

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), as amended by the Fiscal Year 2010 Department of Defense Appropriations Act (2010 DOD Act). Please refer to the ODS website at www.odskompanies.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 because of an involuntary termination of employment that occurred at some time between Sept. 1, 2008, and Feb. 28, 2010; and
- Elects COBRA or Oregon coverage (when first offered or during any additional election period provided by ARRA).

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, and this qualifying event must occur at any time between Sept. 1, 2008, and Feb. 28, 2010. 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 fifteen 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.

What are the current notice requirements under ARRA?

Under COBRA continuation, employers and plan administrators must provide a general notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from Sept. 1, 2008 through Feb. 28, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. Individuals who experience any qualifying event after Dec. 19, 2009 must get the updated general notice within the normal timeframe for providing a COBRA election notice. The updated model general notice includes information on the premium reduction as well as information required in a COBRA election notice.

Employers and plan administrators must also provide a premium assistance extension notice to certain individuals who have already been provided a COBRA election notice that did not include information about the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act. Listed below are the affected individuals and the associated timing requirements.

- Individuals who were assistance eligible individuals as of Oct. 31, 2009 (unless they are in a transition period — see below) and individuals who experienced a termination of employment on or after Oct. 31, 2009 and lost health coverage (unless they were already provided a timely, updated general notice) must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act by Feb. 17, 2010;
- Individuals who are in a “transition period” must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act within 60 days of the first day of the transition period. (The transition period begins immediately after the end of the nine months of premium reduction in effect under ARRA before the amendments made by the 2010 DOD Act, as long as the premium reduction provisions of the 2010 DOD Act would apply due to the extension from nine to 15 months).

Note: Some individuals may be entitled to multiple notices. To satisfy the notice requirements, these individuals may be provided a single notice that includes all of the required information so long as the notice is provided by the earliest date required.

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, 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.

Insurers must also provide additional notice to individuals who were assistance eligible individuals at any time on or after Oct. 31, 2009, or who experienced a qualifying event (consisting of termination of employment) relating to Oregon continuation on or after Oct. 31, 2009, no later than Feb. 21, 2010.

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 at <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.



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.

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 at <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>. 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/>.