

FREQUENTLY ASKED QUESTIONS

COBRA and general Oregon continuation premium reductions

These FAQs are not intended as a substitute for legal or compliance advice, and employers and groups should consult legal counsel for specific guidance. These FAQs may be revised at any time to reflect any additional guidance issued by federal and state regulatory agencies responsible for enforcing continuation coverage requirements under the American Recovery and Reinvestment Act of 2009 (ARRA). Please refer to the ODS website at www.odscompanies.com for the most current version of these FAQs.

What plans are subject to the premium reduction provisions?

The premium reduction provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) with 20 or more employees and are subject to the COBRA rules under the Employee Retirement Income Security Act of 1974. They also apply to plans sponsored by state or local governments subject to the continuation provisions under the Public Health Service Act and plans in the Federal Employee Health Benefits Program. Continuation coverage falling under any of these plans will be referred to as “COBRA continuation” in these FAQs.

The premium reduction provisions also apply to all group health insurance policies providing coverage for hospital or medical expenses to employers with 19 or fewer employees and are subject to ORS 743.610. Continuation coverage falling under any of these plans will be referred to as “Oregon continuation” in these FAQs. Oregon continuation does not include dental coverage, and as a result, the premium reduction is not available for dental plans under Oregon continuation.

Who is eligible to receive the premium reduction?

ARRA makes the premium reduction available for “assistance eligible individuals.” An assistance eligible individual is a COBRA- or Oregon-qualified beneficiary who meets the following requirements:

- Is eligible for COBRA or Oregon continuation at any time during the period from Sept. 1, 2008, through Dec. 31, 2009;
- Elects COBRA or Oregon coverage (when first offered or during any additional election period provided by ARRA); and
- Is eligible for the continuation election opportunity because of an involuntary termination of employment that occurred at some time between Sept. 1, 2008, and Dec. 31, 2009.

However, if the individual is eligible for other group health coverage (such as through a new employer’s plan or a spouse’s plan) or Medicare, he or she is not eligible for the premium reduction.



If the employee's termination of employment was for gross misconduct, the employee and any dependents generally would not qualify for COBRA or the premium reduction.

Electing the premium reduction disqualifies the individual for the Health Coverage Tax Credit. In addition, certain high-income individuals may have to repay the amount of the premium reduction through an increase in their income taxes. If the amount earned for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), individuals may have to repay all or part of the premium reduction through an increase in their income tax liability for the year. For more information, visit the IRS web page on ARRA at <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.

Are domestic partners eligible to receive the premium reduction?

No, the premium reduction is not available for domestic partners, even if they can be included on COBRA or Oregon continuation.

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?

In general, yes. Individuals must have coverage at the time of the involuntary termination of employment. This qualifying event must occur at any time between Sept. 1, 2008, and Dec. 31, 2009, and individuals must be eligible for COBRA or Oregon continuation at any time during that period. Of course, newborns and children who were adopted or placed for adoption after the qualifying event also are considered qualified beneficiaries and would have the same rights as someone who had coverage at the time of the qualifying event.

How long does the premium reduction last?

The premium reduction can last up to nine months. However, it will end earlier if:

- The individual becomes eligible for Medicare or another group health plan (such as a plan sponsored by a new employer or a spouse's employer), or
- Under COBRA continuation, the individual reaches the end of his or her maximum continuation period.

If an individual continues COBRA continuation after the premium reduction period, he or she may have to pay the full amount of the premium. Failure to do so may result in loss of COBRA continuation.

Please note, individuals paying reduced COBRA continuation premiums must notify their plans if they become eligible for coverage under another group health plan or Medicare. Failure to do so can result in a tax penalty. Individuals paying reduced Oregon continuation premiums must notify



ODS if they become eligible for coverage under another group health plan or Medicare. Failure to do so can result in a tax penalty.

Who is eligible for the second election opportunity for COBRA or Oregon continuation?

Under COBRA continuation, qualified beneficiaries whose qualifying event was an involuntary termination of employment during the period from Sept. 1, 2008, through Feb. 16, 2009, who (i) did not elect COBRA continuation when it was first offered or (ii) did elect COBRA continuation but are no longer enrolled (for example, those who dropped COBRA continuation coverage because they were unable to continue paying the premium) have a new, second election opportunity. Individuals eligible for the extended COBRA continuation election period should have already received a notice from their plan administrators informing them of this opportunity. This notice should have been provided by April 18, 2009, and individuals have 60 days after the notice is provided to elect COBRA continuation. However, this special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination under COBRA continuation). COBRA continuation elected in this special election period begins with the first period of coverage beginning on or after Feb. 17, 2009, which will generally be March 1, 2009.

Under Oregon continuation, qualified beneficiaries whose qualifying event was an involuntary termination of employment during the period from Sept. 1, 2008, through April. 28, 2009, who (i) did not elect Oregon continuation during the period allowed under ORS 743.610 or (ii) did elect Oregon continuation but are no longer enrolled (for example, those who dropped Oregon continuation coverage because they were unable to continue paying the premium) may have a new, second election opportunity. Individuals eligible for the extended Oregon continuation election period must receive a notice from their insurer informing them of this opportunity. This notice must be provided by May 28, 2009, and individuals have 31 days after the notice is provided to elect COBRA continuation. However, this special election period does not extend the period of Oregon continuation coverage beyond the current maximum period (the longer of 9 months from the employee's involuntary termination under Oregon continuation, or until Nov. 30, 2009). Oregon continuation elected in any special election period will begin with the first period of coverage beginning on or after Feb. 17, 2009, which will be March 1, 2009.

Does ARRA impose any new notice requirements?

Yes, there are new notice requirements for both COBRA and Oregon continuation.

Under COBRA continuation, employers and plan administrators are required to notify qualified beneficiaries regarding the premium reduction and other information about their rights under ARRA as follows:



- A general notice must be sent to all qualified beneficiaries, whether they are currently enrolled in COBRA continuation or not, who have a qualifying event during the period between Sept. 1, 2008, and Dec. 31, 2009. This notice may be provided separately or with the COBRA election notice following a COBRA-qualifying event. A full version of the general notice must be sent to qualified beneficiaries who experienced a qualifying event at any time from Sept. 1, 2008 through Dec. 31, 2009 (regardless of the qualifying event), and have not yet been provided an election notice or who were provided an election notice on or after Feb. 17, 2009, that did not include the additional information required by ARRA. An abbreviated version of the general notice may be sent instead of the full version to individuals who experienced a qualifying event on or after Sept. 1, 2008, who have already elected COBRA continuation and who currently have COBRA continuation coverage.
- A notice of the extended COBRA continuation election period should have been sent to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who had a qualifying event at any time from Sept. 1, 2008, through Feb. 16, 2009, and who either did not elect COBRA continuation or who elected but subsequently discontinued COBRA continuation. This notice should have been provided within 60 days following Feb. 17, 2009.

The Department of Labor has developed model notices that are available on their website at <http://www.dol.gov/ebsa/COBRAmodelnotice.html>.

Unless specifically modified by ARRA, the existing COBRA notice manner and timing requirements continue to apply.

Under Oregon continuation, insurers are required to notify qualified beneficiaries regarding the premium reduction and other information about their rights under ARRA as follows:

- An insurer subject to the requirements of ORS 743.610 shall provide a notice directly to qualified beneficiaries who have lost group coverage for any reason other than group replacement of coverage. This notice must be sent within 10 days following the date of any administrative action taken by an insurer to initiate or document the loss of coverage.
- An insurer subject to the requirements of ORS 743.610 shall provide a notice directly to qualified beneficiaries who lost coverage due to an involuntary termination between Sept 1, 2008 and April 28, 2009. This notice will explain Oregon continuation and the right to an additional opportunity to request Oregon continuation.

What information must the COBRA continuation notices include?

The COBRA continuation notices must include the following information:

- The forms necessary for establishing eligibility for the premium reduction

- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium reduction
- A description of the second election period (if applicable to the individual)
- A description of the requirement that the assistance eligible individual notify the plan when he or she becomes eligible for coverage under another group health plan or Medicare and the penalty for failing to do so
- A description of the right to receive the premium reduction and the conditions for entitlement
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan

The Oregon continuation notices must include the following information:

- Contact information for the employee to reach the insurer
- Forms and instructions about how to complete and return the forms
- Instruction about the second chance election opportunity (if applicable to the individual)
- A clear statement explaining availability of premium subsidy
- Premium information or directions for determining the premium amount for each qualified beneficiary and instruction for submitting the premium
- A clear statement about who is eligible to continue coverage
- Information about how to enroll in different coverage if allowed by the employer
- When coverage becomes effective if the second election is made
- Instructions about how to appeal denials for treatment as an assistance eligible individual
- Instruction about notification if the employee becomes ineligible for the subsidy

Can employees currently enrolled in COBRA or Oregon continuation switch to a different coverage option offered by the plan?

Yes. Group health plans are permitted, but not required, to allow qualified beneficiaries to enroll in coverage that is different than the coverage they had at the time of the qualifying event. ARRA provides that changing coverage will not cause an individual to be ineligible for the premium reduction, provided that:

- The premium for the different coverage is the same or lower than the coverage the individual had at the time of the qualifying event.
- The different coverage also is offered to active employees.
- The different coverage is not limited to only dental coverage, vision coverage, counseling coverage, a flexible spending account or an on-site medical clinic.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice about their opportunity to change. Individuals subject to COBRA continuation have 90 days to elect to change their coverage after the



notice is provided. Individuals subject to Oregon continuation have 31 days to submit their election.

Does the 65 percent get paid to the individual?

Individuals will not receive a payment. Assistance eligible individuals are responsible for paying only 35 percent of the COBRA premium for the period of coverage. The remaining 65 percent of the premium is reimbursed directly to the employer, plan administrator or insurance company through a payroll tax credit.

If the employee is required to pay only 35 percent of the premium, how is the employer reimbursed for the remaining 65 percent of the premium?

The employer (or other responsible entity) may recover the subsidy provided to assistance eligible individuals by taking the subsidy amount as a credit on its IRS Form 941 quarterly employment tax return. For more information on the Form 941 credit and the tax provisions in ARRA, visit the [IRS website](#).

Does the premium reduction apply to premiums paid for periods of coverage prior to enactment of ARRA?

No. There is no premium reduction for premiums paid for periods of coverage prior to Feb. 17, 2009.

If a plan received payment of 100 percent of the premium for coverage for March or April from an individual determined to be eligible for the premium reduction, what does the plan do with the overpayment?

If an individual met the requirements of an assistance eligible individual and paid 100 percent of the premium in March or April for coverage in those months, the overpayment can be applied as a credit toward subsequent premiums as long as it can be used within 180 days of the overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

How should premiums be submitted to ODS?

The employer is responsible for submitting 100 percent of the COBRA continuation premium to ODS, which includes the assistance eligible individual's portion (35 percent), plus the employer's portion (65 percent).

The employer is responsible for submitting the employee's 35 percent of the Oregon continuation premium to ODS.

If the employer denies the employee's request for the premium reduction, does the employee have appeal rights?

Yes. Individuals who are denied treatment as assistance eligible individuals and thus denied eligibility for the premium reduction may request an expedited review of the denial. The Department of Labor will handle appeals related to private sector employer plans subject to ERISA's COBRA provisions. The Department of Health



and Human Services will handle appeals for federal, state and local governmental employees, as well as appeals related to group health insurance coverage provided according to state continuation coverage laws. The departments must make a determination within 15 business days of receipt of a completed request for review. The Department of Labor is currently developing a process and an official application form that will be required to be completed for appeals.

The process will include obtaining information from the employer, plan or insurer where appropriate. There will be a very short turnaround time for submission of this information because of the short time for the determination.

Where can I go to find more information?

Guidance and other information is available on the Department of Labor's dedicated COBRA website at www.dol.gov/COBRA. We encourage you to subscribe to this page so that you will receive updates as new information is added to the site. You also can call 866-444-3272 to speak to an Employee Benefits Security Administration Benefits Advisor.

For specific information about claiming the credit for the 65 percent of COBRA premiums and filing the quarterly federal tax return (Form 941), you can visit the [IRS website](#). The IRS will continue to update its website with more information on the ARRA premium assistance provisions as it becomes available.

For more information on continuation coverage requirements for small employers under Oregon law, you can visit the Oregon Insurance Division website at <http://www.insurance.oregon.gov/consumer/consumer-issues/federal-stimulus-info/federal-stimulus-info.html> or the CMS website at <http://www.cms.hhs.gov/COBRAContinuationofCov/>.

