

[COBRA SUBSIDY EXTENDED AND NEW COBRA NOTICES REQUIRED](#)

January 6, 2010 by [Adam Santucci](#)

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA), which expanded health care insurance benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The ARRA granted individuals involuntarily terminated from employment between September 1, 2008 and December 31, 2009, a subsidy to cover 65 percent of their monthly COBRA premiums for up to nine months. The subsidy is available for individuals with an annual income of less than \$125,000 (single) or \$250,000 (joint filers). Individuals earning between \$125,000 (\$250,000 joint) and \$145,000 (\$290,000 joint) are eligible for "phased-in" assistance.

Under the ARRA, plan administrators are not only responsible for providing notice of the subsidy to eligible individuals, they must also pay the cost of the subsidy up front. The plan administrator may then file [IRS Form 941](#) to claim a payroll tax credit in the amount of subsidies paid. In other words, employers must front 65 percent of eligible individuals' COBRA premiums in exchange for a credit against their payroll taxes.

UPDATE! On December 19, 2009, President Obama signed the 2010 Department of Defense Appropriations Act (Act), which [extends the COBRA premium subsidy provisions](#) and places additional notification requirements on plan administrators. The Act provides eligible individuals with an additional six months of subsidized coverage, extending the availability of the COBRA premium subsidy from nine to 15 months. The Act also allows individuals involuntarily terminated on or before February 28, 2010 to receive the subsidy, extending the original eligibility deadline of December 31, 2009, by two months. Employees involuntarily terminated in January and February 2010 will now be eligible for the subsidy.

Furthermore, if an individual was eligible for the COBRA premium assistance under the original ARRA, and that eligibility already expired, then that individual may receive the continued premium subsidy retroactively. In order to take advantage of the retroactive coverage, the individual must pay 35 percent of the premium by February 17, 2010, or within 30 days of receipt of the extension notice described below, whichever is later. If eligible individuals already have paid the full COBRA premium, then the plan administrator must either refund the over payments or credit future premium payments.

The Act also contains additional notification requirements that require plan administrators to provide eligible individuals with information regarding the extended subsidy.

By February 17, 2010, plan administrators must issue new notices to any individual who was assistance eligible on or after October 31, 2009. Individuals who experience an involuntary

termination of employment on or after December 19, 2009, must receive a notice containing updated information regarding the subsidy within the normal time frame for providing COBRA notification. Additionally, individuals eligible for the COBRA continuation coverage who are in transition, meaning those eligible individuals whose initial premium assistance period of nine months expired before December 19, 2009, must be provided notice of the extended subsidy within 60 days of the beginning of their transition period. This notice must be given to those in transition regardless of whether they paid the full premium amount to continue coverage, or whether they ceased paying COBRA premiums. In addition to describing the extended premium assistance available, the notice must contain information on the availability of retroactive coverage.

The new and updated notices must contain information regarding the following:

- the extension of benefits from nine months to 15 months;
- an explanation that the eligibility period runs through February 28, 2010;
- that qualified beneficiaries have the right to reinstate coverage retroactively by paying subsidized premiums by February 17, 2010 (or by 30 days after the notice is provided); and
- that a refund is available to those eligible individuals who paid the full amount of the COBRA premium.

It is unclear whether the [IRS](#) or the [Department of Labor](#) plans to issue any model notices as with the notices required by the ARRA. The Act, however, does make clear that rules governing the new notices will be similar to the notice rules contained in the ARRA.

In summary, via the extensions provided in the Act, individuals involuntarily terminated between September 1, 2008 and February 28, 2010 are eligible for up to 15 months of COBRA premium assistance. The premium subsidy ends when the individual is eligible for other group coverage or Medicare, after 15 months of receiving premium assistance, or when the maximum period of COBRA coverage ends (typically 18 months), whichever is first. Appropriate notice regarding the availability of the extended premium assistance must be given to all eligible individuals.

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