

Legislative Brief

COBRA Premium Subsidy Answers for Employers: Reporting and Documentation



Under the American Recovery and Reinvestment Act of 2009, certain individuals who are eligible for COBRA continuation health coverage, or similar coverage under State law, may receive a subsidy for 65 percent of the premium. These individuals are required to pay only 35 percent of the premium. The employer may recover the subsidy provided to assistance-eligible individuals by taking the subsidy amount as a credit on its quarterly employment tax return (Form 941). The employer may provide the subsidy — and take the credit on its employment tax return — only after it has received the 35 percent premium payment from the individual.

The following questions and answers reflect guidance from the Internal Revenue Service regarding reporting and documentation requirements related to the COBRA premium subsidy. The IRS issued this guidance before the premium assistance subsidy extension laws were passed. We have noted below where the original guidance is affected by the extension. Additional Legislative Briefs provide information on administration and eligibility, form preparation, and taxability and recapture. Please contact your Benefit Management Solutions Inc. representative for more information.

1. What other information relating to the COBRA subsidy must be submitted with the Form 941 besides the entries on Lines 12a and 12b?

No additional information relating to the COBRA subsidy is to be submitted with the Form 941, either electronically or in paper form. However, those claiming the credit must maintain supporting documentation for the credit claimed.

Such documentation includes:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35% share of the premium.
- In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to **May31, 2010**), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to December 31, 2009, and election of COBRA coverage. **Note: the premium subsidy extension law clarified that COBRA eligibility during the eligibility period is no longer a factor, although individuals must still timely elect COBRA.**
- A record of the SSNs of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals.
- Other documents necessary to verify the correct amount of reimbursement. (2/26/09)

Legislative Brief

COBRA Premium Subsidy Answers for Employers: Reporting and Documentation

2. When does the law become effective?

The law became effective on the date of enactment, February 17, 2009. However, under a transition rule, the regular premium amount may continue to be paid for up to two months after enactment (e.g., for March and April), and the subsidy can be provided retroactively. (2/26/09)

3. It was mentioned that this would be a temporary statute. How long is this change expected to be in effect?

For assistance-eligible individuals, the qualifying event must occur on or before **May 31, 2010**, and the COBRA subsidy may apply for up to **15** months. (2/26/09)

4. When more than one entity may be responsible for receiving COBRA premiums, who should claim the credit?

The law as enacted clarifies that the person to whom the reimbursement is payable is (1) the multiemployer group health plan, (2) the employer maintaining a group health plan that is subject to Federal COBRA continuation coverage requirements or that is self-insured, or (3) the insurer providing coverage under a plan not included in (1) or (2). Only this person is eligible to offset its payroll taxes by the amount of the subsidy. (2/26/09)

5. Will there be a means other than a quarterly Form 941 for employers (or other person if applicable) to claim credit for the COBRA subsidy provided to assistance-eligible individuals? There is some information out there saying the credit can be claimed on a more frequent basis (e.g., weekly).

As discussed above, an employer may reduce its payroll tax deposits during a quarter by the amount of subsidy provided during the quarter. However, in all cases, credit for the subsidy must be claimed on the employer's payroll tax return, whether the quarterly filed Form 941 or the annually filed Form 943 or 944. A payroll tax return is the only means to claim credit and be reimbursed for the COBRA subsidy. (3/5/09)

6. If, in 2010, an employer receives payment of an assistance eligible individual's 35% share of the COBRA premium for 2009 coverage, can the credit for the related 65% premium subsidy be claimed for a quarter in 2009?

A. No. If an employer receives an assistance eligible individual's 35% share of the COBRA premium in 2010, the employer may claim the credit for the related premium subsidy on Form 941 for either the quarter in 2010 in which it receives the individual's 35% premium payment or a later quarter in 2010, but not for a quarter in 2009, regardless of the fact that the premium is for coverage during 2009. In all cases, however, if an employer chooses to reduce its payroll tax deposits during the quarter based on the receipt of the individual's 35% premium payment, the employer must claim the credit for the related subsidy amount on Form 941 for the quarter during which its payroll tax deposits were reduced. In addition, of course, an employer may only claim credit for the subsidy amount once. (1/20/10)

7. Is there a specific date when employers can no longer take this credit?

An individual can be eligible for the COBRA subsidy based on an involuntary termination of employment that occurs as late as **May 31, 2010** (the qualifying event), and the subsidy can apply for up to **15** months of COBRA coverage, which generally begins shortly after the qualifying event. It is therefore expected that eligibility for the subsidy will be exhausted by the end of 2010 and Form 941 for the fourth quarter of 2010 will be the last time to take the subsidy credit. **Note: this expected timeline has changed due to the premium subsidy extension.** (3/5/09)

8. Will there be anything that Payroll Service Providers will have to provide to employers and/or IRS?

Payroll Service Providers need to communicate with their clients and ensure their clients maintain proper supporting documentation for the credit claimed.

Legislative Brief

COBRA Premium Subsidy Answers for Employers: Reporting and Documentation

Such documentation includes, but is not limited to:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35 percent share of the premium.
- In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to **May 31, 2010**), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to **May 31, 2010**, and election of COBRA coverage. **Note: the premium subsidy extension law clarified that COBRA eligibility during this period is no longer a factor, although individuals must still timely elect COBRA.**
- A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals.
- Other documents necessary to verify the correct amount of reimbursement.

This documentation must be maintained, but will not be required to be submitted to the IRS with Form 941. (3/5/09)

9. Is the assistance eligible individual's share of the premium always 35 percent, or are there other elections the individual can make?

The assistance eligible individual is required to pay 35 percent of the amount of the total premium for the coverage the individual elects. This percentage is fixed by statute. (3/5/09)

10. If an employer reduces its payroll tax deposits during the quarter by the amount of its credit for the subsidy provided during the quarter, does the employer have to report the specific amount of the credit that is applied against each deposit?

No. The credit is claimed on the quarterly Form 941, regardless of whether the employer reduces its deposits during the quarter by the amount of the credit. It is not necessary for the employer to report the specific amount of the credit that is applied against each deposit. For example, an employer that applies the credit towards its required semi-weekly deposits would still report the total credit at the end of the quarter on Form 941 for the quarter. (3/19/09)

11. Regarding federal unemployment tax (FUTA), will an employer's percentage contribution or the balance of money in that fund change as a result of the COBRA premium subsidy?

No, the new subsidy provision has no impact on FUTA. (3/19/09)

12. As discussed in question above, a person claiming the payroll tax credit must maintain supporting documentation for the credit claimed, which includes an attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to May 31, 2010), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy. If an insurer or multiemployer plan is the person entitled to claim the payroll tax credit for the COBRA premium subsidy, what documentation must the insurer or multiemployer plan obtain in order to establish that an employee is eligible for the subsidy by reason of an involuntary termination of employment and that the related payroll tax credit applies?

If an insurer or a multiemployer plan is the person who is entitled to the payroll tax credit, the supporting documentation must include a statement from the employee or the employee's former employer that the employee

Legislative Brief

COBRA Premium Subsidy Answers for Employers: Reporting and Documentation

was involuntarily terminated and that the termination occurred during the period of September 1, 2008, through **May 31, 2010**. (Of course, if an employee is not eligible for COBRA continuation coverage because the termination of employment was for gross misconduct, the employee is also not eligible for the COBRA premium subsidy.)

The statement must include a certification that, to the best of the employee's or the employer's, as applicable, knowledge and belief, all of the information provided is true and correct and must be signed by the employee or the employer, as applicable. The form headed "Request for Treatment as an Assistance Eligible Individual" included in the Department of Labor's model COBRA notices, if properly completed by the employee, can be used for as the required statement from the employee. The documentation must also include the name and address of the employer.

If an insurer or multiemployer plan complies with these documentation procedures, the IRS will not challenge the insurer's or multiemployer plan's treatment of the termination of employment as involuntary, provided that the insurer or multiemployer plan has not engaged in fraud, malfeasance or misrepresentation of a material fact and does not know or have reason to know of fraud, malfeasance or misrepresentation of a material fact on the part of the employee or employer. (6/4/09)

13. Is an employer, multiemployer plan or insurer required to report the COBRA premium subsidy provided to an assistance eligible individual during the year on Form W-2 or Form 1099?

No information reporting of the COBRA premium subsidy is required to be provided to an assistance-eligible individual or to the IRS by an employer, multiemployer plan or insurer. However, any person claiming a payroll tax credit for the COBRA premium on Form 941, Employer's Quarterly Tax Return (or other applicable form) must keep records of the individual payments and other documentation to support the credit claimed as discussed above. (6/4/09)

14. In the case of a group health plan (other than a multiemployer plan) that is subject to federal COBRA requirements and that covers employees of two or more unrelated employers, who is entitled to take the payroll tax credit for the COBRA premium subsidy provided to assistance-eligible individuals receiving COBRA coverage under the plan?

If a plan (other than a multiemployer plan) that is subject to federal COBRA requirements covers employees of two or more unrelated employers, the person entitled to take the payroll tax credit attributable to the premium subsidy provided to an assistance-eligible individual is the former employer of the employee on whose involuntary termination of employment the individual's eligibility for the subsidy is based. Thus, the total amount of the premium subsidy provided to all assistance-eligible individuals under the plan is allocated among the former employers on this basis. (6/4/09)

15. In the case of a group health plan (other than a multiemployer plan) that is subject to Federal COBRA requirements and that covers employees of different employers that are members of a single controlled group, who is entitled to take the payroll tax credit for the COBRA premium subsidy provided to assistance-eligible individuals receiving COBRA coverage under the plan?

Although all the members of a controlled group are treated as a single employer for employee benefit purposes, each member is treated as a separate employer for payroll tax purposes. Therefore, if a plan (other than a multiemployer plan) that is subject to federal COBRA requirements covers employees of different employers that are members of a single controlled group, the person entitled to take the payroll tax credit attributable to the premium subsidy provided to an assistance-eligible individual is generally the former employer of the employee on whose involuntary termination of employment the individual's eligibility for the subsidy is based. Thus, the total amount of the premium subsidy provided to all assistance-eligible individuals under the plan is allocated among the former employers on this basis. (6/4/09)

16. In the case of a group health plan maintained by an agency of a state government (state agency) that provides health coverage to employees of various agencies of the state and local governments within the state, that is subject to the federal COBRA requirements under the Public Health Service Act (PHSA), and

Legislative Brief

COBRA Premium Subsidy Answers for Employers: Reporting and Documentation

under which assistance eligible individuals are required to pay their 35 percent share of the COBRA premiums directly to the state agency, who is entitled to take the payroll tax credit for the COBRA premium subsidy provided to assistance-eligible individuals receiving COBRA coverage under the plan?

In general, the person entitled to take the payroll tax credit attributable to the premium subsidy provided to an assistance-eligible individual is the former employer (i.e., the former employing agency) of the employee on whose involuntary termination of employment the individual's eligibility for the subsidy is based.

However, in the circumstances described above, the state agency may claim the payroll tax credit attributable to the premium subsidy provided to assistance-eligible individuals under the plan, rather than the individual former employing agencies, but only if the former employing agency provides the state agency with confirmation that the employee was involuntarily terminated and that the former employing agency will not claim a payroll tax credit for any premium subsidy provided to the former employee or related beneficiaries.

As in other cases, the payroll tax credit can be claimed only after the assistance-eligible individual's 35 percent share of the premium has been received by the state agency. For this purpose, in accordance with IRS [Notice 2009-27](#), Q&A-20, whether the assistance-eligible individual's 35 percent share of the premium has been received is determined without regard to any amount paid on behalf of the assistance-eligible individual by any agency of the state or any local government within the state if the payment is made in connection with the individual's status as a former employee (or spouse or child of a former employee) of the state or a local government within the state. (6/4/09)

Source: Internal Revenue Service

6/09; EAS 3/10

This Benefit Management Solutions Inc. Legislative Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Images copyright © 2000 Getty Images, Inc. All rights reserved.