

COBRA Subsidy Frequently Asked Questions

The American Recovery and Reinvestment Act of 2009 was signed into law on February 17, 2009 by President Obama. The new law includes a federal subsidy for COBRA premiums for up to 9 months.

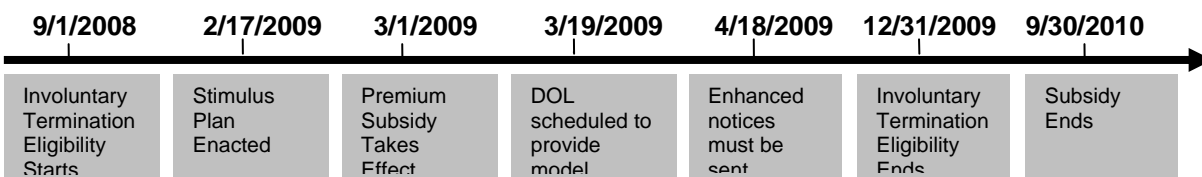
When is the COBRA subsidy available?

The subsidy will be available beginning on March 1, 2009 for involuntarily terminated individuals with a COBRA-qualifying event between September 1, 2008 and December 31, 2009.

In April 2009, the State of Minnesota passed the look-back period for continuation coverage for individuals who were involuntarily terminated from an employer based in Minnesota that is not subject to Federal COBRA law (generally those with fewer than 20 employees). The look-back period, also called the special election period, allows individuals who were involuntarily terminated between September 1, 2008 and February 16, 2009, and previously declined or dropped continuation coverage, an opportunity to re-elect coverage.

The State of Wisconsin passed a look-back period in May 2009. This period applies to individuals who were involuntarily terminated by Wisconsin-based employers that are not subject to Federal COBRA law (generally those with fewer than 20 employees). The rules for Wisconsin's look-back period are slightly different than Minnesota's rules:

- If an individual is involuntarily terminated from September 1, 2008 to February 16, 2009, they have a new opportunity to elect continuation coverage with coverage and premiums beginning on March 1, 2009.
- If an individual is involuntarily terminated from February 17, 2009 to May 19, 2009 (the effective date of the law), they have a new opportunity to elect continuation coverage with coverage and premiums beginning on the date they became eligible for continuation coverage.
- The Wisconsin-based employers impacted by this law are required to send a notice to individual's eligible for the look-back period



Key Points:

- 65% premium subsidy allowed for up to 9 months - Maximum period of 18 months for COBRA coverage does not change
- Employees have 60 days to respond to special enrollment notice
- Subsidy is not retroactive – it begins the later of March 1, 2009 or the date of involuntary termination

How much will the government subsidize?

For individuals making less than \$125,000 per year and couples making less than \$250,000 annually, 65% of their COBRA premiums will be subsidized by the Federal government.

For individuals making between \$125,000 and \$145,000, and couples making between \$250,000 and \$290,000, the subsidy will be reduced. At this time we do not know the reduction amount.

The income limits are based on the individual's modified adjusted gross income for the year(s) in which the subsidy is received.

Who is eligible for the COBRA subsidy?

Individuals who had a COBRA-qualifying involuntary termination event from September 1, 2008 through December 31, 2009 are eligible. The subsidy applies to both medical and dental benefits (including voluntary dental plans).

Scenario	Eligible for subsidy	Subsidy Start Date	Subsidy End Date	End date of COBRA
Jim was laid off on September 1, 2008 and elected COBRA at that time	Yes	March 1, 2009	December 1, 2009 <i>If he is not eligible for another plan before then</i>	March 1, 2010

Employees who voluntarily terminated from employment or individuals who did not participate in the employer-sponsored medical and dental plan are not eligible for the subsidy.

What is considered “involuntarily termination” from employment?

The Recovery Act does not define involuntarily termination. The Department of Labor has provided some guidance regarding the definition of “involuntarily.” It does not include employees terminated for gross misconduct.

The IRS informally indicated that the following would be considered an involuntary termination:

- employee accepts a voluntary retirement (or layoff) program invitation from the employer
- a furlough or layoff with an indefinite return date
- a "constructive involuntary termination" (e.g. employer moves a division from one city to another and invites employees to move to the new city; those that do not accept the new employment should be considered involuntarily terminated)

- a termination due to a "material negative change in employment" (e.g. employer reduces a person's job to PT from a FT position and employee terminates rather than taking the reduced position)

The IRS also indicated that 1) death and 2) reduction in hours to more than 0 (i.e. employee remains employed) will NOT be considered involuntary termination for purposes of the subsidy.

Do family members qualify for the subsidy?

Yes. Continuation coverage provided to a qualified individual and any dependents (including family members) qualifies for the subsidy. The dependent must, however, qualify for the continuation coverage as specified by COBRA, FEHB or the state continuation coverage requirements.

In some cases, the subsidy will continue if the qualified individual is no longer receiving continuation coverage. For example, if the continuation coverage is provided through COBRA and the qualified individual dies, the surviving spouse and any children will continue to qualify for COBRA coverage and for the subsidy.

How long is the subsidy available?

The COBRA subsidy is available for up to nine months of COBRA coverage or until individuals are eligible for coverage under another employer's plan or Medicare. The standard COBRA window of 18 months does not change.

How will individuals who did elect COBRA coverage and have been paying full cost receive the subsidy?

The subsidy will begin March 1, 2009. Individuals will not be able to receive reimbursement for premiums they paid for COBRA coverage prior to this date. Individuals with COBRA coverage will be eligible on March 1, 2009 and will receive the subsidy. There is a 60-day window to reimburse or credit after enactment to give employers and insurers time to put the process in place.

Scenario	Eligible for subsidy	Subsidy Start Date	Subsidy End Date	End date of COBRA
Julie was laid off on January 1, 2009 and elected COBRA at the time	Yes	March 1, 2009	December 1, 2009 <i>If she is not eligible for another plan before then</i>	July 1, 2010

Will individuals who originally declined COBRA at the time of termination be offered COBRA coverage to become eligible for the subsidy?

Employers covered by Federal COBRA law are required to notify all individuals with a COBRA-qualifying event of the subsidy. Individuals have the right to elect the subsidized COBRA coverage even if they previously declined coverage. They can elect coverage for 60 days following the date they receive the COBRA notification. COBRA coverage will be effective on March 1, 2009.

Additionally, employers covered by Federal COBRA law can give their employees an option to buy-down coverage – or select a less expensive plan than what the employee had while employed. The plan must be currently offered to employees. This option is not available for HealthPartners groups under 20 employees.

The special election period (look-back period to September 1, 2008) has been approved by the State of Minnesota and the State of Wisconsin.

What happens if an employer's size varies from more than to less than 20 employees?

A plan is not subject to COBRA for any calendar year if all employers maintaining the plan employed fewer than 20 employees on a typical business day during the preceding calendar year. An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if it had fewer than 20 employees on at least 50% of its typical business days during that year. If a single employer plan ceases to be a small employer plan because of an increase in its workforce during the calendar year, then the plan becomes subject to COBRA as of the following January 1.

What is the effective date for an individual who originally declined coverage but then elects during the special election period?

For the State of Minnesota, the effective date is March 1, 2009. The individual has 60 days to opt in for the COBRA coverage; however, the effective date will be retroactive to March 1, 2009 and the individual must pay premiums back to that date.

The rules for Wisconsin's look-back period are slightly different than Minnesota's rules:

- If an individual is involuntarily terminated from September 1, 2008 to February 16, 2009, they have a new opportunity to elect continuation coverage with coverage and premiums beginning on March 1, 2009.
- If an individual is involuntarily terminated from February 17, 2009 to May 19, 2009 (the effective date of the law), they have a new opportunity to elect continuation coverage with coverage and premiums beginning on the date they became eligible for continuation coverage.

If an individual declined COBRA coverage originally and then opts in, when will the individual exhaust COBRA coverage?

In most cases, the individual is eligible for 18 months after their termination date.

What is the employer's role?

There are different rules for the subsidy depending on the *total* number of employees (not only full-time or benefit-eligible). By law, the subsidy is administered differently depending on whether the company is covered by Federal COBRA law or state continuation law.

- **If you have 20 or more employees:**
 - You are most likely covered by Federal COBRA law and you will need to administer the subsidy and collect the subsidy reimbursement through a payroll tax credit. More information is available at www.dol.gov/cobra.
 - You may allow qualified beneficiaries to change their coverage options through the “buy down” provision (not required). As a rule, the coverage must have the same or lower cost, but during open enrollment current COBRA rules would apply. In this event, individuals have 90 days to enroll.

- **If you have fewer than 20 employees:**
 - You are most likely covered by state continuation law and HealthPartners will cover the 65% subsidy and collect the reimbursement from the Federal government.
 - The special election period (look-back period to September 1, 2008) has been approved by the State of Minnesota and the State of Wisconsin.
 - For employers located in Minnesota and Wisconsin, a special election period must be offered to those with an involuntary termination of employment that occurred between September 1, 2008 and February 16, 2009. The special election period allows those who previously declined continuation coverage or initially elected coverage but later dropped it another chance to enroll in continuation coverage with coverage beginning on March 1, 2009. The Wisconsin-based employers impacted by this law are required to send a notice to individual's eligible for the look-back period.
 - Additionally, for employers based in Wisconsin, if an individual is involuntarily terminated from February 17, 2009 to May 19, 2009 (the effective date of the special election law), they have a new opportunity to elect continuation coverage with coverage and premiums beginning on the date they became eligible for continuation coverage. The Wisconsin-based employers impacted by this law are required to send a notice to individual's eligible for the look-back period.
 - In addition to this special election notice, HealthPartners is required by the Department of Labor to send a continuation notice to certain members with a qualifying event from September 1, 2008 to December 31, 2009.

- In order to comply with this requirement, we have been sending and will continue to send a continuation notice that includes an attestation to all members with terminated coverage from September 1, 2008 to December 31, 2009. A copy of the notice is posted on healthpartners.com/employer.
- We will instruct recipients to return applicable information to you or your COBRA administrator.
- The attestation must be completed by anyone who would like to apply for the subsidy. If you receive a completed attestation for an eligible individual, please complete the grey box at the bottom of the first page and mail or fax it to your HealthPartners billing representative.
- HealthPartners will track the nine-month subsidy and notify you one month before it ends. Once the individual's nine-month subsidy ends, we will resume billing 100% of the premium.
- Please continue to send enrollment changes to HealthPartners as you currently do.
- This process is in addition to your current process and is not a replacement of your COBRA administration. You will continue to be responsible for communicating with eligible individuals about continuation coverage and billing the premiums. As soon as we receive the Group Size Form from the group and attestation for an eligible individual, we will begin billing the subsidized amount and apply any applicable credits to the individual's premium.

What is the subsidy amount?

The subsidy is 65% of the COBRA premium. If the employer is already subsidizing part of the individual's premium, the Federal subsidy only applies to 65% of the individual's portion of the premium.

Example 1:

- 102% of the active employee premium is \$1,000
- Employer charges \$1,000 to purchase COBRA
- 35% of \$1,000 is \$350 - the individual is required to pay \$350
- The employer will pay \$650 (65%) and then be reimbursed via a payroll tax credit

Example 2:

- 102% of the active employee premium is \$1,000
- Employer charges \$200 to purchase COBRA
- 35% of \$200 is \$70 - the individual is required to pay \$70
- The employer will pay and be reimbursed via a payroll tax credit for \$130 (65%)

Example 3:

- 102% of the active employee premium is \$1,000

- For the first 3 months, employer charges \$200 to purchase COBRA, and charges \$1,000 per month thereafter
 - For the first 3 months:
 - The individual is required to pay \$70 (35% of \$200)
 - The employer will pay and earn a credit of \$130 (65%)
 - For the next 6 months:
 - The individual is required to pay \$350 (35% of \$1,000)
 - The employer will pay and earn a credit of \$650 (65%)

Who needs to be notified of the subsidy?

The subsidy must be communicated to individuals with a COBRA-qualifying event between September 1, 2008 and December 31, 2009. COBRA notices must be revised to contain additional information about the subsidy. The Department of Labor provides model language and a sample attestation at www.dol.gov/cobra.

Individuals who would have been eligible for the subsidy, but either didn't elect COBRA or elected it and let it lapse, must be given a special 60-day period in which to elect coverage. In cases of employers with greater than 20 employees where the "buy down" provision is offered, the individual has 90 days to elect coverage.

Violation of the notice requirements is considered a violation of the current COBRA notice requirements and subject to the same COBRA penalties.

Eligible individuals who are denied a subsidy may submit an appeal to the Department of Labor, which will be reviewed within 15 days. A process and an official application form will be posted on the Department of Labor's Web site.

When is an individual no longer eligible for the subsidy?

The subsidy is available for 9 months. An individual ceases to be eligible for the subsidy on the date the individual becomes eligible for other health plan coverage. The normal COBRA rule is that an individual loses eligibility after enrolling in another health plan. The individual is responsible for notifying the employer or plan. The Department of Labor will provide procedures and individuals will be charged a penalty if they do not comply.

What if an employer refuses to provide group continuation coverage or refuses to provide the subsidy?

The new law requires the federal Department of Labor to provide an expedited review of any employer's refusal to allow a worker to elect group continuation coverage and receive the subsidy.

Once the denied individual submits an application for review, the Department of Labor shall make an eligibility determination within 15 business days. If you have additional questions about these reviews, contact the Department of Labor at 1-866-444-3272 or visit the agency's Web site at <http://www.dol.gov/ebsa/COBRA.html>.

What if a group terminated coverage?

HealthPartners will administer the subsidy for groups who are current HealthPartners health plan groups with less than 20 employees. If a group with less than 20 employees terminated HealthPartners coverage prior to March 1, 2009, the new insurer should administer the COBRA subsidy.

Important: If you are a new group to HealthPartners and had involuntary terminations dating back to September 1, 2008 and prior to HealthPartners coverage, we need you to send us contact information for your terminated employees. Please fax the employee's name and address with your HealthPartners group information to 952-883-5950 and we will send them the required notice.

What is the rate implication of the COBRA subsidy?

We are in the process of assessing the financial implications of a potential increase in COBRA membership. We believe the financial impact will be minimal.

Why is HealthPartners sending the member notices?

There seems to be conflicting approaches around whether the insurance issuer or the employer should be sending the notices for groups with fewer than 20 employees. It is our understanding that Congress granted the Department of Labor (DOL) the authority to issue instructions and guidance on how and by whom the notices should be sent. DOL published model notices at the end of March and instructed insurance issuers to send the notices for employers not subject to Federal COBRA (generally those with fewer than 20 employees). We explored many channels to ensure that it was indeed DOL's intent for the insurance issuer to send the notices and we believe that intent is clear.

For additional information, please visit:

IRS

- General information: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>
- FAQs: <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>
- Updated payroll tax form: <http://www.irs.gov/pub/irs-pdf/f941.pdf>

Department of Labor

- General information: <http://www.dol.gov/ebsa/COBRA.html>
- Fact sheet: <http://www.dol.gov/ebsa/newsroom/fsCOBRAPremiumreduction.html>
- Model notice and attestation: <http://www.dol.gov/cobra>