

## New COBRA Subsidy is Effective Immediately

The economic stimulus package signed by President Obama on Feb. 17 (its official title is "The American Recovery and Reinvestment Act of 2009") creates a new, temporary employer-paid COBRA subsidy.

Under the new law, effective immediately, employers are required to fund 65% of an employee's COBRA premiums for up to 9 months. This FAQ provides an overview of the key changes.

### Who is eligible for the new COBRA subsidy assistance?

COBRA eligible employees (and their eligible dependents) who were involuntarily terminated between September 1, 2008 and December 31, 2009, for reasons other than for gross misconduct.

### How much is the subsidy?

Under existing law, employees pay 100% of their COBRA premiums. Under the new law, employers will pay 65% of the employee's COBRA premium for group medical, dental and vision health plan coverage. The employee will pay the other 35%. The employer's portion of the subsidy will be reimbursed by the federal government through a tax refund or credit of some kind to be developed by the Secretary of the Treasury later on this year.

### When does the subsidy commence?

On the effective date of the new law, which was February 17, 2009.

### How will former employees know about these new rights?

Since the law applies to employees laid off or terminated as of last September 1, 2008, employers must notify these former employees (and eligible dependents) of their right to buy subsidized COBRA benefits no later than April 18, 2009. They are to be given at least 60 days to decide whether to elect to purchase the subsidized benefits.

### Is the subsidy available to all employees, regardless of income?

Yes. The subsidy is available to all COBRA-eligible employees laid off between last September and this coming December 2009. However, higher income individuals earning between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers) will be taxed on a portion of the subsidy; those earning over \$145,000 (or \$290,000 for joint filers) will be taxed on the full amount of the subsidy. A higher income individual may elect to waive receipt of the subsidy and thus avoid being subject to the additional income tax liability.

### Does the subsidy also apply to previously terminated or laid off employees who chose



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### not to elect COBRA continuation?

Yes. Even those employees who elected to forgo COBRA in the past can participate and receive the subsidized benefits this year. The only limitation is that they must have left the employment during the subsidy period (September 2008 - December 2009).

### If a group health plan offers more than one coverage option, can an eligible individual change to a more affordable option?

Maybe. That decision is left to the employer. Employers that offer different health care plan options may permit individuals eligible for the subsidy to change coverage options under the group health plan when electing COBRA continuation coverage. To change plans, the premium for the other coverage must be the same or lower than the individual's existing group health plan coverage and the lower priced option must provide for full medical coverage (as opposed to just dental, vision care, counseling, or referral services or certain treatment provided by an on-site medical facility). This election must be made within 90 days of receiving notice of this option.

### When does an individual's eligibility for the COBRA subsidy end?

The subsidy program ends for all participants on December 31, 2009, unless Congress chooses to extend it. An individual's eligibility for the subsidy ends earlier in the case of one of the following events:

(1) the COBRA eligibility otherwise expires (COBRA typically lasts for up to 18 months for employees – up to 36 months for dependents);  
or

(2) the subsidy recipient becomes eligible for Medicare or health coverage under another group health plan.

Note: where an employee becomes eligible under another group health plan, the employee can keep the old employer's COBRA (with the subsidy) where the new plan only provides: (a) dental, vision, counseling, or referral services; (b) the new plan is a flexible spending account or health reimbursement arrangement; or (c) the new plan only consists of on-site medical services

consisting primarily of first-aid services, prevention and wellness care.

A subsidy recipient has a duty to notify the old employer when he or she becomes Medicare eligible or eligible for coverage under a new group plan. If the subsidy recipient fails to do so, then he or she will be subject to a penalty equal to 110 percent of the subsidy.

### Are there any notice requirements under the Act?

Yes. Although the Secretary of Labor is required to provide model notices incorporating the additional requirements within 30 days, in the interim employers must modify current COBRA notices to add the following:

(1) a description, displayed prominently, of the qualified recipient's right to a subsidized premium, including any conditions;

(2) a description of the extended election period for individuals who previously declined COBRA continuation coverage; and

(3) a description of the qualified recipient's option to enroll in different coverage if the employer permits such election.

Modified notice describing this new benefit must be timely given to every employee terminated after Feb. 17. For those eligible employees terminated between Sept. 1, 2008 and Feb. 17, 2009, this modified notice must be provided on or before April 18, 2009.

### What should I be doing now to comply?

- Update your COBRA notices to add the new COBRA subsidy provisions. If you use a third party administrator for your COBRA notice, confirm they are meeting these new notice deadlines and making the changes.

- Inventory employee terminations that took place between Sept. 1, 2008 and Feb/ 17, 2009. Provide eligible employees and their covered dependents with the requisite notice by April 18, 2009.

- If your group health plan provides more than one coverage option, e.g., PPO, HMO, etc., decide whether to offer COBRA-eligible individuals the option to select a different, less expensive coverage option.

- Until further guidance is forthcoming, we recommend developing a tracking system that will enable you to confirm you have met these obligations. This will be extremely helpful in obtaining reimbursement from the government.

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