

The American Recovery and Reinvestment Act of 2009 and COBRASecureSM

Employee Benefits Corporation

COBRA Subsidy Resolved in American Recovery and Reinvestment Act

The final version of President Obama's American Recovery and Reinvestment Act of 2009 includes a section that requires employers to temporarily subsidize COBRA coverage for laid-off employees. Specifically, 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 duration of the subsidy is up to nine months for each eligible COBRA participant and the federal government will reimburse employers by providing a payroll tax credit for the amounts they spend due to the subsidy.

This is meant to help laid-off employees keep their employer-sponsored health coverage through COBRA. Employees who choose to continue their health coverage through COBRA otherwise pay up to 102 percent of the cost of health coverage premiums.

The following is a series of frequently asked questions that you can review to better understand the impact of the American Recovery and Reinvestment Act of 2009.

Note: The COBRA changes discussed in this FAQ also apply to state continuation regulations.

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COBRA is the **Consolidated Omnibus Budget Reconciliation Act of 1985**. It is a federal law that requires employers to provide **intermediate health coverage** from the time an employee loses his or her coverage until he or she obtains other insurance coverage or the intermediate coverage expires. **COBRASecure** is administered by Employee Benefits Corporation and **ensures 100 percent compliance with all COBRA regulations**, minimizing potential liability for employers.

The COBRA Subsidy In Detail

When did the American Recovery and Reinvestment Act (ARRA) take effect?

President Obama signed the American Recovery and Reinvestment Act into law on February 17, 2009. ARRA is effective on the first day of the following month – March 1, 2009.

What are the key changes ARRA introduces to COBRA?

COBRA and any accompanying state continuation “mini-COBRA” laws will be required to make several changes to benefit continuation. Important changes to note include:

- A 65 percent, up to nine-month subsidy has been created to assist employees who involuntarily lost or lose their employment
- Employers and plan sponsors are responsible to pay the 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 is required

Who is eligible for the subsidy?

Assistance eligible individuals (AEIs) are eligible for the subsidy. They consist of employees who are COBRA qualified beneficiaries and meet specific criteria.

1. The individual must experience a qualifying event that is an involuntary termination of employment (except in the case of gross misconduct),
2. The qualifying event must take place between September 1, 2008 and December 31, 2009, and
3. The individual must elect COBRA during their initial election period or the additional, 60-day election period (addressed later).

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

When will the subsidy start?

The subsidy, in general, applies to periods of COBRA coverage beginning after the act becomes law. A “period of coverage” is the monthly period for which COBRA premiums are charged. March 1, 2009 marks the first period of coverage for most employers and AEIs.

How much will AEIs pay for premiums?

AEIs are required to pay 35 percent of the premium instead of 100 percent (102 percent where the additional administrative fee is charged) of the premium. The subsidy applies to all health plans except Health Care Flexible Spending Accounts.

AEIs who continue to pay the full premium amount in March or April can expect to receive a credit on future COBRA premiums or a refund if there are not enough future months of coverage to apply the entire credit.

The ARRA requires AEIs to pay only 35 percent of the portion of the premium not paid by employers. Those employers who pay a portion of the COBRA premium should review separation agreements that are in place.

Is there an income limitation for the subsidy?

Yes. Technically, all AEIs are eligible for the subsidy, but certain high-income individuals could 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

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sliding scale. All subsidy amounts for those who earn over \$145,000 (single) and \$290,000 (family) must be claimed as a recapture tax.

How does the subsidy work for the employer or plan sponsor?

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.

How long does the subsidy apply?

The subsidy will apply for the first period of coverage beginning March 1, 2009, and last for nine months.

Are there any situations in which the AEI would not receive the full, nine months of subsidized premiums?

Yes. The subsidy can end earlier for any of the following reasons:

- The AEI becomes eligible (not actually 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

When determining whether eligibility for another group health plan ends the subsidy for an AEI, dental, vision, counseling, Health Care FSA, HRA and on-site medical clinics are not considered group health plans.

AEIs who fail to notify the group health plan that they are eligible for other coverage are 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.

Who is eligible for the 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.

At this time, the Act does not provide any guidance on when the initial payment is due. Until further guidance is issued, it would seem reasonable to apply the standard 45-day timeframe to make the initial COBRA payment.

How does the gap in coverage due to the additional election period affect the AEI?

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.

Does an employer or plan sponsor have to offer additional COBRA options?

Employers and plan sponsors are not required to allow AEIs 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.

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.**

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.**

What additional notice requirements does ARRA create?

Two additional notices must be sent. The first notice is to those who are subsidy-eligible and have already elected COBRA coverage. It will advise them of the subsidy and how it works.

The second notice will go to those who are eligible for the additional, 60-day election period to 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.

Will Employee Benefits Corporation be updating software and notifications in light of ARRA guidance?

Employee Benefits Corporation is currently awaiting official direction regarding the proper implementation of the subsidy in our COBRASecure administration. We will provide detailed communications when we have a complete platform for complying with its requirements for additional participant notices and new administrative processes.

For those employers who use the COBRASecure administration program, Employee Benefits Corporation will update current notices and provide any additional notices as required.

Who can I contact for more information?

Employers can contact their Client Liaison or Employee Benefits Corporation's Compliance Department at **800 346 2126** with any immediate questions.

About COBRA and COBRASecure

COBRA is the Consolidated Omnibus Budget Reconciliation Act of 1985. It is a federal law that requires employers to provide intermediate health coverage from the time an employee loses his or her coverage until he or she obtains other insurance coverage or the intermediate coverage expires. COBRASecure is administered by Employee Benefits Corporation and ensures 100 percent compliance with all COBRA regulations, minimizing potential liability for employers.

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