



The COBRA Subsidy Program

(as of April 15, 2010)

As part of the [American Recovery and Reinvestment Act of 2009](#) (ARRA),¹ the economic stimulus package signed by President Obama on February 17, 2009, a new federal COBRA subsidy was created. The COBRA subsidy program was originally designed to apply to employees ***involuntarily terminated*** on or after September 1, 2008 and before January 1, 2010. However, on December 19, 2009, President Obama signed into law the [Department of Defense Appropriations Act, 2010](#) (2010 DOD Act),² which extended the COBRA subsidy program to involuntary terminations occurring prior to March 1, 2010. Then, on March 2, 2010, President Obama signed into law the [Temporary Extension Act of 2010](#) (2010 TEA),³ which further extended the COBRA subsidy program to involuntary terminations occurring prior to April 1, 2010. Then, on April 15, 2010, President Obama signed into law the [Continuing Extension Act of 2010](#) (2010 CEA),⁴ which further extended the COBRA subsidy program to involuntary terminations occurring prior to June 1, 2010.

Employers that had involuntary terminations after March 31, 2010 (the date the COBRA subsidy program would have terminated had the 2010 CEA not become law) and prior

¹ If you wish to read the official text of ARRA pertaining to the COBRA subsidy, go to PDF page 341 at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ005.111.pdf. The U.S. Department of Labor (DOL) has a reprint of just the COBRA subsidy section of ARRA at www.dol.gov/ebsa/pdf/COBRAPremiumReductionProvision.pdf.

² If you wish to read the official text of the 2010 DOD Act pertaining to the COBRA subsidy, go to PDF page 64 at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ118.111.pdf. The DOL has a reprint of just the COBRA subsidy section of the 2010 DOD Act at www.dol.gov/ebsa/cobra/COBRAPremiumReductionProvisionExtension.html.

³ If you wish to read the official text of the 2010 TEA pertaining to the COBRA subsidy, go to PDF page 3 at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ144.111.pdf. The DOL has a reprint of the 2010 TEA at www.dol.gov/ebsa/pdf/HR4691.pdf.

⁴ If you wish to read the official text of the 2010 CEA pertaining to the COBRA subsidy, go to PDF page 2 at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4851enr.txt.pdf.

to April 15, 2009 (the date the 2010 CEA became law) will need to give retroactive notice to affected eligible individuals of their right to received subsidized COBRA.

This memo briefly overviews the COBRA subsidy program as it exists as of April 15, 2010. It is likely that Congress will extend the COBRA subsidy program again. To track the current status of the COBRA subsidy program, visit the U.S. Department of Labor's (DOL) COBRA subsidy website, at www.dol.gov/ebsa/COBRA.html.

COBRA Generally⁵

COBRA, or the Consolidated Omnibus Budget Reconciliation Act, requires employers with 20 or more employees who have group health insurance plans to allow employees (and eligible family members) who would otherwise lose health coverage in certain circumstances to continue that coverage at the employees' own expense. *Some states have "mini-COBRA" laws that provide comparable continuation rights applicable to employers with fewer than 20 employees. With one major exception, the federal COBRA subsidy program applies to the mini-COBRA laws as well.*

COBRA Subsidy Amount, Duration, and Eligibility

Eligible individuals receive a **65% federal subsidy** toward their health care coverage premium, for **up to 15 months**.⁶ The U.S. Department of the Treasury administers the subsidy, providing employers or health plans a credit against payroll taxes for the cost of the subsidy. The subsidy terminates upon the covered individual becoming eligible for any other group health care coverage or Medicare.

Under the COBRA subsidy program, employees ***involuntarily terminated*** on or after September 1, 2008 and before June 1, 2010, with annual modified adjusted gross

⁵ The DOL has two sets of FAQs that explain how COBRA works:

- FAQs for Employers: www.dol.gov/ebsa/faqs/faq_compliance_cobra.html
- FAQs for Employees: www.dol.gov/ebsa/faqs/faq_consumer_cobra.html.

⁶ The original COBRA subsidy was for 9 months. The 2010 DOD Act retroactively extended the subsidy to 15 months. The subsidy period does not extend the maximum period of COBRA continuation coverage that is otherwise normally required by COBRA (e.g., 18 months in the case of a termination from employment).

Health insurance plan administrators were required to issue notices concerning the extension of the COBRA subsidy to 15 months to all eligible individuals who either dropped their COBRA coverage when their original 9-month subsidy period ended or paid the full premium for their COBRA coverage when their 9-month subsidy period ended. The notices should have advised these individuals that they were eligible to either reinstate their coverage retroactively at the subsidized rate or receive a credit or refund of any overpayment.

incomes of no more than \$125,000 (individual federal tax return) or \$250,000 (joint federal tax return), are eligible for the full 65% COBRA premium assistance, along with their eligible family members.⁷

The 2010 TEA added a new group of employees who are now eligible for the COBRA subsidy. Prior to the 2010 TEA, if an employee became eligible for COBRA due to a reduction in hours worked, s/he was not eligible for the COBRA subsidy, even if s/he were subsequently involuntarily terminated. This is no longer the case.

If on or after September 1, 2008 an employee suffered a **reduction of hours of employment** sufficient to trigger entitlement to COBRA, **and** if the employee is **involuntarily terminated** after March 1, 2010 and before June 1, 2010, then the employee (and eligible family members) will become eligible for the COBRA subsidy for periods of coverage beginning after March 2, 2010 (typically April 1, 2010). This new entitlement also applies to employees (and eligible family members) who did not elect COBRA when they first became eligible for COBRA or dropped the COBRA coverage thereafter (e.g., because of the cost). Health insurance plan administrators are now obligated to notify such individuals of their right to elect COBRA coverage as a result of the involuntary termination following a reduction in hours.⁸

Thus, for terminations occurring after March 1, 2010 but before June 1, 2010, employers will need to review their records to see if any terminated employees suffered a COBRA trigger reduction-in-hours on or after September 1, 2008. If yes, these employees (and their eligible family members) will need to be provided notice of the COBRA subsidy and their second chance to elect COBRA coverage.

Deference to Employer's Determination That an Employee Was Involuntarily Terminated

The 2010 TEA added a provision that provides, for purposes of the COBRA subsidy, that an employer's reasonable determination that an employee was involuntarily

⁷ Qualified individuals who (1) were involuntarily terminated prior to February 17, 2009 (the date ARRA became law) and (2) either initially declined COBRA coverage or dropped COBRA coverage (e.g., nonpayment of premiums) were provided an additional 60 days after they received notice of a special election period to elect to COBRA coverage and receive the subsidy. It appears that this special "second chance" election opportunity was **not** applicable to mini-COBRA coverage.

⁸ It appears that the COBRA coverage election and the subsidy will be prospective only and the maximum period of COBRA coverage (e.g., 18 months) for these individuals will be counted from the date of the earlier reduction in hours of employment (i.e., from the of the original COBRA triggering event). If an individual did not make the COBRA election at the time of the loss of health coverage due to a reduction in hours of employment, or made a COBRA election and subsequently dropped the COBRA coverage, the new COBRA election apparently will not apply retroactively and the individual cannot be required to pay the COBRA premium for the period of time s/he didn't not have COBRA coverage in effect.

terminated and thus eligible for the COBRA subsidy is entitled to deference as long as the employer maintains appropriate supporting documentation of its determination.

Model Notices

The DOL has published model notices that employers/plan sponsors can use to meet their obligations to provide notice of the COBRA subsidy program to employees and beneficiaries. The DOL will be revising the model notices to reflect the changes to the COBRA subsidy program made by the 2010 CEA. Health insurance plan administrators should periodically check the DOL's model notices web page, at www.dol.gov/ebsa/COBRAmodeInotice.html, for the latest versions of the notices.

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The DOL has both a [general COBRA web page](#) and a [COBRA subsidy web page](#) that employers should check periodically for details.

Employers should work with their group health insurance carriers to ensure that all required notices are timely distributed.

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