employees; and
- The different coverage is not limited to only dental coverage, vision coverage, counseling coverage, a flexible spending account, or an on-site medical clinic.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice of their opportunity to change. Individuals have 90 days to elect to change their coverage after the notice is provided.

Q9: If the employee is required to pay only 35% of the premium, how is the employer reimbursed for the remaining 65% of the premium?

The employer (or other responsible entity) may recover the subsidy provided to Assistance Eligible Individuals by taking the subsidy amount as a credit on its IRS Form 941 quarterly employment tax return.

For more information on the Form 941 credit and the tax provisions in ARRA, visit the [IRS web site](#).

Q10: Does the premium reduction apply to premiums paid for periods of coverage prior to enactment of the ARRA?

No. There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.

Q11: If a plan receives payment of 100 percent of the premium for coverage for March or April from an individual determined to be eligible for the premium reduction, what does the plan do with the overpayment?

If an individual meets the requirements of an Assistance Eligible Individual and pays 100 percent of the premium in March or April for coverage in those months, the overpayment can be applied as a credit toward subsequent premiums as long as it can be used within 180 days of the overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

Q12: If the employer denies the employee's request for the premium reduction does the employee have appeal rights?

Yes. Individuals who are denied treatment as Assistance Eligible Individuals and thus denied eligibility for the premium reduction may request an expedited review of the denial. The Department of Labor will handle appeals related to private sector employer plans subject to ERISA's COBRA provisions. The Department of Health and Human Services will handle appeals for Federal, State, and local governmental employees, as well as appeals related to group health insurance coverage provided pursuant to state continuation coverage laws. The Departments must make a determination within 15 business days of receipt of a completed request for review. The Department of Labor is currently developing a process and an official application form that will be required to be completed for appeals. The process will include obtaining information from the employer, plan or insurer where appropriate. There will be a very short turn around time for submission of this information due to the short time for the determination.

Q13: Where can I go to find more information?

Guidance and other information is available on the Department of Labor's dedicated COBRA web site at www.dol.gov/COBRA. You are encouraged to subscribe to this page so that you will receive updates as new information is added to the site. You can also call 1.866.444.3272 to speak to an Employee Benefits Security

Administration Benefits Advisor.

For specific information about how you claim credit for the 65% of COBRA premiums and filing your Quarterly Federal Tax Return (Form 941) you should visit the [IRS web site](#). The IRS will continue to update its web site with more information on the ARRA premium assistance provisions as it becomes available.

For more information on continuation coverage requirements for small employers under State law (including state "mini-COBRA laws"), contact your State insurance commissioner's office or [CMS](#).

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