

American Recovery and Reinvestment Act, as Amended COBRA Subsidy Provisions

Answers to frequently asked questions

Purpose

The purpose of the COBRA subsidy provisions of the American Recovery and Reinvestment Act is to help people who have lost their jobs (and insurance) afford COBRA and CalCOBRA continuation coverage for a limited period of time until they can find new employment/insurance. The expectation is that the rest of the stimulus package will sufficiently improve the economy and create new jobs, so these people will go back to work. The original subsidy enacted by ARRA was extended from 9 months to 15 months by the Department of Defense Appropriations Act of 2010. The Appropriations Act also extended the period of time that people can qualify for the subsidy.

In a nutshell

Eligible COBRA and CalCOBRA beneficiaries can receive a subsidy for 65% of the COBRA/CalCOBRA premium they pay for a maximum of 15 months, beginning March 1, 2009. (This was extended from the initial 9 months to 15 months.)

What is covered?

The law applies to **group** health coverage as follows:

- All groups subject to federal COBRA (through ERISA and PHSA).
- Federal Employees Health Benefits Program.
- All state continuation of coverage rights that are similar to COBRA, such as CalCOBRA. This applies to groups under 20 (not subject to COBRA) and church plans, effectively addressing **all** group coverage.

The law applies to self-funded and insured group plans.

Who is covered?

To be covered, employees (and their qualified enrolled dependents) who had group coverage must have lost that group coverage because of "involuntary termination" of employment on or after September 1, 2008. Both the qualifying event and the loss of coverage must have occurred on or after September 1, 2008. This is the **only** qualifying event that is eligible for the subsidy. It applies to anyone who has an involuntary termination of employment between September 1, 2008 and February 28, 2010. (Note: The date for qualification was extended from December 31, 2009 to February 28, 2010. In addition, it is no longer necessary that the loss of group coverage occur on or before February 28, 2010; it is sufficient that the loss of employment occurred on or before February 28, 2010.)

Please note that the subsidy is not automatic; it must be requested, and the applicant must qualify.

Regarding subsequent qualifying events: If a dependent of a COBRA/CalCOBRA subscriber has a subsequent COBRA qualifying event (e.g., death of the subscriber, divorce, etc.), the dependent can continue COBRA coverage on their own. The Treasury Department has confirmed that, in such instances, the dependents can continue to receive the subsidy for the remaining period.

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When is it effective?

The bill was signed by the President and is effective as of February 17, 2009. It applies to the COBRA/CalCOBRA premium for the first premium period after the bill was signed. Thus, it applies for premium billing as of March 1, 2009. The bill is not retroactive. The amendments were effective December 19, 2009, and amend the original subsidy provisions of ARRA back to the original effective date.

Must the subsidy be provided on March 1, 2009?

Technically, the subsidy begins as of March 1, 2009. But the law, effectively, has a phase-in period.

Under the law, the individual can pay the full COBRA premium for up to two billing periods, and the employer (or carrier/insurer, for CalCOBRA) must either refund the overpaid amount or credit it against future COBRA/CalCOBRA premiums, but can give a credit only if it is reasonably assumed the credit will be used within 180 days. So, the person can be asked to pay the full premium for up to 60 days, giving employers and carriers/insurers 60 days to get the necessary procedures in place. Anyone entitled to the premium subsidy must actually get it as of May 1, 2009, and retroactive to March 1, 2009.

What is the amount of the subsidy?

The subsidy covers 65% of the COBRA/CalCOBRA premium charged to the subscriber, who pays the remaining 35%. So, if the subscriber currently pays the entire COBRA/CalCOBRA premium, the subsidy is likely to be 65% of the full premium, generally set at 102% of the group rate for COBRA, and 110% for CalCOBRA. It includes the subscriber and dependent portion. If the employer is already covering part of the cost (e.g., severance), the 65% applies **only** to the portion that is actually being billed to the subscriber. The subscriber is not disqualified from getting the subsidy if the employer is already paying 65% of the COBRA/CalCOBRA premium; the subscriber is still entitled to a 65% subsidy of whatever amount he or she is paying. This subsidy applies to all coverage included in the COBRA premium, such as medical and dental/vision coverage. If someone other than the employer (such as a parent, the state, a hospital, or a charity) is paying the COBRA premium on the beneficiary's behalf, the individual is still entitled to the subsidy.

How long does the subsidy last?

The subsidy continues until *the earliest* of the following events:

- The individual is no longer *enrolled in state or federal continuation coverage*.
- The individual is *eligible for coverage under a group health plan (except for coverage only for dental, vision, counseling, or referral services) or Medicare*.
- Fifteen months after the date the individual begins receiving the subsidy.

Does the subsidy continue after February 28, 2010?

Yes, in some cases. The subsidy continues for up to 15 months for any individual who is involuntarily terminated from employment between September 1, 2008 and February 28, 2010. For example, if an individual eligible for federal continuation coverage is involuntarily terminated from employment and begins coverage February 1, 2010, the subsidy continues until June 30, 2011 (unless the individual is no longer enrolled or becomes eligible for other specified coverage).

Highly compensated individuals

As noted, the goal of the subsidy provision of the act is to support people who can't afford their COBRA premium. Thus, the subsidy is not available to high-wage earners. Entitlement to the subsidy phases out for adjusted gross income for individuals between \$125,000 and \$145,000, and for joint filers between \$250,000 and \$290,000. If they receive the subsidy, they must repay the subsidy on the next tax return. However, employers/carriers/insurers do not have to track income and, in fact, must pay the subsidy, if requested, even if it is known that the person exceeds the income cap. However, if the individual specifically tells the employer/carrier/insurer they are above the income cap and don't want the subsidy, the employer/carrier/insurer must agree not to pay the subsidy. Please note that since the subsidy must actually be requested, the hope is that anyone whose income exceeds the cap will not request the subsidy and, thus, will not face a reimbursement issue.

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Who advances the subsidy?

COBRA

- Multiple employer plans – by the carrier/insurer
- Underwritten group plans – by the employer
- ASO group plans – by the employer

CalCOBRA – By the carrier/insurer

Please note that the Treasury Department has indicated that an employer cannot modify its obligation to provide or fund the subsidy by contract with some third party.

How is the subsidy repaid?

The entity that advances the subsidy is entitled to be repaid by the federal government. That repayment is accomplished by way of an offset credit against the federal quarterly payroll taxes that are paid to the federal government. This can be offset against employee income-tax withholdings and both the employee's and the employer's FICA tax. The tax liability is reduced by the amount of subsidy advanced for the same period. At this time, it is unclear if the subsidy exceeds the amount of the payroll taxes, whether the balance carries forward as a credit against the next tax payment, or if the employer receives a refund. That determination is expected soon from the IRS. The IRS has already revised the Form 941 to accommodate this change for Q1 returns. The offset has to be accompanied by a report that identifies each individual for whom the subsidy was provided (by name and Social Security number), the amount of the subsidy, and indicates whether the subsidy was for one person or more. An attestation that the individual was qualified for the subsidy must also accompany the offset. This report is to accompany the individual's tax filing.

Other rights

- Original special election – If individuals who would have been eligible for the subsidy either don't take COBRA or let it lapse, they must be given a special 60-day election period to elect COBRA coverage. The 60 days begin when they receive the notice. Employers have 60 days to send out the notice. The COBRA coverage is retroactive to March 1, 2009, not back to the original qualifying date. For purposes of determining how long an individual receives COBRA coverage, the clock starts on the earliest date they could have elected COBRA.
- Special transition period from extension – The bill that provides for the extension of the original ARRA subsidy from 9 to 15 months also provides a special limited right to people who exhausted the original 9 months of premium assistance and let their COBRA or CalCOBRA coverage lapse. If they used up their full 9 months of subsidy and then let their coverage lapse, they have a narrow window to re-enroll retroactively and get the remaining 6 months of subsidy. They must enroll by the later of February 17, 2010 or 30 days after they are giving notice of this special transition period.
- Change to lower plan – If allowed by the employer, individuals can change their plan once outside of open enrollment (within the election period). The change must be to a plan with the same or lower costs. Individuals can't trade up. This is optional, at the discretion of the employer.
- Appeal of denial of subsidy – If the employer (or carrier/insurer) concludes that individuals don't qualify for the subsidy, they can immediately appeal to the Department of Labor or the Department of Health and Human Services. The agencies will review and respond to the appeal within 15 days. For ERISA, if the appeal is denied, the person can still sue, but the agency determination will be given weight. The Department of Labor may similarly listen to appeals from persons on CalCOBRA who are denied the subsidy.

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Notices – what/who gives them?

- Original ARRA special notice – A one-time notice must have been sent to tell all possible beneficiaries about the subsidy and about the one-time special election period. The notice must have been sent within 60 days of the effective date of the bill to all persons (including dependents) who had a COBRA qualifying event and lost coverage on or after September 1, 2008, as well as to individuals the employer believes were involuntarily terminated. (Such disputes may be subject to the appeal process below.) Individuals have 60 days to elect COBRA if they hadn't enrolled, and the coverage must be retroactive to March 1, 2009. If they don't elect in the 60-day period, they waive their rights to COBRA/CalCOBRA and any available subsidy.
- Extension special notices – Special notices must be sent regarding the extension of the COBRA/CalCOBRA subsidy. They must go to: (1) people currently receiving the initial 9-month subsidy to tell them it is extended to 15 months; (2) people who used up the 9-month subsidy and once again paid the full premium, to tell them about the additional 6 months and to arrange a credit or refund; and (3) to recently terminated members who may have received COBRA/CalCOBRA notices without information on the subsidy – they get 60 days to enroll and elect the subsidy. In addition, members who received the full 9-month subsidy and then let the COBRA/CalCOBRA coverage lapse must be notified of the additional 6 months of subsidy available, and given at least 30 days to re-enroll retroactively and pay the 35% of premium for the retroactive period.
- Going forward (for any terminations through at least February 28, 2010 and probably later, since eligibility for the subsidy is based on when employment terminated, not when the group coverage is terminated) – Any notice of COBRA or CalCOBRA rights sent to individuals with new qualifying events must include notice of the subsidy right.

Please note that failure to give either notice is subject to existing fines for failure to comply with COBRA requirements.

For employer groups subject to COBRA, the notice must be given by the employer or by a contracted COBRA administrator on behalf of the employer.

For groups subject only to CalCOBRA, the federal bill states that notice will be given as specified by state law and, if there is no requirement, the regulators will issue a guidance. In California under CalCOBRA, employers are required to tell the carrier/insurer when there is a termination of employment and the carrier/insurer sends all CalCOBRA notices (unless they have contracted with the employer to do so). Thus, carriers/insurers will need to obtain from employer groups subject only to CalCOBRA a list of those employees who had their employment terminated for any reason on or after September 1, 2008. Then the carrier/insurer will need to send the special notice to those individuals about the subsidy and the special election period. In addition, the carrier/insurer will need to create an addendum to its standard CalCOBRA notices about the subsidy rights for use until at least February 28, 2010. All of these notice changes can be modeled off of model notices from the Department of Labor and the Department of Managed Health Care.

The Department of Labor has issued revised model notices for COBRA and the subsidy as well as for the special notice requirements. The Department of Managed Health Care has issued revised model notices for CalCOBRA, including the special notices resulting from the subsidy extension.

What the act doesn't do

The subsidy isn't retroactive. The act doesn't extend the period of COBRA coverage, doesn't create any new qualifying events, nor does it change the total COBRA premium. Except as noted above, the act makes **no** changes in COBRA (CalCOBRA).

Blue Shield recommends for anyone seeking more information:

www.ContinuationCoverage.net
or call (866) 400-6689

www.dol.gov/ebsa/COBRA.html

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