

The American Recovery and Reinvestment Act of 2009 (ARRA), which President Obama signed on Feb. 17, 2009, expanded eligibility of COBRA and provides a premium subsidy to certain qualified individuals.

GLOSSARY OF TERMS

COBRA — Consolidated Omnibus Rehabilitation Act of 1985 — continuation coverage of the health plans offered by the employer.

HIPAA — Health Insurance Portability and Accountability Act of 1996 — covers portability provisions after group health coverage is discontinued.

AEI — Assistance Eligible Individual — consists of employee, spouse and dependent child(ren) eligible for a subsidy provided by ARRA.

Qualified beneficiary — The employee, spouse and dependent child(ren) who were covered by a group health plan at the time of a qualifying event that implemented COBRA continuation coverage.

FSA — Flexible Spending Account.

HRA — Health Reimbursement Arrangement.

HHS — Department of Health and Human Services.

CMS — Centers for Medicare & Medicaid Services.

ELIGIBILITY FOR THE SUBSIDY

Is there a special election form to enroll in the subsidy?

Current COBRA members will receive a COBRA stimulus election form, along with a summary of subsidy provisions, but no COBRA election form since COBRA has already been elected. The COBRA stimulus election form must be filled out and returned to BenefitHelp Solutions to enroll in the subsidy for all assistance eligible individuals. See “How do I qualify for the subsidy?” to determine if you are eligible for the subsidy.

If you are an assistance eligible individual connected to an employee who experienced a qualifying event of involuntary termination back to Sept. 1, 2008 who did not originally elect COBRA or elected COBRA and discontinued the coverage a new COBRA election form, along with a COBRA stimulus election form that will include both total and subsidized premium

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amounts, will be sent with a notification letters. Both the COBRA election form and the COBRA stimulus election form must be filled out and returned to BenefitHelp Solutions within the election period to enroll in COBRA. The subsidy effective date will start at the beginning of the first coverage period after Feb. 17, 2009, usually March 1, 2009.. See "How do I qualify for the subsidy?" to determine if you are eligible for the subsidy

Future COBRA qualified beneficiaries will receive a COBRA election form, a COBRA stimulus election form and subsidy information with the COBRA qualifying event letter. To elect COBRA with the stimulus applied, both the COBRA election form and the COBRA stimulus election form must be filled out and returned to BenefitHelp Solutions within the election period. If only the COBRA election form is returned the full premium will be billed. See "How do I qualify for the subsidy?" to determine if you are eligible for the subsidy

How much is the subsidy?

If you qualify, your former employer will subsidize 65 percent of all COBRA-eligible benefits that you are eligible for and elect at the time of your qualifying event or during the special election period. Your former employer will be reimbursed for their portion of the premiums by the IRS through a credit toward their payroll taxes. You will be responsible for paying 35 percent of the total premium amount.

If you were employed by an employer group consisting of 20 employees or less and are not eligible for federal COBRA, your continuation coverage could be provided through state continuation coverage. In this case, the insurance company will subsidize 65 percent of the applicable premium. Your portion of the premium will be 35 percent.

How do I qualify for the subsidy?

You and all qualifying family members will be eligible for the subsidy if the following requirements are met:

- Your qualifying event for COBRA was due to being terminated from employment involuntarily, not due to gross misconduct, between the dates of Sept. 1, 2008, and Dec. 31, 2009, which has been verified by your employer;
- You are not eligible for any other group health plan coverage, including Medicare; and
- You, and/or any qualified family members, elect to continue coverage under COBRA.

When will the subsidy begin?

The law went into effect Feb. 17, 2009, and the premium subsidy will start at the beginning of the first coverage period after the enactment date of the law. The subsidy will not apply to any COBRA premiums due or paid prior to that date. If you are currently on COBRA, or if you elect COBRA during the special election period, the new premium will begin at the earliest on Feb. 17, 2009. In most cases, the new premium will begin on March 1, 2009. Any credits from fully paid premiums will be applied towards future months beginning March 1, 2009 for payments made by direct payment. If your premium was paid by electronic funds transfer (EFT) you will be refunded the credit.

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Can I move the effective date forward if I don't need the coverage March 1, 2009?

Enrollment in COBRA and the subsidy will depend on the date of your qualifying event. If you are electing COBRA continuation coverage during the special election period due to a qualifying event that occurred between Sept. 1, 2008 and Feb. 17, 2009 your COBRA coverage will begin March 1, 2009. There cannot be a gap in your coverage outside of the allowed time period up to the enactment of ARRA.

If I am not eligible for the subsidy, can I still have COBRA?

Yes, you would be eligible for COBRA coverage as long as you elect it at your initial COBRA election period, or during the special election period, even if you are not eligible for the subsidy. The special election period will only be offered to qualified beneficiaries who meet the requirements of involuntary termination and could be eligible for the subsidy.

My employer was not eligible for Federal COBRA. Will I be eligible for this subsidy?

Continuation coverage maintained by the state is also included in ARRA. Please contact your insurance carrier directly or your State department of insurance to learn more about whether such coverage is provided in your State at http://www.naic.org/state_web_map.htm.

What is considered an "involuntary" termination?

Involuntary termination has been defined as a termination from employment due to a decision by the employer to terminate the employment, except when an employee requests to terminate employment, when the employee was willing and able to continue performing services. An involuntary termination of benefits will not be considered eligible for the subsidy.

Situations that would be considered involuntary termination are:

- Lay-offs with a reduction in hours to zero where the employee can be recalled;
- Temporary furlough period;
- Employer's failure to renew a contract at the time the contract expires, if the employee is willing to renew the contract and continue to provide the services;
- Employer terminates employee for illness or absence from work;
- Voluntary terminations where the facts and circumstances show that the employer would have terminated the employee's services, and the employee had knowledge that they would be terminated;
- Voluntary terminations as a response to an employer-imposed reduction in hours and creates a negative change to the employment relationship for the employee;
- Retirement where the facts and circumstances show that the employer would have terminated the employee's services, and the employee had knowledge that they would be terminated;
- Cause, as long as not due to gross misconduct;
- Resignation from employment as a result of a change in geographic location of employment for the employee;
- Lockout initiated by employer;
- Termination in return for a severance package where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee's group will be terminated;

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- Military leave.

What if I am a “seasonal” or “contracted” employee? Am I eligible for the subsidy?

You may be eligible for the subsidy. See “What is considered an “involuntary” termination?”

I am on a medical leave of absence and am unable to go back to work. I received a COBRA notice that I will be losing benefits the first of next month. Will I be considered eligible for the subsidy?

No, a termination of benefits due to leave of absence is not considered an involuntary termination. If the employer terminates the employment because an employee does not return to work after a period of time, the termination may be qualified as an involuntary termination

My termination date was Aug. 15, 2008, and my COBRA began Sept. 1, 2008. Would I be eligible for the subsidy?

No. The relevant date is the date you were involuntarily terminated, not the date you became eligible for or elected COBRA coverage. The termination date and COBRA election date have to occur no earlier than Sept. 1, 2008, but before Jan. 1, 2010, to be applicable for the subsidy.

Are my family members included in the subsidy?

Any qualified beneficiary who was eligible for COBRA due to the qualifying event of involuntary termination from employment will be eligible for the subsidy. These individuals are called an Assistance Eligible Individual (AEI). An AEI includes the affected employee, spouse and dependent children who were on the medical benefits at the time of the qualifying event. Newborn or newly adopted children added to the COBRA after the qualifying event date are considered an AEI and eligible to be included in the subsidy.

Domestic partners are not qualified beneficiaries under COBRA and will not be considered an AEI.

New spouses added onto the COBRA plan after the qualifying event date are not eligible for the subsidy.

What benefits will be eligible for the subsidy?

Any benefits that are offered under COBRA in any combination would be eligible for the subsidy except for healthcare Flexible Spending Accounts (FSAs). This would include dental- and vision-only plans.

If I become eligible for another group health plan, what do I do?

If you become eligible for another group health plan, including Medicare, **regardless of whether or not you are enrolled**, the subsidy is no longer available to you beginning on the first billing date that you are eligible for the other group health coverage. You must notify BenefitHelp Solutions immediately in writing to discontinue the subsidy for any applicable AEIs eligible for group coverage.

Exceptions to this would be:

- Coverage that provides only dental, vision, counseling and/or referral services,

- Coverage under a flexible spending account (FSA), or health reimbursement arrangement (HRA) as long as it qualifies as an FSA under section 106(c),
- Coverage for services/treatment at an on-site medical facility.

What happens if an individual takes the COBRA premium subsidy but is eligible for coverage under another group health plan?

A penalty of up to 110 percent of the subsidy received could be assessed upon the individual(s) who improperly received the subsidy when filing taxes for the year the subsidy is received.

Will pre-existing conditions and other wait periods apply during the lapse in COBRA coverage?

If at the time of your initial COBRA event a waiting period or pre-existing clause applied, that waiting period will still be in affect if you elect COBRA during the special election period.

Example: There is a six-month waiting period for dental, and you had only exhausted two months of the waiting period at the time COBRA was initially offered on Oct. 1, 2008. If you elect COBRA during the special election period, effective March 1, 2009, you will still have four months of a waiting period for your dental.

No new pre-existing conditions or waiting periods will be applied.

If I did not originally elect COBRA, will I have a lapse in coverage in regards to HIPAA if I elect now?

You will not have benefits for the period you were not enrolled, however the lapse will not affect your HIPAA rights if you enroll during the extended election period.

What do I do if I am not offered the subsidy and believe that I should be eligible?

If your employer is from the private-sector you may appeal directly to the Secretary of Labor by contacting them at 866-444-3272 or www.dol.gov/COBRA and selecting "Review of Subsidy Denials" to obtain instructions for the appeal process. The Secretary of Labor will review all applications for both COBRA and state continuation and will make a decision within 15 business days.

If your employer is a state or local government agency you may appeal to HHS-CMS at 866-400-6689 or via e-mail at continuationcoverage@maximus.com. More instructions can be found at <http://www.cms.hhs.gov/COBRAContinuationofCov/>.

I lost my job in October 2008 and elected not to go on my spouse's coverage due to cost. I enrolled in an individual plan and wanted to know if I would be eligible for the subsidy if I cancel my individual plan?

AEIs that did not elect COBRA during their initial COBRA event or discontinued COBRA coverage will be sent an extended election notice allowing them to elect COBRA at the subsidized rate for all assistance eligible individuals. However, the subsidy premium would only be available to those that do not have other group coverage available and they must discontinue the subsidy at such time that other group coverage is available.

NOTIFICATION AND ELECTION OF THE SUBSIDY

When will the “Special Election” notice be mailed out?

All employers and third-party administrators have until April 18, 2009, to provide notices to COBRA-qualified beneficiaries with qualifying events between Sept. 1, 2008, and Dec. 31, 2009. BenefitHelp Solutions will send an updated COBRA letter that includes information about the subsidy to all qualified beneficiaries who were eligible for COBRA and either have not received a COBRA letter or were sent a COBRA letter after Feb. 17, 2009 and have not elected COBRA yet.

For those currently enrolled in COBRA due to an involuntary termination, notification and information on the new subsidized premium amount will be sent as close to April 17, 2009 as possible.

AEIs who did not elect COBRA during their initial COBRA event or discontinued COBRA coverage will be sent a special election notice allowing you to elect COBRA at the subsidized rate for you and all assistance eligible individuals effective no earlier than Feb. 17, 2009. Letters will go out by April 18, 2009.

See “Is there a special election form to enroll in the subsidy?” to find out how to elect.

If BenefitHelp Solutions did not originally send my COBRA notice, who will be sending this subsidy notification?

BenefitHelp Solutions will notify all qualified beneficiaries of our current contracted COBRA employer groups, so your notification will come from us, even though we may not have sent your original COBRA notice.

If BenefitHelp Solutions originally sent me my COBRA notice but no longer administers our COBRA, who will send the information on the subsidy?

Your employer or the new administrator of COBRA will provide you notification about the subsidy.

How long will I have to elect?

- **No plan change option:** You will have 60 days from either Feb. 17, 2009, or the date of the special election notification, whichever is later, to elect COBRA during the special election period for you and any qualified family members.
- **Plan change option:** You will be allowed 60 days from Feb. 17, 2009, or the date of the special election notification, whichever is later, to elect COBRA and an additional 30 days to choose another eligible plan for you and any qualified family members if your employer allows a plan change option. This additional 30 days allows you to elect a plan that is equal to or less in premium than the plan you had as an active employee.

If I elect during the special election period, does that extend my COBRA period?

Your 18-month COBRA coverage is calculated from your original qualifying event even though your coverage will begin no earlier than Feb. 17, 2009. If you were eligible for COBRA Oct. 1, 2008, and then elect COBRA during the special election period beginning March 1, 2009, October through February counts as five months, so you will have 13 months of COBRA available to you and your qualified family members.

Can I add dependents or benefits during this new election period?

During the special election period, you are able to enroll any qualified beneficiaries who were originally eligible for COBRA and add any benefits you were enrolled in prior to the original COBRA event. Newborns and newly adopted children may also be added to the election.

If your employer allows the plan change option during this special election, you will be able to select between the plan that you were enrolled in as an active employee and any other plan offered that costs the same or less as the original plan.

You may also add dependents and benefits at the time of your employer's open enrollment, but dependents will not be considered AEs or eligible for the subsidy.

If I know that I am eligible for the subsidy, can I send in the current election form, but start March 1?

If you return the original COBRA notice, you will be enrolled beginning on the original COBRA effective date and be billed from that date. If your intention is to enroll with a lapse in coverage during the special election period, please wait to receive the special election notice, which will automatically enroll you March 1, 2009, and apply the subsidy.

PREMIUM

How long will the subsidy last?

The subsidy will last for a maximum period of nine months from the first billing cycle beginning no earlier than Feb. 17, 2009.

The subsidy will end for the following reasons:

- The first date following the nine months of subsidy;
- The COBRA 18-month period expires;
- Other group health coverage, including Medicare, is available to you and any qualified family member, even if you are not enrolled; or
- Failure to pay the subsidized premium within the allotted grace period, or anytime during the COBRA period.

If I elect now, will I have to pay for the months between my original COBRA date and the new COBRA date?

No. You will begin paying premiums at the start of the new effective date of COBRA if you are electing during the special election period. In most cases, the effective date will be March 1, 2009, but can be no earlier than Feb. 17, 2009.

If I have been on COBRA since Oct. 1, 2008, and qualify for the subsidy, will I receive a refund for the premiums that I paid prior to March 1, 2009?

Subsidy premiums will begin on the earliest billing date, beginning no earlier than Feb. 17, 2009. Any credits from fully paid premiums will be applied towards future months beginning March 1, 2009, unless paid by electronic funds transfer (EFT). In that case, a refund of the difference in premium will be given.

My employer is paying for my COBRA. How will the subsidy apply in that situation?

The subsidy will only apply to any premium that you are responsible for paying. If your employer is fully paying the COBRA premium for you, the subsidy will not apply until your employer stops paying for your COBRA. If the employer has agreed to pay for nine months or more of COBRA premium, which lasts through Nov. 31, 2009, you may not be eligible for any subsidy.

Example: Your employer is paying for three months of COBRA beginning April 1, 2009. The COBRA AEI will pay 35 percent of the subsidy beginning July 1, 2009, for the remaining six months in the subsidy period.

If your employer is paying a portion of your COBRA premium for a period of time, you will be responsible for paying 35 percent of your share of the premium and the employer will subsidize the remaining 65 percent.

Example: The COBRA premium is \$1,000 and employer is paying 50 percent for six months beginning March 1, 2009. You will pay \$175 (35 percent of \$500) for six months and \$350 for the remaining three months of the subsidy period.)

Can I send in my 35 percent if I know that I was terminated from employment involuntarily?

If you are currently enrolled in COBRA, we do not recommend sending in the subsidized premium. We are still in the process of obtaining verification of everyone's qualifying events, as well as programming our system to effectively transfer the correct information to the insurance carriers. Any payment of less than the full amount of the premium will not be submitted to carriers and services could be interrupted.

We recommend paying the current billed amount and the subsidy will automatically be applied to accounts that are eligible for the subsidy after BenefitHelp Solutions receives the COBRA stimulus election form. Any credit on the account will be transferred to future months, as long as there are 180 days available for COBRA. Otherwise, the credit will be refunded.

To whom will I pay the 35 percent premium?

You pay your premiums to BenefitHelp Solutions. Employers will send their subsidized portion to us after you pay your premium so that we can send the entire premium to the insurance carriers.

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OTHER QUESTIONS

What happens if my employer goes out of business and cancels benefits?

As a COBRA-qualified beneficiary and AEI, your coverage, as well as any subsidy, would terminate if the employer group cancels their insurance plans, unless there is a related or successor employer plan that will be responsible for taking over any COBRA benefits.

Would the COBRA subsidy be considered taxable income?

No, not if you are qualified for the subsidy and your modified adjusted gross yearly income is less than \$125,000 (single filing) or \$250,000 (joint filing). As mentioned above, there may be tax consequences if you are eligible for other coverage but continue to receive the subsidy.

What if I make over \$125,000 per year?

If your modified adjusted gross yearly income during the year that you receive a subsidy falls between \$125,000 (single filing) or \$250,000 (joint filing) and \$145,000 (single filing) or \$290,000 (joint filing), you will be required to pay a portion of the subsidy back on your tax filing. If your modified adjusted gross income is \$145,000 (single filing) or \$290,000 (joint filing) or more, you will be required to pay back the full amount of the subsidy received during the year that you received a subsidy.

You may permanently waive the right to the subsidy but may not obtain the subsidy later on if your adjusted gross income falls below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

If I am eligible for a subsidy through the Health Care Tax Credit, can I also receive this subsidy?

No. A subsidy cannot be received under both programs.

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