Internal Revenue Service

COBRA: Answers for Employers

Under the American Recovery and Reinvestment Act of 2009, certain individuals who are eligible for COBRA continuation health coverage, or similar coverage under State law, may receive a subsidy for 65 percent of the premium. These individuals are required to pay only 35 percent of the premium. The employer may recover the subsidy provided to assistance-eligible individuals by taking the subsidy amount as a credit on its quarterly employment tax return. The employer may provide the subsidy — and take the credit on its employment tax return — only after it has received the 35 percent premium payment from the individual.

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1. 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.

2Q: How does an employer claim the credit for the COBRA subsidy?

A: The credit is claimed on Line 12a of the January 2009 revision of the Form 941, which was posted on the IRS website on Feb. 20. In addition, the Form 941 filer also needs to include the number of individuals provided COBRA premium assistance on Line 12b.

3Q: What other information relating to the COBRA subsidy must be submitted with the Form 941 besides the entries on Lines 12a and 12b?

A: No additional information relating to the COBRA subsidy is to be submitted with the Form 941, either electronically or in paper form. However, those claiming the credit must maintain supporting documentation for the credit claimed. Such documentation includes, but is not limited to:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35% share of the premium.
- In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to December 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to December 31, 2009, and election of COBRA coverage.
- A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals.
- Other documents necessary to verify the correct amount of reimbursement.

4Q: The employer paid the bill and took the credit for March. In April the employer finds out that the employee did not continue his/her coverage (i.e., did not pay the 35 percent). The credit element must be allowed to be a negative, which would increase the deposit due.

A: The premium subsidy and the related credit for the employer apply only after the individual has paid his or her 35 percent of the premium, so this situation should not occur.

5Q: I haven't seen the legislation, but why does this belong on the Form 941?

A: The legislation as passed provides for reimbursement of the subsidy through the employment tax process, so Form 941 is the applicable form.

6Q: What will happen if Line 12a ends up being larger than Line 10 on a 941 return? Will this result in a net negative of taxes for a company?

A: If Line 12a is larger than Line 10, Line 13 would also be larger than Line 10, resulting in an overpayment that could be applied to the next return, or requested as a refund.

7Q: Is the IRS considering any other form changes (e.g., 941X)?

A: Yes. All appropriate forms are being revised and will be updated on the IRS.gov web site as soon as possible.

8Q. Will the due date for the first-quarter Form 941 be extended?

A: No, the due date for the first quarter 2009 Form 941 is not being extended.

9Q: Would the number of beneficiaries 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.

10Q: Now that the legislation has passed, how is this going to be communicated to the employer/payroll community?

A: The IRS will continue to provide updated information through this Web site as it becomes available.

11Q: 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.

12Q: When does the law become effective?

A: The law became effective on the date of enactment, Feb. 17, 2009. However, under a transition rule, the regular premium amount may continue to be paid for up to two months after enactment (e.g., for March and April), and the subsidy can be provided retroactively.

13Q: It was mentioned that this would be a temporary statute. How long is this change expected to be in effect?

A: For assistance-eligible individuals, the qualifying event must occur on or before Dec. 31, 2009, and the COBRA subsidy may apply for up to nine months.

14Q: What individuals are eligible for the COBRA subsidy?

A: An assistance-eligible individual can be any COBRA qualified beneficiary associated with the related covered employee, such as a dependent child of an employee, who is covered immediately prior to the qualifying event. The qualifying event for purposes of eligibility for the subsidy is involuntary termination of the covered employee's employment that occurs during the period beginning Sept. 1, 2008, and ending Dec. 31, 2009. The individual must also be eligible for COBRA coverage, or similar state coverage, during this period.

15Q: Is this provision for employees who involuntarily lose their jobs — or will it apply to all employees even if they leave voluntarily?

A: The credit applies only to involuntarily terminated employees and their family members who are qualified beneficiaries.

16Q: 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.

17Q: When more than one entity may be responsible for receiving COBRA premiums, who should claim the credit?

A: The law as enacted clarifies that the person to whom the reimbursement is payable is (1) the multiemployer group health plan, (2) the employer maintaining a group health plan that is subject to Federal COBRA continuation coverage requirements or that is self-insured, or (3) the insurer providing coverage under a plan not included in (1) or (2). Only this person is eligible to offset its payroll taxes by the amount of the subsidy.

18Q: 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.

19Q: 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.

20Q: What other agencies will provide information about the COBRA subsidy?

A: Information about the COBRA subsidy will also be available through the Department of Labor and the Department of Health and Human Services, which, along with the IRS, share responsibility for the COBRA requirements.

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21Q Can an employer reduce its payroll deposits during the quarter by the amount of the COBRA subsidy it provides during the quarter without incurring a Failure to Deposit penalty?

A: The amount of the COBRA subsidy the employer provides during the quarter (based on the 35 percent premium payments received from assistance eligible individuals during the quarter) will be treated as having been deposited on the first day of the quarter and applied against the employer's deposit requirements. Therefore, timely deposits up to the amount of the subsidy will be deemed to have been made during the quarter, regardless of the otherwise applicable due dates for deposits. However, in some cases, the amount of the subsidy the employer provides during the quarter will be less than the total amount of the employer's required deposits during the quarter. In that case, the employer will be required to make timely deposits during the remainder of the quarter to make up the difference.

Example 1: Employer's required payroll deposits for the second quarter of 2009 total $10,000, determined without regard to the COBRA premium subsidy provided by Employer during the quarter. Employer provides assistance eligible individuals with a total COBRA subsidy of $12,000 during the quarter, based on the 35 percent premium payments received from the individuals during the quarter, and reports the $12,000 subsidy on Line 12a of its Form 941 for the quarter. Employer will be treated as having made a $12,000 payroll tax deposit on the first day of the quarter and thus will not be subject to a Failure to Deposit penalty for the quarter even if it reduces its deposits during the quarter by the amount of the subsidy. Alternatively, Employer may make some or all of its required deposits during the quarter, determined without regard to the COBRA premium subsidy provided by Employer during the quarter, rather than reducing its total deposits by the subsidy.

Example 2: Employer's required payroll deposits for the second quarter of 2009 total $10,000, determined without regard to the COBRA premium subsidy provided by Employer during the quarter. Employer provides assistance eligible individuals with a total COBRA subsidy of $8,000 during the quarter, based on the 35% premium payments received from the individuals during the quarter, and reports the $8,000 subsidy on Line 12a of its Form 941 for the quarter. Employer will be treated as having made an $8,000 payroll tax deposit on the first day of the quarter and thus will not be subject to a Failure to Deposit penalty for the quarter, provided that, once the total of its required deposits exceeds $8,000, it makes its regularly required deposits for the remainder of the quarter.

22Q: Will the credit amount taken impact an employer's current "assigned" deposit frequency or future deposit frequencies?

A: Frequency of deposits and look back periods are computed from Line 8 of Form 941, before taking into account any credits, including the COBRA credit. Therefore the COBRA credit will not affect future deposit frequency computations.

23Q: 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.

24Q: If the employer chooses to have the excess refunded, will the IRS send a notice before refunding the credit?

A: If the full amount of the excess is to be refunded to the employer, the IRS will not send a notice before making the refund.

25Q: The questions and anwers refer to the employer. Is it always the employer that provides the subsidy and takes the credit on its Form 941?

A: In some cases, a person other than the employer is the proper party to provide the subsidy and take the credit on its Form 941. For example, under the legislation, if the COBRA coverage is provided by a multiemployer plan, the plan provides the subsidy and is reimbursed by taking a credit on Form 941.

26Q: 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.

27Q: Will Schedule B continue to reflect the total payroll tax liabilities for the quarter, or will the liabilities reported be reduced by the COBRA subsidy credits?

A: Schedule B is used to report an employer's payroll tax liability for each payroll period, not the amount of the employer's payroll tax deposits. Therefore, when the employer reduces a deposit by the amount of the COBRA subsidy, this has no affect on the liabilities the employer reports on Form 941, Schedule B (or the monthly totals in Part 2 of Form 941). The employer should still reflect on Schedule B (or in Part 2, Form 941) the total liabilities for all wages reported on Form 941.

Example: Employer is a semi-weekly schedule depositor with a total liability of $75,000 for the payroll period ended on Feb. 27, 2009. Employer's regular deposit of $75,000 would be due on March 4, 2009. Because of a COBRA subsidy obligation of $5,000, Employer is allowed to reduce the deposit amount to $70,000, so Employer makes a timely deposit of $70,000 by March 4, 2009. When Employer completes Schedule B of Form 941 for the first quarter of 2009, Employer must enter the total liability, $75,000, on Day 27 of Month 2. As always, the total liability reported on Schedule B must equal the total taxes reported on Line 10 of Form 941. Employer will reflect the total COBRA subsidy for the quarter on Line 12a of Form 941.

28Q: 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.

29Q: 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.

30Q:Will there be anything that Payroll Service Providers will have to provide to employers and/or IRS?

A: Payroll Service Providers need to communicate with their clients and ensure their clients maintain proper supporting documentation for the credit claimed. Such documentation includes, but is not limited to:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35 percent share of the premium.
- In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from Sept. 1, 2008, to Dec. 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from Sept. 1, 2008, to Dec. 31, 2009, and election of COBRA coverage.
- A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals.
- Other documents necessary to verify the correct amount of reimbursement.

This documentation must be maintained, but will not be required to be submitted to the IRS with Form 941.

31Q: It might be difficult to make the April 30, 2009 deadline for filing the new Form 941. Who should we contact if we want to request an extension of time to file?

A: No extensions are available for filing of employment tax returns.

32Q: 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.

33Q: Is the COBRA benefit based on the former employee's insurance coverage?

A: In general, COBRA coverage is based on the same coverage that the individual had at the time of the qualifying event. However, under the COBRA subsidy provision, an employer may offer an assistance eligible individual the option of choosing other coverage that is also offered to active employees and that does not have higher premiums than the coverage the individual had at the time of the qualifying event.

34Q: 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.