



March 1, 2009

COBRA PREMIUM ASSISTANCE

President Obama, on February 17, 2009, signed the American Recovery and Reinvestment Act (ARRA) of 2009.

As part of the recently enacted American Recovery and Reinvestment Act of 2009 (ARRA), COBRA eligible employees who are involuntarily terminated from employment between September 1, 2008 and December 31, 2009 will be entitled to a premium subsidy for up to nine months of their COBRA continuation coverage.

Under this provision, terminated employees (and their qualified beneficiaries) will only be required to pay 35 percent of the monthly COBRA premium, while the employer or coverage provider will pay the remaining 65 percent and will be able to obtain an employment tax credit equal to the remaining 65 percent of the monthly COBRA premium.

Because this new provision is already effective, administrators of group health plans will be required to take immediate action to comply with its requirements. Specifically, plan administrators will need to comply with new COBRA notice requirements and will need to address the new premium subsidy requirements as early as March 1, 2009.

Here are some common questions and answers regarding the new COBRA requirements under ARRA:

Which employees are eligible for premium assistance? An Assistance Eligible Individual (AEI) is any employee whose employment is involuntarily terminated between September 1, 2008 and December 31, 2009 and who is eligible for COBRA continuation coverage. A dependent child or spouse of an involuntarily terminated employee who meets the definition of a qualified beneficiary under COBRA would also be eligible for this assistance.

Is the premium subsidy available to an AEI if the employer already subsidizes COBRA premiums? The premium subsidy is not available to an AEI to the extent the employer subsidizes the cost of COBRA coverage. For example, if the employer provides COBRA continuation coverage to a qualified beneficiary free of charge, the employee is not eligible for premium subsidy and the employer is not eligible to obtain credit for 65 percent of the cost of the COBRA coverage.

Does this transition assistance apply to smaller employers who are not subject to COBRA, but who have insured health plans that are subject to state continuation of coverage requirements? Yes. In Wisconsin, for example, continuation applies to group health insurance policies that provide hospital or medical coverage to Wisconsin residents for employers of any size.

When does the premium assistance begin? The subsidy would apply to the first period of coverage (generally a month) beginning after Feb. 17, 2009, the effective date of ARRA during which the AEI has COBRA coverage in effect.

How long does premium assistance last? An AEI may receive the COBRA premium assistance for a maximum period of nine months. However, premium assistance ends earlier if the maximum period of COBRA coverage expires earlier or the individual becomes eligible for coverage under another group health plan or Medicare.

An AEI is required to notify a plan of his or her eligibility for other group health plan coverage or Medicare. Failure to provide the plan with notice may result in a penalty being assessed to the ineligible individual receiving the

subsidy. At the time of this article, the Department of Labor has not issued any guidance as to how and when this notice must be provided.

What happens to an AEI who suffered an involuntary termination of employment prior to the effective date of ARRA but does not have in effect COBRA coverage as of that date? If an employee was involuntarily terminated on or after September 1, 2008, but either did not elect COBRA continuation coverage or elected continuation coverage but terminated that coverage prior to February 17, 2009, he or she will have a new election period to enroll in COBRA coverage and obtain premium assistance. This election period begins Feb. 17, 2009 and ends sixty days after the plan administrator provides the individual with notice of his or her rights to this extended election period. If an AEI elects COBRA coverage under this special election window, coverage would be effective as of the first period of coverage after Feb. 17, 2009 (generally March 1, 2009). However, that individual's maximum period of COBRA coverage would be determined as if the individual had timely elected COBRA coverage as of the original qualifying event.

Are there any income limits? If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$190,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS as www.irs.gov.

What is the ARRA's "Plan Enrollment Option"? Generally, a COBRA qualified beneficiary is permitted only to elect COBRA continuation coverage that is the same as the coverage the qualified beneficiary had as of the date of the COBRA qualifying event. The act permits (but does not require) an employer to allow AEI's (including AEI's that have COBRA coverage without the special election) to elect a health care coverage option different from the health care coverage originally offered to the AEI under COBRA subject to the following criteria:

- The COBRA premium for the different coverage cannot exceed the COBRA premium for the coverage in which the AEI was enrolled when the COBRA qualifying event occurred.
- The different coverage must be coverage the employer is offering to its active employees at the time the AEI elects the different coverage.
- The different coverage cannot provide only dental, vision, counseling or referral services (singly or in any combination) and cannot be a health care flexible spending account or an on-site facility primarily providing first aid, prevention, or wellness care.

When is an AEI permitted to elect different coverage? If an employer decides to offer the different coverage option to an AEI, the employer must provide the AEI an election notice and allow an election period of not less than 90 days.

What new notice requirements apply to plan administrators? There are two new notice requirements with which plan administrators must comply. First, AEI's who incur a COBRA qualifying event after Feb. 17, 2009 must be provided notice of the right to premium assistance. This notice can either be included in the plan's general COBRA notice or can be provided as a stand-alone notice. Second, those AEI's who incurred a qualifying event prior to Feb. 17, 2009 and are entitled to the special election rights described above must be provided a separate notice advising them of their rights to premium assistance. Notices must be provided within 60 days following February 17, 2009.

What information is required to be included in these notices? The Department of Labor is required to provide model notices by March 19, 2009.

How will an employer claim the credit for the COBRA subsidy? The credit will be taken as a reduction of Federal payroll employment taxes (941, 944 or 943) however, the credit cannot be claimed until after receipt of the 35% premium from the AEI. Generally, subsidy amounts will be entered in payroll and then will then reduce the amount of federal employment taxes will be due to the IRS and then get reported correctly on the new 941 return.

What if a qualified individual has already paid more than the 35% premium for March 2009? The overpaid amounts must either be refunded to the AEI or you can provide a credit to the AEI that reduces one or more subsequent payments that the AEI would be required to pay for COBRA for future months.

What supporting documentation must be maintained?

- Information on the receipt, including dates and amounts, of the AEI's 35% share of the premium.
- In the case of an insured plan, copy of 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 AEI's.
- 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 AEI'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 SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals.
- Other documents necessary to verify the correct amount of reimbursement.
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What do employers need to do to get started? Employers and plan administrators will need to take the following steps as soon as possible in order to ensure compliance with ARRA:

1. Identify all employees who may be AEI's and who incurred an involuntary termination of employment on or after Sept. 1, 2008.
2. Contact your third party administrator, COBRA administrator and/or insurance company for further guidance. Most notably, the notice requirements.
3. Implement a procedure for handling receipt of COBRA premiums for periods beginning on or after March 1 for those individuals who may be AEI's.
4. By April 18, 2009, assure that all eligible AEI's have been sent new election notices.
5. Implement procedures for receiving the subsidy credit with your payroll department or payroll service provider.

Links to additional information:

Department of Labor	http://www.dol.gov/ebsa/cobra.html
Department of Labor	http://www.dol.gov/recovery/
IRS	http://www.irs.gov/newsroom/article/0,,id=204335,00.html

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