

# Tax News

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## IRS Provides Guidance on New COBRA Rules

The IRS recently released guidance, in a question and answer format, addressing how employers are to administer and seek recovery of the new COBRA premium subsidy enacted under the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5). The Act provides that an individual who has been involuntarily terminated on or after September 1, 2008, through the end of 2009 is required to pay only 35% of the group health insurance premium to secure COBRA continuation coverage (up to nine months).

The new guidance focuses on two broad areas: Form preparation – the mechanics of how an employer recovers the COBRA premium subsidy through a payroll credit claimed on IRS Form 941, and administration and eligibility. The guidance also addresses common inquiries surrounding the timing of when the subsidy begins and ends.

### How the Subsidy Works

A former employee and his or her family are “assistance eligible employees” if they are eligible for COBRA health insurance continuation coverage as a result of any involuntary termination occurring from September 1, 2008, through December 31, 2009. These individuals are required to pay only 35% of the group health insurance premium that would otherwise apply.

Under the Act, the “person to whom the premiums are payable” – generally, the employer – pays the other 65% of the COBRA continuation premium. The employer will then be reimbursed by means of a federal payroll tax credit claimed on Form 941.

### The Payroll Credit

Generally, an employer can claim the payroll credit for the COBRA premium subsidy on Form 941, Employer’s Quarterly Federal Tax Return. To do so, the employer should enter the amount of any COBRA premium assistance payments paid on behalf of employees for that quarter on Line 12a. The amount entered should equal 65% of eligible workers’ total COBRA premium payments – not amounts received from former employees.

In its Guidance, the IRS indicated that there has been some confusion surrounding the proper number of individuals to be reported on Line 12b as having received COBRA premium assistance reported on Line 12a. The guidance clarifies that only one individual should be counted for Line 12b purposes in a situation where a former employee has also secured coverage for other qualifying individuals such as a spouse and/or children.

### Timing Issues

The IRS has also clarified that the COBRA premium reduction applies as of the first period of coverage beginning on or after February 17, 2009, for which a qualifying involuntary terminated employee is eligible to pay 35% of the premium. The exact date of coverage is contingent upon the period to which premiums are charged to the plan.

The 35% premium subsidy generally applies until the earliest of three events: (1) when the former employee secures other health insurance coverage; (2) the date that is nine months after the first day of the first month for which the special COBRA premium subsidy provision applies; or (3) the date the individual is no longer eligible for COBRA continuation coverage.

### Conclusion

The American Recovery and Reinvestment Tax Act of 2009 provides many tax planning opportunities, including that relating to the special subsidy rules for COBRA premiums. If you have any questions regarding the new subsidy provisions under the Act, including completing or filing Form 941, please call Doeren Mayhew today at (248) 244-3000 and speak to one of our professionals.