

American Recovery and Reinvestment Act's impact on COBRA

On February 17, 2009, President Barack Obama signed The American Recovery and Reinvestment Act of 2009 (ARRA) into law. The ARRA provides government subsidies toward COBRA premium for individuals who experience a qualifying event because of "involuntary termination" between the period of September 1, 2008, and December 31, 2009. Individuals who qualify for such a subsidy are referred to as assistance-eligible individuals (AEIs).

The ARRA was passed in an effort to slow the impact of the current economic recession by reducing the cost of COBRA for AEIs. As a result, the timeline for implementing the changes outlined in ARRA is condensed. We will provide you with information as it becomes available. In the meantime, this outline will give you a basic understanding of what these changes will mean to you and your employees.

COBRA subsidy eligibility requirements

The federal subsidy for COBRA will be available for employees who experience a qualifying event because of involuntary termination between September 1, 2008 and December 31, 2009. The term "involuntary termination of employment" has not been defined by the Act and we are waiting for further clarification from the Treasury Department on this issue.

Eligibility facts:

- Individuals earning more than \$145,000, and families earning more than \$290,000 are not eligible for the subsidy.
- Individuals who are eligible for other group health coverage, including Medicare, are not eligible.
- Spouses and/or dependents of AEIs are eligible for the subsidy.
- The employer is responsible for designating an employee as eligible.
- AEIs can choose to waive their right to the subsidy.
- The IRS and Department of Labor (DOL) will be issuing additional guidance.

We expect to receive more detail on the eligibility requirements from the IRS and DOL shortly.

COBRA subsidy financial information

The COBRA subsidy outlined in the ARRA would cover 65 percent of the assistance-eligible individual's (AEI) premium obligation. The AEI would be responsible for the remaining 35 percent. The subsidy will not go to the AEI but to his or her employer in the form of an offset against payroll taxes. Through COBRA, employers may charge a 2 percent administrative fee, meaning that AEIs will be responsible for paying 35 percent of the 102 percent premium and the subsidy to employers will be 65 percent of the 102 percent premium.

Financial facts on the subsidy:

- The federal government is responsible for paying the 65 percent subsidy through an offset against payroll — IRS Form 941 lines 12a and 12b.
- Employers are responsible for the "up-front" costs associated with their 65 percent of the premium.
- Employers who fully subsidize COBRA premiums as part of a severance package may not be eligible for the subsidy credit.
- The COBRA subsidy applies to plans subject to state-continuation rules.
- Individuals who do not qualify for the subsidy because of their income may still accept the subsidy but will have to repay their obligation through personal income tax returns in 2010.

Duration of the COBRA subsidy

The subsidy takes effect on the first “period of coverage” following the enactment date, which was February 17, 2009. In most cases, this means that the subsidy will take effect on March 1, 2009. The subsidy is applicable for up to nine months of COBRA coverage. After nine months, the AEI can elect to continue unsubsidized coverage. An AEI’s entitlement to the subsidy ends when he or she becomes eligible for other group coverage or Medicare, or reaches the maximum COBRA continuation period.

Note that AEIs who were involuntarily terminated on or after September 1, 2008, and did not initially elect COBRA, or elected and subsequently lost COBRA due to nonpayment, will be offered another opportunity to elect COBRA. In most cases, the qualified beneficiary’s coverage will begin March 1, 2009. However, the maximum duration period would be established from the initial date of loss of coverage (September 1, 2008).

Other duration facts:

- Qualified beneficiaries are responsible for informing their former employer, in writing, when they become eligible for other group health coverage or Medicare.
- Former employees who fail to notify their previous employer of eligibility for other group coverage or Medicare will be subject to a penalty of 110 percent of the premium subsidy paid on their behalf for that period.
- The maximum duration of COBRA subsidy and eligibility is based on the qualified beneficiary’s date of initial loss of coverage, beginning on September 1, 2008 and ending December 31, 2009.

Notifying individuals eligible for COBRA subsidy

The ARRA requires plan administrators to notify all individuals who become entitled to elect COBRA between September 1, 2008 and December 31, 2009, of the following:

- availability of premium reduction
- description of second election period
- option to enroll in different coverage (only if employer permits)
- conditions for receiving the premium reduction (including required forms)
- obligation to notify the plan when the employee becomes eligible for other health coverage, and the penalty for not doing so
- contact information for the plan representative who can give the participant relevant information on the premium reduction

The notice requirements are satisfied by amending existing notices or including a separate document with new election notices. The Department of Labor is required to provide model notices no later than March 19, 2009, and notices must be distributed no later than April 17, 2009.

Other notification facts:

- The plan administrator will be required to notify AEIs who did not elect COBRA coverage, or did elect COBRA coverage and dropped it before the enactment date, of their new extended election rights.
- AEIs must notify their plan administrator of their COBRA election within 60 days of receipt of the updated notice.
- AEIs must notify their plan administrator in writing if they are no longer eligible for premium assistance. The Department of Labor is still considering the specific form of this notice.

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Additional guidance is still forthcoming from the departments of Labor and Treasury as well as from the Internal Revenue Service. We are continuing to work actively on this and will monitor the ongoing guidance and provide additional information as it becomes available.

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal or coverage advice. Please consult your counsel in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

Additional resources

You can get additional information on the American Recovery and Reinvestment Act and its impact on COBRA at any of the following websites:

Department of Labor (DOL)
www.dol.gov/ebsa/COBRA.html

**Internal Revenue Service —
employment tax information:**
www.irs.gov/pub/irs-pdf/p15.pdf

**Internal Revenue Service
reporting requirements:**
Form 941:
www.irs.gov/pub/irs-pdf/f941.pdf

Instructions:
www.irs.gov/pub/irs-pdf/i941.pdf