

## 2009 COBRA Premium Amendments

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for premium reductions and additional election opportunities for health benefits under COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit.

The premium reduction applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period.

As with all new laws, there are many unanswered questions. The federal Department of Labor has issued a first set of rules and regulations on this new statutory change. Below is the Frequently Asked Questions posted on the agency's website. Further information can be found at [www.dol.gov/ebsa/cobra.html](http://www.dol.gov/ebsa/cobra.html).

### General Information

#### **Q1: I have heard that the stimulus package signed by the President included a temporary COBRA premium reduction. I would like more information.**

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. 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 you were 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 you declined to take COBRA at that time, or elected COBRA and later discontinued it, you may have another opportunity to elect COBRA coverage and pay a reduced premium.

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#### **Q2: What plans does the premium reduction apply to?**

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").

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#### **Q3: How can I tell if I am 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 you are eligible for other group health coverage (such as through a new employer's plan or a spouse's plan) or Medicare you are not eligible for the premium reduction.

Moreover, electing the premium reduction disqualifies you for the Health Coverage Tax Credit, which could be more valuable to you than the premium reduction. Additionally, certain high-income individuals may have to repay

the amount of the premium reduction through an increase in their income taxes. See FAQ #9 below for more information.

**Note:** 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.

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**Q4: In order to be an Assistance Eligible Individual, must the individual actually have coverage under the group health plan at the time of the involuntary termination of employment?**

In general, yes. The individual must have coverage at the time of the involuntary termination of employment. This qualifying event must occur at any time from September 1, 2008 through December 31, 2009 and the individual must be eligible for COBRA coverage at any time during that period. Of course, newborns and children who were adopted or placed for adoption after the qualifying event are also considered qualified beneficiaries and so would have the same rights as someone who had coverage at the time of the qualifying event.

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**Q5: If I am eligible for the premium reduction, how long will it last?**

Your premium reduction can last up to 9 months. However, it will end earlier if:

- You become eligible for Medicare or another group health plan (such as a plan sponsored by a new employer or a spouse's employer)\*\*, or
- You reach the end of your maximum COBRA coverage period.

If you continue your COBRA coverage after the premium reduction period, you may have to pay the full amount of the premium. Failure to do so may result in your loss of COBRA coverage. Contact your plan administrator for more information.

\*\*Individuals paying reduced COBRA premiums must notify their plans if they become eligible for coverage under another group health plan or Medicare. Failure to do so can result in a tax penalty.

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**Q6: Who is eligible for a new, 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](#).

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**Q7: Does ARRA change any State program requirements or time periods for election of continuation coverage?**

No. ARRA does not change any requirement of a State continuation coverage program. ARRA only allows Assistance Eligible Individuals who elect continuation coverage under State insurance law to receive a premium reduction for up to 9 months. It also allows Assistance Eligible Individuals to switch to other coverage offered to active employees if permitted by the plan provided that the new coverage is no more expensive than the prior coverage.

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**Premiums**

**Q8: How do I apply for the premium reduction?**

If you were covered by an employment-based health plan on the last day of the employee's employment, the plan should provide you a notice of your eligibility to elect COBRA and to receive the premium reduction. The notice should include any forms necessary for enrollment. You may also want to contact your plan directly to ask about taking advantage of the premium reduction.

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**Q9: Are there income limits for the premium reduction?**

If the amount you earn for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), you may have to repay all or part of the premium reduction through an increase in your income tax liability for the year. If you think that your income may exceed the amounts above, you may wish to consider waiving your right to the premium reduction. For more information, consult your tax preparer or visit the [IRS web page](#) on ARRA.

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**Q10: How does the 65% premium subsidy get paid to me?**

You will not receive a payment. Assistance Eligible Individuals are responsible for paying only 35% of the COBRA premium for the period of coverage. The remaining 65% of the premium is reimbursed directly to the employer, plan administrator, or insurance company through a payroll tax credit.

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**Q11: Does the 35% I am required to pay include any administrative fees plans are permitted to charge or do I need to pay that fee separately?**

If you are an Assistance Eligible Individual, you will only need to pay the amount that is 35% of what you would otherwise pay for your COBRA coverage, which already includes any administration fee.

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**Q12: Who can claim the payroll tax credit?**

The payroll tax credit may be claimed by: (1) a multiemployer group health plan, (2) an employer maintaining a group health plan that is subject to Federal COBRA continuation coverage requirements or that is self-insured, or (3) an insurer providing coverage under a plan not included in (1) or (2). Only this person is eligible to offset its payroll taxes by the amount of the subsidy. The tax credit is claimed on the January 2009 revision of the IRS Form 941, Employer's Quarterly Federal Tax Return. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the person claiming the tax credit for the excess in the same manner as if it were an overpayment of such taxes. For more information on the credit and tax provisions in the ARRA, visit the [IRS web site](#).

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**Notices**

**Q13: 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.

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**Q14: 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.
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**Q15: Will there be model notices?**

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

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**Individual Questions For Dislocated Workers And Their Families**

**Q16: I was laid off from my job in December. Is that an involuntary termination of employment?**

Being told not to come back to work until further notice is a termination of employment for purposes of COBRA and the ARRA premium reduction provisions.

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**Q17: My health coverage was terminated when my employer shut down and laid off all its workers. Can I get the premium reduction to pay for new health coverage?**

The premium reduction is available to help qualified individuals pay for COBRA continuation health coverage. If there is no longer a health plan, there is often no COBRA coverage available, unless another related or successor employer sponsors a group health plan responsible for providing continuation coverage to you.

If you believe a related or successor employer may be responsible for providing you with COBRA coverage, you

can contact the employer directly or EBSA toll free at 1.866.444.3272 to speak to a Benefits Advisor for assistance.

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**Q18: I am an assistance eligible individual who has been enrolled in COBRA coverage since December 2008. Will I receive a refund of 65% of all the premiums that I have already paid?**

No. The premium reduction provisions apply only to premiums for coverage periods beginning on or after February 17, 2009. If you were eligible for the reduction but paid in full for periods of COBRA coverage beginning on or after February 17, 2009, you should contact the plan administrator or employer sponsoring the plan to discuss a credit against future payments (or refund in certain circumstances). See FAQ #23 below for more information.

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**Q19: I am currently enrolled in COBRA continuation coverage, but would like to switch to a different coverage option offered by my former employer. Can I do this?**

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.

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**Q20: Only part of my family elected COBRA coverage but all of us were eligible. Can I enroll the others and take advantage of the premium reduction?**

Each COBRA qualified beneficiary may independently elect COBRA coverage. Moreover, even if a family member did not elect COBRA coverage when first eligible, if the individual would be an Assistance Eligible Individual (except for his or her failure to elect COBRA coverage when first eligible or except because he or she discontinued COBRA coverage before February 17, 2009), that individual gets a second opportunity to enroll and qualify for the premium reduction. See FAQs #3 and #6 above for more information.

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**Q21: I received my COBRA election notice. Can I change my coverage option from the one I had previously?**

In general, COBRA coverage is the same coverage that the individual had at the time of the qualifying event. However, under ARRA, an employer may offer Assistance Eligible Individuals the option of choosing other coverage that is also offered to active employees and that does not have higher premiums than the coverage the individual had at the time of the qualifying event. See FAQ #19 for more information.

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**Q22: I was offered COBRA in connection with a qualifying event that was a layoff on or after September 1, 2008, but I believe that I am also eligible for the Health Care Tax Credit under the Trade Adjustment Act. Which program can I receive benefits from?**

Electing the premium reduction disqualifies you for the Health Coverage Tax Credit. If you are eligible for the Health Coverage Tax Credit, which could be more valuable than the premium reduction, you will have received a notification from the IRS.

If you have questions about these provisions, you may call the Health Coverage Tax Credit Customer Contact Center toll-free at 1.866.628.4282. TTD/TTY callers may call toll-free at 1.866.626.4282. [More information](#) about the Trade Act is also available.

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**Q23: If an Assistance Eligible Individual pays the full COBRA premium and is later determined to be eligible for the premium reduction, what should the plan do with the overpayment?**

The plan (or other person to whom such payment is payable) can apply the overpayment as a credit toward subsequent premium payments as long as it is reasonable to believe that the credit can be used within 180 days of the overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

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## Appeals

**Q24: What can I do if my former employer's group health plan denies my application for the premium reduction?**

If the plan determines that you are not eligible for the premium reduction, you can 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 are required to make a determination regarding your appeal within 15 business days after receiving your completed application for review.

**Note:** Appeals to the Department of Labor must be submitted on a U.S. Department of Labor application form. The form will soon be available at [www.dol.gov/COBRA](http://www.dol.gov/COBRA) and can be completed online or mailed or faxed as indicated in the instructions. If you believe you have been inappropriately denied eligibility for the premium reduction, you may wish to speak with an Employee Benefits Security Administration Benefits Advisor at 1.866.444.3272 before filing this form.

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#### **More Information**

##### **Q25: How can I get more information on my eligibility for COBRA or the premium reduction?**

Guidance and other information is available on the Department of Labor web site at [www.dol.gov/COBRA](http://www.dol.gov/COBRA). You can also call 1.866.444.3272 to speak to an Employee Benefits Security Administration Benefits Advisor. Information about ARRA's premium reduction provisions is also available from the [IRS](#) and the [Department of Health and Human Services](#), which, along with the Department of Labor, share responsibility for COBRA and the new requirements added by ARRA.

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