



## The COBRA Subsidy Program

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (aka: the Economic Stimulus Package). As part of this package, there are significant changes to COBRA.

While many of these provisions go into affect beginning with the first plan period after the signing of the law (generally this means March 1, 2009), further guidance and clarification is still needed from the Department of Labor, Department of the Treasury and/or Health and Human Services.

Below you can find an overview of the program, as well as a list of items still requiring further guidance and/or review. You can be sure that the California Association of Nonprofits is working diligently to help our members comply with this new regulation.

What We Know	
<b>Which employers are affected?</b>	Employers with 20 or more employees who are subject to Federal COBRA rules. <i>For employers with 2 – 19 employees and subject to the state version (CalCOBRA), further guidance is still pending.</i>
<b>Which individuals are affected?</b>	The subsidy is directed at individuals called Assistance Eligible Individuals (AEI). An AEI is someone who: <ul style="list-style-type: none"> <li>Experienced an involuntary termination of employment (e.g. layoff or termination for reasons other than gross misconduct)</li> <li>Is the covered spouse or qualified dependent of such an employee</li> <li>Experienced the termination between 9/1/08 and 12/31/09</li> <li>Has a modified adjusted gross income under \$125,000 (single individual) or \$250,000 (joint filers) <i>sliding scale applies for higher incomes up to \$145,000 (single) and \$290,000 (family)</i></li> </ul>
<b>What about domestic partners?</b>	Federal COBRA has never recognized domestic partners as having equal rights the same as a spouse. Domestic partners will only be eligible for the subsidy if they qualify as a federal tax dependent.
<b>How much is the subsidy?</b>	The AEI is responsible for 35% of the premium, while the remaining 65% is paid by the employer (in most cases) and will be reimbursed by the federal government.
<b>How long does the subsidy last?</b>	The subsidy will last up to nine months OR:

	<ul style="list-style-type: none"> <li>• When the AEI becomes eligible for coverage under another group health plan</li> <li>• When the AEI becomes eligible for Medicare</li> <li>• When the AEI's COBRA period otherwise expires</li> </ul>
<b>How will employers know if an AEI no longer qualifies?</b>	It is the AEI's responsibility to notify the employer in a timely manner. Noncompliance will result in a 110% penalty on the ineligible amount of subsidies on the individual's next tax return.
<b>How are employers reimbursed for the 65% they pay?</b>	Reimbursement will be received through payroll tax credits (e.g. employers will reduce their monthly or quarterly federal tax deposit). If the amount of COBRA premiums paid exceeds the tax deposit, employers will request a refund from the IRS.
<b>Which health plans are eligible for the COBRA subsidy?</b>	Under previous COBRA law, a person choosing COBRA could only choose to continue any coverages they had immediately preceding their termination. Under the new revisions, employers have the <b>OPTION</b> of allowing AEI's to enroll in any other plans that are also offered to other employees, and that have premiums that are the same or lower than the plan the employee was previously enrolled in.
<b>What about employees who were terminated before this new law was signed?</b>	<p>There will be a "special enrollment period" specifically for employees who experienced an involuntary termination between 9/1/08 and 2/17/09. A special notice must be provided to these former employees and/or covered dependents within 60 days of the signing of the law (4/17/09). These AEI's will have 60 days from the date the notice was provided to them to elect COBRA. This includes employees/dependents who previously declined to elect COBRA and/or elected then dropped COBRA.</p> <p>If any of these AEI's now elect COBRA, coverage will become effective no sooner than March 1, <b>however</b>; their 18, 29 or 36 COBRA period will still be measured from the original qualifying event or loss of coverage date.</p> <p><i>Model forms should be available within 30 days.</i></p>
<b>What if employees already on COBRA have been paying the full premium?</b>	All AEI's will be eligible for a subsidy beginning with their coverage on March 1. If an employee has already prepaid in full for any months beginning with March, they will need to have the excess premium payments (above the 35%) repaid to them or credited toward future premiums.
<b>Are there any other notices employers need to be aware</b>	COBRA election notices will need to be modified <b>or</b> a

of?	<p>separate notice created which includes the following information:</p> <ul style="list-style-type: none"> <li>• Subsidy eligibility requirements</li> <li>• Name, address, and phone of the plan administrator for any questions</li> <li>• Requirement for written notification to plan administrator if an AEI becomes ineligible for the subsidy – and what the penalties for noncompliance are</li> <li>• Explanation of the reduced premium</li> <li>• <b>OPTIONAL</b> – explanation of right to choose another plan with premiums that are the same or lower</li> </ul> <p><i>Model forms should be available within 30 days.</i></p>
-----	---

<b>Questions Requiring Further Guidance</b>	
<b>Is an administration fee of up to 2% still able to be charged?</b>	Awaiting further guidance
<b>How does an employer show their COBRA subsidy credit when calculating their Federal Tax Deposit?</b>	Awaiting further guidance and forms/reports
<b>How does an employer request a refund from the IRS?</b>	Awaiting further guidance and forms/reports
<b>Does this affect Cal-COBRA?</b>	Awaiting further guidance