

OVERVIEW
COBRA PREMIUM SUBSIDY PROGRAM
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (“ARRA”)

This chart is a summary only of the key provisions of ARRA’s subsidy program, and is not intended to provide specific legal advice on these issues. Forms and layman-friendly FAQs are posted on the Internal Revenue Service (IRS) website (www.irs.gov) and the U.S. Department of Labor (DOL) website (www.dol.gov). Q&A guidance can also be found in IRS Notice 2009-27 (Premium assistance for COBRA benefits), which we have posted for your convenience on our website (www.levinebakerlaw.com). For specific questions, feel free to call Alisa Baker (415-391-3510) or Rick Levine (415-391-8177).

	COBRA	ARRA	Comments
What is it?	Government-mandated program providing for (employee-paid) continuation of employer-provided group health coverage post-termination; similar program in California for group health plans not covered by federal COBRA (i.e., with less than 20 employees)	Government-mandated subsidy enacted 2/17/09 (ARRA Effective Date) to assist in payment of up to 9 months of COBRA (or CAL-COBRA) premiums for involuntarily terminated employees and their dependents	<i>ARRA is intended to provide assistance to individuals who lose their group health coverage as a result of an involuntary termination of employment during the financial crisis.</i>
Who is eligible?	“Qualified Beneficiary” (QB) who would otherwise lose existing group health coverage as a result of a “qualifying event” (QE). Includes “covered employees” (CE) as well as dependents of such employees.	“Assistance Eligible Individual” (AEI) is a QB (employee and/or dependent) who is eligible to elect COBRA as a result of an involuntary termination of employment that occurs between 9/1/08 and 12/31/09 (“ARRA Eligibility Period”)	<i>There are a number of types of QEs for COBRA purposes; there is only one QE for ARRA purposes. However, the definition of involuntary termination includes a very broad definition of resignation for “good reason”—i.e., resignation due to “an employer action that causes a material negative change in the employment relationship for the employee.”</i>
What is the cost of the	Up to 102% of the	35% of the premium	<i>The QB pays only 35%;</i>

premium to the QB?	premium paid by active employees for federal COBRA for first 18 months; up to 110% of premium for next 18 months (if applicable)	that would otherwise be due under COBRA.	<i>the remaining 65% is paid by the employer and then recouped through a payroll tax credit.</i>
What is the coverage term?	In general, 18 months from the QE for federal COBRA (although in certain cases, 36 months). Cal-COBRA tacks on an 18 months for up to 3 years of coverage. Various events (for example, nonpayment of premiums, coverage under another group health plan, coverage under Medicare) will also end the term.	Co-extensive with the COBRA term up to a maximum of 9 months. Both the QE and COBRA eligibility must occur during the ARRA Eligibility Period (i.e., a QB who elected COBRA for a termination prior to 9/1/08 will not be eligible for the subsidy even though his COBRA coverage continues during the ARRA Eligibility Period.	<i>COBRA coverage lapses when (among other events) the QB becomes covered by another group health plan. ARRA subsidy will expire when the QB becomes eligible for coverage under another group health plan, regardless of whether s/he elects such coverage.</i>
How is the election to receive coverage made?	Under COBRA election rules, a QB must be timely notified by the employer of his rights to receive coverage at the QE. The QB then must elect to continue coverage no later than 60 days after notice and pay the first premium retroactively no later than 45 days after the election.	Employer must notify any AEIs (including QBs who did NOT elect COBRA prior to the ARRA Effective Date) that they are eligible for the subsidy and provide the forms on which to make the election.	<i>All QBs who become eligible during ARRA Eligibility Period have a chance to elect COBRA and the subsidy, even if they failed to timely elect prior to the ARRA Effective Date. This is to help people who didn't elect COBRA because they couldn't afford the premiums after termination.</i>
When does the subsidy begin?	NA	Once the QB elects to receive both COBRA and the subsidy, the subsidy takes effect as of the first premium payment after the ARRA Effective Date. The subsidy is not retroactive.	<i>An AEI who was terminated prior to the ARRA Effective Date, and who elected COBRA before that date, will still receive up to 9 months of subsidy but only for premiums paid after the ARRA Effective Date.</i>
Is there a phase-out to eligibility for a QB?	No (except in the case of a dependent who is no longer eligible for group coverage).	Yes. Eligibility begins to phase out in any year where the AEI has gross income in excess of	<i>The subsidy will be recaptured by adding it back to the QB's tax return for the applicable</i>

		\$125,000 (\$250,000 married filing jointly) and is completely phased out at \$145,000 (\$290,000).	<i>year. The right to the subsidy may be waived by the QB to avoid recapture; however, unless the QB is sure that he will have gross income in excess of the ceiling for any year, it makes most sense to elect the subsidy and repay it after the amount of gross income is known.</i>
How is the employer reimbursed for the subsidy?	NA	The employer is entitled to a credit against payroll tax in the amount of the subsidy paid (as reported on forms provided by the IRS and the DOL).	<i>The rules authorize “self help” by the employer – i.e., the employer is permitted to simply offset the subsidy by using employee withholdings that would otherwise be paid over to the IRS.</i>
What if the employer fails to offer the benefit?	Penalties (including excise taxes) for failure to notify and provide COBRA coverage are significant, under both COBRA and ERISA.	The DOL is required to review any request for review by an individual who was denied AEI treatment within 15 business days of receipt of the request. ARRA also imposes significant penalties for failure to offer benefits to AEIs.	<i>Forms scheduled to be posted on the DOL website in late May 2009. The expedited process is appropriate in view of the intent of ARRA to provide immediate assistance.</i>