

COBRA Subsidy in American Recovery and Reinvestment Act

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THE COBRA CHANGES DISCUSSED IN THIS ANNOUNCEMENT ALSO APPLY TO STATE CONTINUATION REGULATIONS.

The American Recovery and Reinvestment Act of 2009 ("ARRA"), signed by President Obama February 17th 2009 and effective March 1st 2009, includes a section that requires employers to temporarily subsidize COBRA coverage for eligible individuals. The subsidy requires employers to pay 65 percent of COBRA premiums for COBRA participants who involuntarily lost or lose their employment between September 1, 2008 and December 31, 2009. **The federal government will reimburse employers by providing a payroll tax credit for the amounts they spend due to the subsidy.**

BE ADVISED of these key changes in COBRA Administration:

COBRA, and any accompanying state continuation laws, are required to make several changes to benefit continuation.

- In an effort to assist employees who have or will involuntarily lose their employment, COBRA benefits may be able to be subsidized by 65% for up to 9 months
- Employers and plan sponsors are responsible to pay a 65 percent subsidy, which they will take as a credit against payroll taxes
- An additional, 60-day election period has been created to allow individuals who previously waived their COBRA election to elect coverage with subsidized premiums
- Additional notification required

Eligibility:

Assistance Eligible Individuals (AEIs) are eligible for the subsidy.

The individual MUST:

- Experience a qualifying event that is an involuntary termination of employment (except in the case of gross misconduct),

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- Experience the qualifying event between September 1, 2008* and December 31, 2009, **and**
- Elect COBRA during their initial election period or the additional, 60-day election period (addressed later).

* The COBRA subsidy applies to employees who involuntarily lost their employment as far back as September 1, 2008. If an employee falls into this category but did not initially elect COBRA coverage, they will have an additional 60-day period to elect COBRA with reduced the premiums.

Cost for the Individual:

- The AEI is required to pay 35% of the premium, as opposed to the 100% they would have paid prior
- Those who pay (or have already paid) the full premium in March or April can expect to receive a future credit to their COBRA premium or refund (if there is not enough time to apply the entire credit)

NOTE: The subsidy applies to all group health plans, including fully insured and self-funded health plans. The ARRA has no impact to any dental-only and vision only plans – as well as Health Care Flexible Spending Accounts.

Income Limitation:

All AEIs are eligible for the subsidy, though certain high-income individuals may be required to repay the subsidy as an additional tax called a “recapture tax.”

- AEIs who earn **less than** \$125,000 (single) or \$250,000 (married) are not subject to the recapture tax.
- AEIs who earn **between** \$125,000 and \$145,000 (single) and \$250,000 and \$290,000 (family) are eligible based on a sliding scale.
- AEIs who earn **over** \$145,000 (single) and \$290,000 (family) must claim their subsidy amount as a recapture tax.

Employer Responsibilities:

- Employers and plan sponsors must cover the 65 percent subsidy beginning March 1, 2009. The employer or plan sponsor is then entitled to a credit toward payroll taxes.
- The ARRA requires AEIs to pay only 35 percent of the portion of the premium not paid

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by employers. Those employers who pay a portion of the COBRA premium should review separation agreements that are in place.

Duration of Subsidy:

The subsidy applies for the first period of coverage beginning March 1, 2009, and lasts up to nine months.

Early Termination of the Subsidy:

There are situations where the individual would **not** receive the full 9 months of subsidized premiums.

- The AEI becomes eligible (not necessarily covered) under another group health plan or Medicare*,
- The AEI reaches the end of the maximum period of coverage before the nine months elapse, or
- The AEI elects COBRA during the additional, 60-day election period and reaches the end of the maximum COBRA coverage period (extending from the AEI's initial COBRA election period) before the nine months elapse

* Dental, vision, counseling, Health Care FSA, HRA and on-site medical clinics are not considered eligible group health plans when determining if a group health plan ends the subsidy for an AEI.

If the individual fails to notify the group health plan that they are eligible for other coverage, they become subject to a penalty of 110 percent of the subsidy provided for the AEI after the date they first became eligible for the other coverage.

An additional 60-day election period:

- Employers and plan sponsors must allow an additional, 60-day election period to any qualified beneficiary who qualifies for the subsidy but did not initially elect continuation coverage
 - ◊ For example, an employee who involuntarily lost their employment in October, 2008.
- The additional election period must be offered to those individuals who initially declined or who elected continuation coverage and later terminated the coverage.
- Coverage for those individuals who elect during the additional election period will become effective for coverage March 1, 2009. They are not retroactively covered to their original loss of coverage date.

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- Until further guidance is issued, it would seem reasonable to apply the standard 45-day timeframe to make the initial COBRA payment. (**At this time**, the Act does not provide any guidance on when the initial payment is due.)
- The time between the qualifying event and the date of enactment of the Act, February 17, 2009, does not apply towards the 63-day gap in coverage as it applies to creditable coverage under HIPAA.

Additional COBRA options:

Employers and plan sponsors are not required to allow AEs special options to enroll in other group health plan coverage options.

If an employer chooses to allow additional options, employees who qualify for the subsidy can elect under COBRA any health plan option offered by their employer, as long as it has the same or a lower premium as the individual's previous coverage if the employer chooses to allow this.

Additional options do not include dental, vision, counseling, Health Care FSA, HRA or on-site medical clinics.

Additional Notices Required:

Two additional notices must be sent by the employer.

- The first notice is to individuals who are eligible and have already elected COBRA coverage.
 - ◊ This notice should inform them of the changes and how the subsidy will work.
- The second notice is to individuals who are eligible for the additional 60-day election period.
 - ◊ This notice should inform them of the opportunity to elect continuation coverage with subsidized premiums.

Employers and plan sponsors will also need to update their qualifying event notifications to include language about the subsidy.

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