

FAQ: COBRA Provisions of the ARRA (Economic Stimulus Bill)

Updated February 12, 2010

Overview

On Tuesday, February 17, 2009, President Obama signed the “American Recovery and Reinvestment Act,” which includes several provisions related to healthcare. In part, the Act creates new opportunities for individuals to qualify for continuation coverage provided by a group health plan. The Act also provides for a subsidy for that continuation coverage for some individuals and their family members.

On Saturday, December 19, 2009 President Obama signed the “Department of Defense Appropriations Act, 2010,” which amended some of the provisions in the American Recovery and Reinvestment Act concerning continuation coverage.

The following FAQ was created to assist our customers in answering their questions about the continuation portion of the Act. This FAQ will be revised as necessary to answer additional questions or as the federal government issues guidance on these issues.

If you have a question that is not addressed here, please contact us at 800-532-5332 or consult your legal counsel.

General questions

Q: *When is the law effective?*

A: February 17, 2009, when the President signed the American Recovery and Reinvestment Act. In most cases, the COBRA subsidy will be effective March 1, 2009; under no circumstances is the subsidy effective prior to enactment of the law.

Q: *How many months will individuals receive the subsidy?*

A: A maximum of 15 months, but there are limitations (see below).

Q: *What is the amount of the subsidy?*

A: Generally, 65% of the cost of the health insurance premium, including the 2% administrative surcharge. Individuals electing COBRA will be responsible for 35% of the total amount.

Q: *Who is entitled to reimbursement of the 65% subsidy?*

A: For group health plans that are subject to COBRA continuation, the employer is entitled to reimbursement.

Q: *What changes were made to the subsidy as a result of the Department of Defense Appropriations Act, 2010?*

A: The following changes were made to the subsidy as a result of the Department of Defense Appropriations Act, 2010:

- The maximum period for the COBRA premium reduction was extended from the original nine months to 15 months;

- The end date of eligibility for premium assistance was extended by two months, from the original end date of December 31, 2009 to February 28, 2010;
- The requirement that COBRA continuation coverage must commence before the COBRA premium reduction sunset date was eliminated. Eligibility for the COBRA premium reduction will only be conditioned on the qualifying event occurring on or before February 28, 2010, without regard to when the COBRA continuation coverage period begins (This clause overrides the prior eligibility position of the Department of Labor). However, the COBRA continuation coverage must start the day after coverage as an active employee ends;
- “Assistance eligible individuals” (or “AEI’s”) who lost coverage upon failing to pay the full COBRA premium after the original nine months of subsidized coverage expired have a second chance to pay the premium (at the 35% reduced rate) so as to retroactively restore their coverage under the plan. The employer must allow the employee to pay the premium by February 17, 2010 (60 days of the date of enactment of the law) or, if later, within 30 days after the notice of restoration rights is provided. An employee who exhausted the original nine months of subsidized coverage but retained coverage under the plan by paying the full COBRA premium must receive a refund or a credit towards future COBRA premiums for the overpayment; and
- New notification requirements for employers were created to notify AEI’s of changes made by the Department of Defense Appropriations Act, 2010.

Q: *Where can people find more information about the bills, the subsidy, and how it works?*

A: Additional information is located on the [Department of Labor's Web site](#), the [Internal Revenue Service's Web site](#), the [Department of Health and Human Services' Web site](#), [Recovery.gov](#). The IRS guidance (released March 31, 2009) has a number of examples and explanations; we encourage everyone to review that document for helpful information, as we have not replicated that information in these FAQs. This guidance also contemplates that additional guidance may be released. We will continue to monitor for such releases and will update these FAQs as appropriate.

How the law affects our members

Q: *How long do former employees have to elect COBRA coverage once they have received notice?*

A: 60 days.

- If the original COBRA notice was sent prior to February 17, 2009, then the additional notice grants eligible individuals an extended or “new” 60 days to elect COBRA.
- If the original COBRA notice is sent after February 17, 2009, and includes the information under this law, then the individual has 60 days from the date of the notice.

Q: *Who is eligible for the subsidy?*

A: To be an “assistance eligible individual” (or “AEI”), an individual must:

- Be a “qualified beneficiary” who is eligible for COBRA continuation coverage related to a qualifying event occurring from September 1, 2008 through February 28, 2010;
- Elect COBRA continuation coverage; and
- Become eligible for COBRA (i.e., “qualifying event) due to the involuntary termination of the covered employee’s employment from September 1, 2008 through February 28, 2010.

Note: There is an income maximum that will disqualify individuals from receiving the subsidy; however, employers are required to pay the subsidy and the individuals will work with the IRS in terms of their tax return, etc.

Example A: Dan was involuntarily terminated from his employment on September 18, 2008, and became eligible for COBRA continuation coverage on October 1, 2008. He did not elect and maintain COBRA coverage. Dan now will have a second opportunity to elect COBRA. His new coverage will be effective March 1, 2009, and the subsidy will be available for up to 15 months. Dan's qualifying event remains September 18, 2008, and his 18 months of COBRA continuation coverage are measured from October 1, 2008.

Example B: Pam was involuntarily terminated from her employment on August 31, 2008, and became eligible for COBRA continuation coverage on September 1, 2008. Pam is not an AEI, is not eligible for the special election, and is not eligible for the subsidy.

Example C: Mike is involuntarily terminated from his employment on February 10, 2010. He remains covered under the group plan through February 28, 2010, as part of his coverage as an active employee. He becomes eligible for COBRA continuation coverage on March 1, 2010. Mike is an AEI and is eligible for the subsidy for up to 15 months.

Q: *Are family members eligible for the subsidy?*

A: Yes, if the former employee meets the qualifications for the subsidy, then all family members who are "qualified beneficiaries" are eligible as well. Domestic partners are not "qualified beneficiaries," so the subsidy will not be available for those individuals. The subsidy is only available for AEIs.

Example A: Dan is an AEI under the Act and is paying the reduced 35% premium. While receiving the subsidy, Dan marries Susan. Susan may enroll on the plan with Dan, but is not a qualified beneficiary and, as such, is not eligible for the premium subsidy. The premium subsidy will only be provided for the premium associated with Dan's coverage. If the employee-only portion is \$350 and the employee plus spouse is \$600, then Dan pays \$372.50 (35% of \$350 plus \$250 for the incremental increase in the total premium associated with covering Susan).

Example B: Pam is an AEI and Jack, her domestic partner, and their two children were all covered on the plan at the time of her involuntary termination from employment. Pam and the two children are qualified beneficiaries, but Jack is not. As such, the subsidy is available for Pam and the children only. If the employee plus two dependents premium is \$1,000 and there is no additional charge for covering an additional dependent (Jack), then Pam pays \$350 (35% of \$1,000). If the premium for employee plus three dependents was \$1,200, then Pam would pay \$550 (35% of \$1,000 plus \$200 for the incremental increase in the total premium associated with covering Jack).

Q: *When does the individual's eligibility for the subsidy end?*

A: The earlier of:

1. the first date that the assistance eligible individual ("AEI") is eligible for coverage under any other group health plan (note that it ends based on *eligibility* and not on *enrollment* in the other group plan);
2. fifteen months from the date the employer began providing the subsidy;
3. the date on which the AEI's COBRA coverage period expires; or
4. the date on which the AEI no longer pays the 35% portion of the premium.

Q: *Is an individual eligible for up to 15 months of subsidy if they used up their entire nine months of subsidy prior to the maximum length of the subsidy being extended to 15 months as a result of the Department of Defense Appropriations Act, 2010?*

A: Yes, an AEI would be eligible for up to 15 months of the subsidy, even if the AEI's original subsidy of nine months already expired.

If the AEI already paid the entire premium for COBRA coverage after the original nine months of subsidy expired, the recipient of the premium – whether the employer or the insurer – must either:

- reimburse the AEI for amounts in excess of the 35% share of the premium; or
- provide credit to the AEI for the excess amount in a way that reduces the AEI's subsequent premium payments, if it's reasonable to believe the excess will be consumed within 180 days.

Example: Dan was involuntarily terminated from his employment on February 15, 2009 and started COBRA on March 1, 2009. Dan's original nine months of subsidy expired on November 30, 2009. As of December 1, 2009, Dan became responsible for the entire premium for COBRA coverage and made his payment of the entire premium to his former employer on December 15, 2009. On December 19, 2009, the maximum duration of the subsidy was extended to 15 months. Dan's former employer must either reimburse Dan for amounts in excess of the 35% share of December's premium or provide Dan a credit towards future months' subsidized premium for the excess amount Dan paid in December.

If the AEI let their COBRA continuation coverage lapse due to nonpayment of the entire premium, the AEI would be able to maintain COBRA continuation coverage if the AEI pays the 35% share of the premium retroactively by February 17, 2010 (or, if later, 30 days after the date of notification of the extension of the subsidy).

Example: Pam was involuntarily terminated from her employment on February 15, 2009 and started COBRA on March 1, 2009. Pam's original nine months of subsidy expired on November 30, 2009. As of December 1, 2009, Pam became responsible for the entire premium for COBRA coverage. Pam did not make her premium payment. On January 15, 2010, Pam's former employer sends her notification of the extension of the subsidy. If Pam pays her 35% share of December's, January's, and February's premium before February 17, 2010, Pam's COBRA continuation coverage would be retroactively reinstated on December 1, 2009.

Q: *How is the individual's COBRA eligibility period measured?*

A: The same way it was before the law passed—from the original qualifying event. For example, if John was laid off September 18, 2008, that is his qualifying event and his 18 month eligibility period (assuming no other facts) will be measured starting from October 1, 2008.

Q: *What if an AEI becomes eligible for coverage under another group health plan, but fails to notify the group health plan providing the subsidized COBRA coverage and continues to remain on the subsidized plan?*

A: Individuals will be subject to penalties of 110% of the subsidy amount provided during the time they were eligible for other coverage but remained on the subsidized coverage.

Q: *If an AEI elects COBRA effective March 1, 2009, but the qualifying event was the previous September, and the AEI did not elect COBRA at that time, what happens to pre-existing conditions given the gap in coverage?*

A: The time period beginning on the date of the qualifying event and ending with the day before the enactment of this law will be disregarded for purposes of determining the HIPAA 63-day break in coverage.

Q: What about dependents who lose coverage when they age out of the plan? Are they eligible for a subsidy?

A: No; the subsidy is only available when the employee is involuntarily terminated from employment.

Q: What if the individual elected COBRA and was then termed for non-payment prior to the enactment of this law. Is the individual eligible to re-elect COBRA and receive the subsidy?

A: Yes, if continuation is re-elected under the special notice required by this law.

Q: What happens if an AEI pays the entire premium?

A: The employer must either:

- reimburse the AEI for amounts in excess of the 35% share of the premium; or
- provide credit to the AEI for the excess amount in a way that reduces the AEI's subsequent premium payments, if it's reasonable to believe the excess will be consumed within 180 days.

Q: Is the subsidy considered taxable income to the AEI?

A: No.

Q: May individuals that are enrolled in continuation coverage change their coverage options?

A: Yes, under certain circumstances. The employer must offer multiple continuation coverage options and may allow individuals a one-time opportunity to change to a different continuation coverage option prior to the annual open enrollment period if the following conditions are met:

- the individual qualifies for the subsidy;
- the premium for the new coverage does not exceed the premium for coverage in which the individual was enrolled;
- the different coverage option is also offered to the active employees of the employer; and
- the different coverage is not dental, vision, counseling and/or referral services; coverage under a health FSA; or coverage for services or treatments furnished at an on-site medical facility maintained by the employer.

Q: What happens if a potential AEI is denied the subsidy or the special election right?

A: The individual may appeal the decision that he/she is not eligible for the subsidy or for the right to elect continuation coverage during this special election notice period. Appeals involving federal COBRA will be handled by the [U.S. Department of Labor](#) or call 1-866-444-3272 to speak with an Employee Benefits Security Administration Benefits Advisor. The agency is required to make a decision within 15 business days after the application for review is submitted.

Q: Can an AEI still receive the full 15 months of subsidy after February 28, 2010 if the AEI was involuntarily terminated no later than February 28, 2010 and became eligible for COBRA due to a qualifying event that occurred no later than February 28, 2010?

A: Yes, AEI's are entitled to receive the full 15 months of subsidy as long as they remain eligible as an AEI.

Example: Sally was involuntarily terminated from her employment on October 15, 2009 and started COBRA on November 1, 2009. Sally would be entitled to 15 months of premium assistance from November 1, 2009 through January 31, 2011 as long as she remains eligible as an AEI.

How the law affects employers

Q: *When are employers required to notify former employees of the subsidy, as outlined in the American Recovery and Reinvestment Act?*

A: No later than April 18, 2009 (60 days from the date of enactment).

Q: *Is the Department of Labor (DOL) developing a model notice employers can use, as outlined in the American Recovery and Reinvestment Act?*

A: Yes, the DOL has issued three model notices in connection with ARRA's COBRA provisions. Each version is to be used in different circumstances. Those documents are available on the [DOL's Web site](#).

Q: *Who must be sent the notice, as outlined in the American Recovery and Reinvestment Act?*

A: All employees who left employment from September 1, 2008 onward if they are eligible for COBRA or state continuation—even if they will not qualify for the subsidy.

Q: *What are the new notification requirements for extension of the subsidy created by the Department of Defense Appropriations Act, 2010?*

A: An AEI whose employment terminated on or after October 31, 2009, and on or before February 28, 2010, must be furnished a notice advising of the extended subsidy eligibility period. The notice must be provided by February 17, 2010 (60 days from the date of the enactment of the Department of Defense Appropriations Act, 2010), or if later, as of the date the normal COBRA Election Notice is otherwise required to be provided to the employee.
AEI's who either lost COBRA coverage by failing to pay the full premium after the end of the original subsidy period, or who continued coverage by paying the full COBRA premium rate, must also be provided with a notice regarding the restoration of coverage, and an outline of the premium overpayment rules discussed above. The notice must be provided by February 17, 2010 (60 days from the date of the enactment of the Department of Defense Appropriations Act, 2010).
Note: Some individuals may be entitled to multiple notices. The DOL has clarified in its [COBRA Premium Reduction Fact Sheet](#) that a Plan Administrator can satisfy the notice requirement by providing these individuals a single notice that includes all of the required information.

Q: *When are employers required to notify former employees of the extension of the subsidy?*

A: No later than February 17, 2010 (60 days from the date of enactment of the Department of Defense Appropriations Act, 2010).

Q: *Is the Department of Labor (DOL) developing a model notice employers can use to notify former employees of the extension of the subsidy, as outlined in the Department of Defense Appropriations Act, 2010?*

A: The Department of Defense Appropriations Act, 2010 does not require the DOL to create model notices. However, it does appear the DOL is in the process of creating a single model notice for plan administrators to fulfill their notification requirements under the Department of Defense Appropriations Act, 2010.

Q: *Who must be sent the notices of the extension of the subsidy, as outlined in the Department of Defense Appropriations Act, 2010?*

A: All individuals who were an AEI at any time on or after October 31, 2009 and all employees who left employment from October 31, 2009 onward if they are eligible for COBRA (even if they will not qualify for the subsidy) must receive an additional notice with information regarding changes made by the Department of Defense Appropriations Act, 2010.

All individuals who were an AEI who did not make timely payment of the entire premium after their original nine months of subsidy expired must receive an additional notice with information regarding changes made by the Department of Defense Appropriations Act, 2010, including information on the ability to make retroactive premiums payments of the 35% share of the premium in order to maintain COBRA continuation coverage.

Q: How will employers pay the 65% portion of the premium to the carrier?

A: With their regular premium payment.

Q: How will employers claim reimbursement for the 65% subsidy?

A: When the AEI pays his/her 35% portion of the premium, the employer may then deduct their 65% amount from their payroll taxes. If the amount exceeds the employer's payroll taxes, then the IRS will credit or refund the excess as if it were an overpayment of payroll taxes. The IRS has released a revised Form 941 and Instructions for reporting the amount of the premium subsidy that is taken as a payroll tax set-off.

Q: What happens if the employer pays the entire premium?

A: The Act does not apply and the employer cannot deduct any amount paid from the company's payroll taxes.

Q: What is meant by "involuntary termination of employment"?

A: The Act does not define this term. The IRS [guidance](#) includes the following definition: "An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer's failure to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services. In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee."

The IRS's guidance provides several examples of how this definition is interpreted; we recommend that you review the examples.

This FAQ document is intended to provide our customers with general information regarding the American Recovery and Reinvestment Act. This document does not constitute legal or compliance advice, and you should consult your own legal counsel for specific guidance.

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