



COBRA Questions and Answers: Form Preparation

FP-1

Q. How will an employer be reimbursed for the COBRA subsidy that it has provided to eligible individuals?

A. The COBRA subsidy amount is reimbursed by being claimed as a credit on [Form 941](#), Employer's QUARTERLY Federal Tax Return. Form 941 has been revised to allow for this credit. (02/26/09)

Additionally, small employers that file [Form 944](#), Employer's ANNUAL Federal Tax Return — generally those with an estimated employment tax liability of \$1,000 or less in the calendar year — may claim their COBRA credit on Form 944. Additionally, agricultural employers may claim the COBRA credit on [Form 943](#), Employer's Annual Federal Tax Return for Agricultural Employees. (12/23/09)

FP-2

Q. How does an employer claim the credit for the COBRA subsidy?

A. The credit is claimed on Line 12a of the January 2009 revision of Form 941, which was posted on the IRS Web site on Feb. 20. In addition, the Form 941 filer also needs to include the number of individuals provided COBRA premium assistance on Line 12b. (02/26/09)

FP-3

Q. I haven't seen the legislation, but why does this belong on the Form 941?

A. The legislation as passed provides for reimbursement of the subsidy through the employment tax process, so Form 941 is the applicable form. (02/26/09)

FP-4

Q. What will happen if Line 12a ends up being larger than Line 10 on a 941 return? Will this result in a net negative of taxes for a company?

A. If Line 12a is larger than Line 10, Line 13 would also be larger than Line 10, resulting in an overpayment that could be applied to the next return, or requested as a refund. (02/26/09)

FP-5

Q. Is the IRS considering any other form changes (e.g., 941X)?

A. Yes. All appropriate forms are being revised and will be updated on the IRS.gov Web site as soon as possible. (02/26/09)

FP-6

Q. Will the due date for the first-quarter Form 941 be extended?

A. No. (02/26/09)

FP-7

Q. Will the number of assistance-eligible individuals need to be reported each quarter, whether or not there was a tax credit amount to apply?

A. Line 12b of the revised Form 941 must indicate the number of individuals who received the total COBRA subsidy reported on Line 12a of the Form 941. If there is no tax credit amount because no subsidy was provided, then the entry on Line 12b would be zero. (02/26/09)

FP-8

Q. Can an employer decide only to claim the credit at the end of the quarter rather than reducing its tax deposits during the quarter?

A. Yes. The employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter. (02/26/09)

FP-9

Q. Can an employer reduce its payroll deposits during the quarter by the amount of the COBRA subsidy it provides during the quarter without incurring a Failure to Deposit penalty?

A. The amount of the COBRA subsidy the employer provides during the quarter (based on the 35 percent premium payments received from assistance eligible individuals during the quarter) will be treated as having been deposited on the first day of the quarter and applied against the employer's deposit requirements. Therefore, timely deposits up to the amount of the subsidy will be deemed to have been made during the quarter, regardless of the otherwise applicable due dates for deposits. However, in some cases, the amount of the subsidy the employer provides during the quarter will be less than the total amount of the employer's required deposits during the quarter. In that case, the employer will be required to make timely deposits during the remainder of the quarter to make up the difference. (03/05/09)

Example 1: Employer's required payroll deposits for the second quarter of 2009 total \$10,000, determined without regard to the COBRA premium subsidy provided by employer during the quarter. Employer provides assistance eligible individuals with a total COBRA subsidy of \$12,000 during the quarter, based on the 35 percent premium payments received from the individuals during the quarter, and reports the \$12,000 subsidy on Line 12a of its Form 941 for the quarter. Employer will be treated as having made a \$12,000 payroll tax deposit on the first day of the quarter and thus will not be subject to a failure-to-deposit penalty for the quarter even if it reduces its deposits during the quarter by the amount of the subsidy. Alternatively, employer may make some or all of its required deposits during the quarter, determined without regard to the COBRA premium subsidy provided by employer during the quarter, rather than reducing its total deposits by the subsidy.

Example 2: Employer's required payroll deposits for the second quarter of 2009 total \$10,000, determined without regard to the COBRA premium subsidy provided by employer during the quarter. Employer provides assistance eligible individuals with a total COBRA subsidy of \$8,000 during the quarter, based on the 35 percent premium payments received from the individuals during the quarter, and reports the \$8,000 subsidy on Line 12a of its Form 941 for the quarter. Employer will be treated as having made an \$8,000 payroll tax deposit on the first day of the quarter and thus will not be subject to a failure-to-deposit penalty for the quarter, provided that, once the total of its required deposits exceeds \$8,000, it makes its regularly required deposits for the remainder of the quarter.

FP-10

Q. Will the credit amount taken impact an employer's current "assigned" deposit frequency or future deposit frequencies?

A. Frequency of deposits and look back periods are computed from Line 8 of Form 941, before taking into account any credits, including the COBRA credit. Therefore, the COBRA credit will not affect future deposit frequency computations. (3/05/09)

FP-11

Q. If the 35 percent premiums are paid and the subsidy is provided at a point in the quarter where there are no additional federal tax deposits due for the quarter, should the employer claim the credit on the current quarter or the subsequent quarter?

A. Although an employer may reduce its payroll tax deposits during a quarter by the amount of subsidy provided during the quarter, claiming the credit on Form 941 for the quarter is not dependent on reducing deposits during the quarter. Therefore, even if no additional deposits are due for the quarter, the employer can claim credit for the full amount of the subsidy provided during the quarter on its Form 941 for the quarter. If the amount of the subsidy entered on Form 941 exceeds the employer's tax liabilities for the quarter, the employer can choose to have the excess either refunded or applied to the next quarter. (03/05/09)

FP-12

Q. If the employer chooses to have the excess refunded, will the IRS send a notice before refunding the credit?

A. If the full amount of the excess is to be refunded to the employer, the IRS will not send a notice before making the refund. (03/05/09)

FP-13

Q. The questions and answers refer to the employer. Is it always the employer that provides the subsidy and takes the credit on its Form 941?

A: In some cases, a person other than the employer is the proper party to provide the subsidy and take the credit on its Form 941. For example, under the legislation, if the COBRA coverage is provided by a multiemployer plan, the plan provides the subsidy and is reimbursed by taking a credit on Form 941. (03/05/09)

FP-14

Q. Will Schedule B continue to reflect the total payroll tax liabilities for the quarter, or will the liabilities reported be reduced by the COBRA subsidy credits?

A. Schedule B is used to report an employer's payroll tax liability for each payroll period, not the amount of the employer's payroll tax deposits. Therefore, when the employer reduces a deposit by the amount of the COBRA subsidy, this has no effect on the liabilities the employer reports on Form 941, Schedule B (or the monthly totals in Part 2 of Form 941). The employer should still reflect on [Schedule B](#), Report of Tax Liability for Semiweekly Schedule Depositors, (or in Part 2, Form 941) the total liabilities for all wages reported on Form 941. (03/05/09)

Example: Employer is a semi-weekly schedule depositor with a total liability of \$75,000 for the payroll period ended on Feb. 27, 2009. Employer's regular deposit of \$75,000 would be due on March 4, 2009. Because of a COBRA subsidy obligation of \$5,000, employer is allowed to reduce the deposit amount to \$70,000, so employer makes a timely deposit of \$70,000 by March 4, 2009. When employer completes [Schedule B](#) of Form 941 for the first quarter of 2009, employer must enter the total liability, \$75,000, on Day 27 of Month 2. As always, the total liability reported on Schedule B must equal the total taxes reported on Line 10 of Form 941. Employer will reflect the total COBRA subsidy for the quarter on Line 12a of Form 941.

FP-15

Q. Is the employer required to claim the credit on Form 941 for the quarter during which the COBRA subsidy is provided to assistance eligible individuals?

A. No. Instead of claiming the credit on Form 941 for the quarter during which the COBRA subsidy is provided, the employer may generally choose to claim the credit on Form 941 for a later quarter in the same calendar year.

Alternatively, if the employer has not claimed the credit on the original Form 941 for the quarter during which the COBRA subsidy was provided, the employer can file [Form 941-X](#) for that quarter. In all cases, however, if an employer chooses to reduce its payroll tax deposits during a quarter by the amount of subsidy provided during the quarter (or during a previous quarter), it must claim the credit for that subsidy amount on Form 941 for the quarter during which its payroll tax deposits were reduced. In addition, of course, an employer may not claim credit for the same subsidy amount on Forms 941 for more than one quarter. (03/05/09)

FP-16

Q. It might be difficult to make the April 30, 2009, deadline for filing the new Form 941. Who should we contact if we want to request an extension of time to file?

A. No extensions are available for filing of employment tax returns. (03/05/09)

FP-17

Q. Does a COBRA premium assistance credit reduce an employer's payroll tax liabilities when determining whether \$100,000 in liabilities has accumulated for deposit purposes?

A. The credit is treated like a payment of payroll taxes and is applied as a deposit made on the first day of the quarter. It does not reduce an employer's tax liabilities for purposes of determining the employer's deposit schedule generally or applying the \$100,000 deposit rule specifically. However, since the credit is applied as a deposit, a required deposit can be reduced by the amount of the credit. For example, if an employer accumulates \$110,000 of liabilities and has a \$20,000 subsidy credit, the employer must still deposit the next day under the \$100,000 rule, but is only required to deposit \$90,000. (03/19/09)

FP-18

Q. If an employer has unpaid employment taxes or unpaid income taxes, will that affect the amount of the COBRA premium credit that the employer can claim on Line 12a of Form 941?

A. If an employer with unpaid employment or income taxes claims a credit on Line 12a of Form 941 for the amount of COBRA premium assistance provided during the quarter, and the amount of the credit exceeds the amount of payroll tax liabilities shown on Form 941, the IRS will offset the other unpaid taxes against the balance due before refunding any balance. In this case, the IRS will notify the employer of the offset. (03/19/09)

FP-19

Q. Line 12b of Form 941 asks for the number of individuals provided COBRA premium assistance reported on Line 12a. How do we determine the correct number of individuals to enter on Line 12b?

A. Count each assistance-eligible individual who paid a reduced COBRA premium in the quarter as one individual,

whether or not the reduced premium was for insurance that covered more than one assistance-eligible individual (e.g., family coverage). For example, if the reduced COBRA premium was for coverage for a former employee, spouse and two children, you would include one individual in the number entered on Line 12b for the premium assistance reported on Line 12a. Each individual is reported only once per quarter regardless of whether or not the individual made monthly or more frequent premium payments during the quarter. (05/01/09)

Example: Former employee is an assistance-eligible individual who is eligible for COBRA coverage and for COBRA premium assistance as of May 1, 2009. Former employee makes COBRA premium payments on May 1 and June 1, 2009, with each payment consisting of 35 percent of the premium for COBRA coverage of former employee and his three family members for that month. The number to be entered on Line 12b of Form 941 for the second quarter of 2009 reflecting former employee is 1.

FP-20

Q. How is reimbursement for the COBRA premium subsidy claimed if the person entitled to reimbursement does not have any payroll tax liabilities, for example, in the case of a multiemployer plan with no employees?

A. Even if the person entitled to reimbursement for the premium subsidy does not have any payroll tax liabilities, reimbursement is claimed by entering the amount of the premium subsidy as a credit on Line 12a of Form 941. The number of assistance-eligible individuals to whom the subsidy was provided is entered on Line 12b. The other lines on Form 941 relating to the number of employees who received wages, the amount of wages, etc., should be completed by entering zeros. The amount of the premium subsidy entered on Line 12a will then result in an overpayment of the same amount on Line 15, a refund of which can be received by checking the box for a refund. As in other cases, reimbursement for the subsidy can be claimed only after the assistance eligible individual's 35 percent of the premium has been received. In addition, the documentation discussed in question RD-1 on the Reporting and Documentation Q&A page (see link at bottom) must be maintained. (05/01/09)

FP-21

Q. If, instead of filing payroll tax returns and making payroll tax deposits and payments under its own name and tax identification number (TIN), an employer has filed Form 2678, appointing an agent to file returns and make deposits and payments, how does the employer claim a payroll tax credit to which it is entitled for any COBRA premium assistance it provides?

A. In the case of an employer that has appointed an agent to file payroll tax returns and make payroll tax deposits and payments on its behalf, any payroll tax credit to which the employer is entitled for any COBRA premium assistance that it provides should be claimed on the payroll tax return filed by the agent. Similarly, any payroll tax deposits and payments made on behalf of the employer should be reduced by the amount of the credit. The employer should not file a separate Form 941 showing zero wages and payroll tax liabilities and claiming the credit. (06/04/09)

Related Items:

- COBRA Questions and Answers: [Administration and Eligibility](#)
- COBRA Questions and Answers: [Reporting and Documentation](#)
- COBRA Questions and Answers: [Taxability and Recapture](#)
- COBRA: [Answers for Employers](#)

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