

COBRA FAQ

Q: Is the employer required to provide the COBRA subsidy?

A: The subsidy requirement applies to group health plans that are subject to the Federal COBRA continuation coverage requirements or to similar requirements under State law. If you are an employer with such a plan and you receive a 35 percent payment from an assistance-eligible individual, you are required to make the remaining 65 percent payment.

Q: What if the employer's group health plan is self-insured? Do the subsidy requirements apply?

A: Yes, the subsidy requirements apply to all plans subject to the COBRA requirements, including self-insured plans. In that case, the employer must provide the COBRA coverage if the assistance eligible individual pays 35 percent of the otherwise required premium. The remaining 65 percent is treated as a payment of payroll taxes by the employer maintaining the plan.

Q: In order to be an assistance eligible individual, must the individual actually have coverage under the group health plan at the time of the involuntary termination of employment?

A: Yes. The individual must have actual group coverage at the time of the qualifying event, i.e., the involuntary termination of employment. The qualifying event must occur between Sept. 1, 2008, and Dec. 31, 2009, and the individual must be eligible for COBRA coverage at any time during that period.

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

A: 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.

Q: How will an employer be reimbursed for the COBRA subsidy that it has provided to eligible individuals?

A: The COBRA subsidy amount is reimbursed by being claimed as a credit on the Form 941. The [Form 941](#) has been revised to allow for this credit.

Q: Is the employer required to claim the credit on Form 941 for the quarter during which the COBRA subsidy is provided to assistance eligible individuals?

A: No. Instead of claiming the credit on Form 941 for the quarter during which the COBRA subsidy is provided, the employer may generally choose to claim the credit on Form 941 for a later quarter in the same calendar year. Alternatively, if the employer has not claimed the credit on the original Form 941 for the quarter during which the COBRA subsidy was provided, the employer can file Form 941X for that quarter. In all cases, however, if an employer chooses to reduce its payroll tax deposits during a quarter by the amount of subsidy provided during the quarter (or during a previous quarter), it must claim the credit for that subsidy amount on Form 941 for the quarter during which its payroll tax deposits were reduced. In addition, of course, an employer may not claim credit for the same subsidy amount on Forms 941 for more than one quarter.

Q: Can an employer decide only to claim the credit at the end of the quarter rather than reducing its tax deposits during the quarter?

A: Yes. The employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.

Q: 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).

A: 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.

Q: Is there a specific date when employers can no longer take this credit?

A: An individual can be eligible for the COBRA subsidy based on an involuntary termination of employment that occurs as late as Dec. 31, 2009 (the qualifying event), and the subsidy can apply for up to nine 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.

Q: If the 35 percent premiums are paid and the subsidy is provided at a point in the quarter where there are no additional federal tax deposits due for the quarter, should the employer claim the credit on the current quarter or the subsequent quarter?

A: Although an employer may reduce its payroll tax deposits during a quarter by the amount of subsidy provided during the quarter, claiming the credit on Form 941 for the quarter is not dependent on reducing deposits during the quarter. Therefore, even if no additional deposits are due for the quarter, the employer can claim credit for the full amount of the subsidy provided during the quarter on its Form 941 for the quarter. If the amount of the subsidy entered on Form 941 exceeds the employer's tax liabilities for the quarter, the employer can choose to have the excess either refunded or applied to the next quarter.

Q: Will the number of assistance-eligible individuals need to be reported each quarter, whether or not there was a tax credit amount to apply?

A: Line 12b of the revised Form 941 must indicate the number of individuals who received the total COBRA subsidy reported on Line 12a of the Form 941. If there is no tax credit amount because no subsidy was provided, then the entry on Line 12b would be zero.

Q: Will the COBRA premium subsidy be taxable income for the individual?

A: The premium subsidy is not included in the individual's income. However, there is a phase-out of eligibility for the subsidy, which will increase some high-income individuals' tax liability if they receive the subsidy. The phase-out impacts individuals whose modified adjusted gross income exceeds \$125,000, \$250,000 for those filing joint returns. Tax liability is increased, to achieve repayment of a portion of the subsidy, for those taxpayers whose modified adjusted gross income is between \$125,000 and \$145,000, or \$250,000 and \$290,000 for those filing joint returns. If a taxpayer's modified adjusted gross income exceeds \$145,000, \$290,000 for those filing joint returns, the full amount of the subsidy must be repaid as an additional tax. There is no additional tax for individuals with modified adjusted gross income less than these income levels.