

The Stimulus Law's Temporary Subsidy for COBRA Premiums

Few people eligible for continued health coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) when they lose their jobs can afford to take it because of the expense (the full cost of the coverage plus 2 percent). To help with that, the American Recovery and Reinvestment Act of 2009, signed by President Obama on February 17, 2009,* provides a temporary subsidy for their COBRA premiums. The subsidy would cover 65 percent of the COBRA premium charged to the former employee.

The COBRA premium assistance subsidy program applies to all private and public sector group health plans currently subject to COBRA, and to continuation coverage under similar federal and state laws. Health plans will have to make the subsidized coverage available almost immediately. Consequently, plan sponsors will need to act now to comply with the new law.

THE COBRA PREMIUM ASSISTANCE SUBSIDY PROGRAM

This section summarizes the program's key features.

Eligibility

Effective for the first period of coverage after February 17, 2009 (generally March 2009), the subsidy is available to any COBRA qualified beneficiary who elects COBRA coverage and whose qualifying event is related to involuntary termination of covered employment that occurs between September 1, 2008 and December 31, 2009. The subsidy is phased out for couples with income above \$250,000 in the year the subsidy would otherwise be received, and not available

if income that year tops \$290,000 (\$125,000-\$145,000 for singles). The subsidy is available for a maximum of nine months, but could end earlier (as noted below). Eligible qualified beneficiaries must pay their discounted share of the premium before the plan may receive the subsidy, which would cover the rest of what the participant would otherwise have had to pay.

Premium Assistance Subsidy Payment

The 65 percent subsidy payment goes to the entity to which qualified beneficiaries pay their federal COBRA premiums. Employers that maintain a group health plan that is subject to COBRA would receive reimbursement. Where the continuation coverage is provided under state law and is fully insured, the health insurance company will be entitled to the reimbursement.

Reimbursement will take the form of a credit against the payroll taxes (FICA and employees' withholding tax) the plan or employer would otherwise pay to the Treasury Department with regard to its own employees. If the COBRA premium subsidy amount is more than the payroll taxes owed, the rest would be reimbursed by the government in cash. How this works will be spelled out in Treasury Department regulations. It is likely that plans will need to begin providing COBRA coverage on a discounted basis well before the Internal Revenue Service will be ready to handle reimbursements.

Termination of the COBRA Subsidy

The subsidy will stop at the end of the 9-month period, or earlier under certain circumstances. For example, an individual will cease to be eligible for the subsidy on the date that he or she first becomes eligible for coverage under another group health plan (other than plans that provide only dental, vision, or counseling services, health flexible spending arrangements, health reimbursement arrangements or on-site clinics that provide first-aid and wellness benefits) or Medicare. The length of time that COBRA continuation coverage must be made available to a qualified beneficiary — with and without the subsidy — will not change.

* When the law is available online, it will be accessible from the following page of the Government Printing Office Web site:
<http://www.gpoaccess.gov/plaws/111publ.html>

Extended Election Period

If a qualified beneficiary who would be eligible for the subsidy has not yet elected COBRA as of the date of enactment, he or she will have an additional opportunity to elect it. COBRA coverage elected during this extended election period will begin on the first coverage period after February 17, 2009 (generally March 2009). It will not extend the total period of available COBRA coverage measured from the date the person lost coverage as an active employee.

Electing Different Coverage

Generally, COBRA qualified beneficiaries are entitled to elect coverage under the plan of benefits that covered them at the time of the qualifying event. The new law permits plan sponsors to allow subsidy-eligible qualified beneficiaries to elect coverage under plans that cost the same or less than their current coverage, if those benefits are offered to active employees. If their health plan allows it, qualified beneficiaries will have 90 days to decide whether to change their coverage.

Additional COBRA Notice

Employer-funded health plans must explain the availability of the premium subsidy when they give COBRA election material to qualified beneficiaries who lose coverage before 2010, and to those who had a qualifying event on or after September 1, 2008, whether or not they had elected COBRA at that time. Notice must be provided to those who had a qualifying event before the date of enactment by April 18, 2009. The Labor Department is directed to provide model notices no later than March 17, 2009.

IMPLEMENTING THE NEW COBRA SUBSIDY

Plan sponsors should start planning for compliance with the COBRA premium assistance program because implementation is required almost immediately. Unlike earlier targeted subsidy programs, the group health plan, rather than the individual, will have the burden of determining who is eligible and, therefore, can maintain COBRA coverage by paying only a portion of the regular COBRA premium. The following are among the items that plan sponsors should consider in order to prepare:

- Determine how to identify individuals whose qualifying event was triggered by involuntary termination. Although loss of plan eligibility due to a reduction in hours, retirement or voluntary quit are also qualifying events that entitle people to COBRA, in those circumstances the subsidy is not available.
- Identify qualified beneficiaries whose health plan coverage terminated after August 31, 2008, including those who did not elect COBRA, because the plan

will need to notify them about the new election and subsidy options.

- Modify existing COBRA election notices to include information regarding the premium assistance subsidy and, if applicable, new coverage elections.
- Review their COBRA premium methodology and be prepared to document that it meets the COBRA standards, in case that is required in order to receive the reimbursement.
- Prepare to report supporting information to the government to document the premium assistance amount they are requesting and confirm that the qualified beneficiaries for whom the premium assistance is sought met the eligibility standards.
- Review their processes for determining and paying payroll taxes in order to be able to modify them as needed to receive the subsidy payments.



Plan sponsors should rely on their attorneys for authoritative advice on the interpretation and application of the American Recovery and Reinvestment Act of 2009. Sibson Consulting can be retained to work with plan sponsors and their attorneys to comply with the COBRA premium assistance program, including providing assistance in developing policies and procedures to handle this new program, designing notices and evaluating COBRA premium methodology.

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