

# Employer Q&As on COBRA premium subsidies

March 13, 2009

## What employers must do

### 1. What do I need to do to comply with the COBRA subsidy law?

The Health Care Authority (HCA), which serves as the plan administrator for PEBB benefits, will notify former employees and their qualified beneficiaries about the COBRA subsidy and their special election period rights by April 18, 2009. The HCA will also continue to pay the health plans directly for COBRA members' coverage.

To do these tasks, the HCA will need information from you about employees who have left your agency since September 1, 2008. *We will notify you about what specific information we'll need in future updates.*

### 2. Will the HCA notify all employees who lost employment since September 1, 2008, or just those who were involuntarily terminated?

The law requires that the HCA notify all employees who terminated employment during the applicable time period, not just those who were involuntarily terminated.

You can also find federal guidance on employers' responsibilities at:

#### [Internal Revenue Service](#)

- [Questions and answers](#)
- [Revised Form 941](#) (updated January 2009) and [instructions](#)

#### [Department of Labor](#)

- [Fact sheet on COBRA premium reduction](#)
- [Title III: Premium Assistance for COBRA Benefits](#) (the COBRA subsidy section of the American Recovery and Reinvestment Act)
- [Conference Committee's Joint Explanatory Statement on the COBRA Premium Subsidy Provision](#)

## Determining eligibility for COBRA premium subsidies

### 1. What is an "assistance-eligible individual"?

Assistance-eligible individuals are individuals who:

- No longer qualify for the employer's PEBB coverage due to the employee's involuntary termination between September 1, 2008 and December 31, 2009;
- Qualify for COBRA coverage (this also includes a child who is born or adopted during the COBRA continuation period);
- Either:

- Enrolled in COBRA coverage during their COBRA election period; *or*
- Did not enroll in COBRA coverage during their COBRA election period; *or*
- Enrolled in COBRA coverage between September 1, 2008 and February 16, 2009, but disenrolled voluntarily or were disenrolled due to nonpayment; and
- Are not eligible for other employer-sponsored coverage or Medicare.

**Note:** Assistance-eligible individuals with high incomes (as defined below) may choose to waive their rights to the COBRA premium subsidy, or claim the subsidy and repay it through their taxes.

The amount of the subsidy is recaptured for individuals who earn more than \$145,000 (or \$290,000 for joint filers) in modified adjusted gross income per taxable year. In this case, the individual must repay any amount of premium subsidies for all months during the taxable year. For individuals who earn between \$125,000 and \$145,000 (single filer) or \$250,000 and \$290,000 (joint filers), the amount of the premium subsidies that must be repaid is reduced proportionately.

## 2. How does the law define “involuntarily terminated”?

The law does not currently define “involuntarily terminated,” but we expect more federal guidance will come soon. *Once we receive clarification, we will communicate that to you.*

## 3. Who determines the former employee’s eligibility for the COBRA subsidy?

Generally, the HCA has determined eligibility for COBRA enrollment, based on federal laws. However, the law states that the entity claiming reimbursements must attest that each assistance-eligible individual qualifies for the COBRA subsidy. Since we’re unclear as to who will ultimately claim reimbursements for the premium subsidies, we don’t know if the employer or the HCA will be responsible for attesting to the employees’ (and their dependents’) eligibility. *We will communicate this process to you once we know more information.*

## 4. The law states that an individual can lose their eligibility for the COBRA subsidy if he or she becomes eligible for group health coverage. Does that include becoming eligible for PEBB health coverage under the 8-hour rule?

Yes.

## 5. Which types of employees or dependents *don’t* qualify for the COBRA subsidy?

The law gives some reference as to who doesn’t qualify; *we’re still waiting for further clarification and will communicate that to you in future updates.* Former employees and their dependents do not qualify for the COBRA subsidy if:

- The employee voluntarily terminated.
- The employee was terminated due to gross misconduct. (The employee wouldn’t qualify for COBRA coverage; therefore, he or she—and the dependents—wouldn’t qualify for the COBRA subsidy.)
- The employee’s qualifying event that ended his or her employer-sponsored health coverage came before September 1, 2008, or after December 31, 2009.
- The employee’s dependents are not federally qualified beneficiaries. (This includes the employee’s same-sex domestic partner and the partner’s children, unless those children are legally adopted dependents of the employee.)
- They are eligible for group health coverage (such as through another employer or a spouse’s employer) or Medicare, even if they choose not to enroll. (**Exception:** The

employee or qualified beneficiary is eligible to continue the COBRA subsidy for up to nine months if he or she enrolls in group health coverage that provides only dental, vision, counseling, referral services [or a combination of these], or a health flexible spending account, or on-site medical services maintained by the employer that are primarily for first-aid or prevention/wellness care.)

- They waive their rights to the COBRA subsidy due to high income. (In the “Determining eligibility for COBRA premium subsidies” section, see “Note” under question 1.)
- They do not enroll in COBRA coverage.

#### **6. What can an employee do if his or her eligibility for the COBRA subsidy is denied?**

He or she can request an expedited appeal of the denial through the Department of Health & Human Services (HHS). The HHS must make a determination about the appeal within 15 business days after receiving the employee’s application for review. *We anticipate that the details of this process will be included in the federal model notice, due in mid-March.*

You can also find federal guidance on employee eligibility, including appeal rights, at:

[Department of Labor](#)

- [FAQs about COBRA premium reduction for workers and their families](#)

## **COBRA subsidy reimbursement**

### **1. Who will receive reimbursement for the federal government’s portion of the COBRA premium—the HCA, the employer, or the COBRA member?**

The law anticipates that the same entity that collects 35% of the COBRA premium from the member, and pays the health plan 100%, will also seek 65% reimbursement from the federal government via adjustments to payroll taxes.

However, in Washington’s case, the HCA collects the member premiums and pays the health plans, but the employer files the payroll taxes. The Internal Revenue Service (IRS) and Department of Health & Human Services (HHS) are aware of this situation and are working on a resolution. *We are seeking guidance from federal sources as to how the reimbursements will get to the PEBB health plans, and will notify you when we know more.*

### **2. If employers are supposed to apply for the tax credits, how will they know which former employees who qualify for the COBRA subsidy actually enroll, and which employees paid the COBRA premiums in full after the enactment date (February 17) and are due a refund?**

We are seeking federal guidance on who determines eligibility for the COBRA subsidy (see question #3 under “Determining eligibility for COBRA premium subsidies,” above) so that we can develop a process in which both the HCA and the employer will know who the assistance-eligible individuals are.

The HCA is also reprogramming its PAY1 computer system to capture additional data on employee terminations. Employers that have access to PAY1 will complete the A.41 Qualify Reason field to note if the employee’s termination was voluntary or involuntary. This functionality on the A.41 screen is tentatively scheduled to be available on April 1, 2009.

For those employers that don’t have access to PAY1, we will develop another reporting method to get this information from you.

*We will communicate how and when these changes will affect your use of PAY1 in future updates.*

**3. If employers are expected to apply for the tax credits for the COBRA subsidy on IRS Form 941, how will the federal government handle retroactive reimbursements?**

The law makes no provision for any reimbursement to employers, other than an adjustment on the next reporting tax cycle. The requirement is that employers report the current cycle's actual subsidy claim. *However, we are seeking resolution from federal agencies as to how employers' tax credits will transfer to PEBB health plans to cover the 65% subsidy for the COBRA premium. We will notify you if this process changes.*

See the links under "What employers must do" section for more information about the COBRA subsidy reimbursement.

## Benefits eligible for the COBRA subsidy

**1. Can assistance-eligible individuals use the COBRA subsidy toward their health flexible spending accounts?**

No. The law specifically excludes applying the COBRA subsidy toward:

- Health flexible spending accounts.
- Coverage that provides only dental, vision, counseling, or referral services (or a combination of these services).
- Coverage for services or treatments furnished in an on-site medical facility maintained by the employer (such as for first aid or prevention/wellness care).

**2. Can assistance-eligible individuals enroll in different health coverage or a different health plan than they had as an employee (or while covered under the employee's coverage)?**

Yes. After receiving the HCA's notice, an assistance-eligible individual will have an opportunity to enroll in coverage under a plan that is different than the plan he or she was enrolled in at the time of the qualifying event. However, the individual cannot enroll in a new plan whose premium exceeds the previous plan's premium, nor enroll in PEBB's dental-only coverage, and receive the COBRA premium subsidy.