

CLIENT BULLETIN

IRS/DOL Post Guidance on Filing for COBRA Premium Subsidy

The Internal Revenue Service (IRS) and the Department of Labor (DOL) have posted guidance on how group health plans, including multiemployer plans, may obtain the COBRA premium assistance subsidy provided at [Section 3001](#) of the *American Recovery and Reinvestment Act of 2009 (ARRA)*.

See [Client Bulletin 2009-15](#) for more details on the COBRA premium subsidy:

- the “second chance” election rights for individuals who were involuntarily terminated between September 1, 2008 and February 17, 2009 but did not then elect COBRA. *ARRA* Section 3001(a)(4)(A),
- that timely elected “second chance” elections receive the subsidy retroactive to March 2009. *ARRA* Section 3001(a)(4)(B),
- the reimbursement process for individuals who pay full premiums in March and/or April 2009 even though they would have been subsidy eligible, *ARRA* Section 3001(12)(E), and
- the special notice which must be sent to individuals who were involuntarily terminated during the above period and those who involuntarily terminate after February 1, 2009, *ARRA* Section 3001(a)(7).

In short, a multiemployer group health plan that wishes to obtain its share of the COBRA premium subsidy will (like single-employer plans) file a request for the subsidy by using [IRS Form 941](#) – Employers Quarterly Federal Tax Return. Form 941 and the [Form 941 Instructions](#) have been revised to accommodate COBRA premium subsidy requests. As the amount of payroll taxes that could be offset by the plan would be insufficient to reimburse the plan for its share of the COBRA premium subsidy, the Form 941 will essentially serve as a method of getting direct subsidy payments from the Treasury Department in the form of a “refund” equal to the unreimbursed amount of the subsidy paid by the plan.

Who is Required to Submit a Form 941?

Multiemployer health plans with employees may offset their employee payroll taxes on the Form 941 by completing the form like normal and then also filling out items 12a, 12b, 13 and 15. This will calculate the refund amount owed to the plan as the payroll tax offset would generally not be sufficient to cover the full amount of subsidy due the Plan. Multiemployer health plans without employees (plans that use a TPA) would also submit the Form 941 as the method for obtaining the Plan's share of the COBRA premium subsidy. The form would be completed by filling out the identifier section, items 12a, 12b, 13 and 15 and signing the form where indicated.

The above information was drawn from a set of Frequently Asked Questions (FAQs) the IRS posted on its website, particularly FAQs 1-3, 16 and 24. The FAQs are available at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>. The Research Department has prepared a special version of the FAQs by adding numbers (there are 33 FAQs) and adding a Table of Contents for ease of use. This document is available by "[clicking here](#)."

The Form 941 is due by the last day of the month that follows the end of the quarter, as shown in the following chart taken from Form 941 instructions:

Quarter	Months Included	Quarter Ends	Form 941 Due Date
1	Jan, Feb, Mar	March 31	April 30
2	Apr, May, Jun	June 30	July 31
3	Jul, Aug, Sept	September 30	October 31
4	Oct, Nov, Dec	December 31	January 31

Fortunately, given the little amount of time between passage of *ARRA* and the subsidy availability as of March 1, 2009, employers and/or multiemployer health plans do not have to claim the credit on Form 941 for the quarter during which the COBRA subsidy is provided to assistance eligible individuals, but may generally choose to claim the credit on Form 941 for a later quarter in the same calendar year. (FAQ 27)

What Information Must the Plan Provide Along with Form 941?

According to FAQ 3, 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:

- 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 the 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 SSNs 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.

Administrators and employees of multiemployer group health plans who are responsible for assisting with the COBRA premium subsidy process for the Plan will want to review the IRS FAQs in detail.

Other Reminders about COBRA Subsidy

Reimbursement or Offset of Future Payments for Overpayments

Subsidy eligible individuals who have already elected COBRA but pay the full premium amount in March and April 2009 even though they would be subsidy eligible for those two months are eligible for either reimbursement from the plan or an offset against future payments due. See *ARRA* Section 3001(12)(E).

Employee-Friendly FAQs

The DOL has prepared a Fact Sheet and a set of 10 FAQs that plans may find useful in member communications. The Fact Sheet is available at: <http://www.dol.gov/ebsa/pdf/fsCOBRAPremiumReduction.pdf> or by "[clicking here.](#)" The FAQs are available at <http://www.dol.gov/ebsa/faqs/faq-consumer-cobra2.html> or in a specially prepared version by "[clicking here.](#)"

Expedited Appeals

DOL FAQ 9 addresses the expedited appeals system by which individuals denied COBRA premium assistance by their plan can appeal directly to the DOL. Such appeals must be submitted on a DOL application form which will soon be available at www.dol.gov/COBRA and can be completed online and submitted online, by mail or fax as indicated in the instructions. Individuals may also speak with an Employee Benefits Security Administration Benefits Advisor toll free at 1-866-444-3272 prior to filing this form.

FURTHER RESOURCES

- **Form 941** is available at: <http://www.irs.gov/pub/irs-pdf/f941.pdf> or by "clicking here."
- **Form 941 instructions** are available at: <http://www.irs.gov/pub/irs-pdf/i941.pdf> or by "clicking here."
- Information on e-filing Form 941 is available at: <http://www.irs.gov/taxpros/providers/article/0,,id=97815,00.html>.
- Form 941 may also be filed online. Information on this option is available at: <http://www.irs.gov/efile/article/0,,id=97966,00.html>.
- The main IRS COBRA premium subsidy webpage is located at: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.
- The main DOL COBRA premium subsidy webpage is located at: <http://www.dol.gov/ebsa/cobra.html>.
- The International Foundation of Employee Benefit Plans (IFEBP) also has a webpage collecting information on the COBRA premium subsidy located at: <http://www.ifebp.org/Resources/News/Regulatory+Updates/AmericanRecoveryandReinvestmentBillIncludesCOBRACHanges.htm>.

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