

The American Recovery and Reinvestment Act of 2009

COBRA Premium Assistance Subsidy

On February 17, 2009, The American Recovery and Reinvestment Act (ARRA) of 2009 was signed by President Obama. The legislation includes a premium assistance program to help eligible individuals involuntarily terminated between September 1, 2008 and December 31, 2009 afford COBRA premiums.

This new legislation will alter the way that COBRA and certain state mandated continuation plans¹ are administered through 2010. Employers, plan sponsors and insurers² that are currently required to comply with federal COBRA continuation provisions or certain state mandated continuation plans must comply with the new COBRA requirements included in the ARRA.

Below is a summary of the COBRA premium assistance program requirements applicable to employers, plan sponsors, and insurers as of February 17, 2009. The Department of Labor is expected to provide additional information and regulations in mid-March; therefore the information provided is subject to change.

How does the new legislation affect COBRA or state mandated continuation plans?

The ARRA expands current federal (COBRA) and certain state mandated continuation plans by providing a premium assistance subsidy to involuntarily terminated individuals and their family members who meet the eligibility requirements. New requirements applicable to employers, plan sponsors, and/or insurers² include:

- Notifying individuals who are, or become, eligible for COBRA continuation coverage or certain state mandated continuation coverage of the availability of the premium subsidy
- Providing the government subsidy to terminated individuals who are eligible for and elect the premium assistance subsidy
- Submitting for reimbursement for the subsidies paid through a tax credit against wage withholdings or FICA payroll taxes

Eligibility for COBRA Premium Assistance

Individuals involuntarily terminated between September 1, 2008 and December 31, 2009 who are not Medicare eligible or eligible for any other group health plan and meet the income threshold will be eligible for the COBRA premium assistance subsidy. This also includes dependents who make an independent election as a result of the employee's involuntary employment termination.

Individuals with an adjusted gross income of \$145,000 or more (single filers) or \$290,000 or more (joint filers) are not eligible for the

premium assistance subsidy. In addition, the premium assistance subsidy phases out for income levels between \$125,000 to \$145,000 (single filers) and \$250,000 to \$290,000 (joint filers). Individuals or families that exceed the income levels outlined during the plan year(s) they received the premium assistance will be required to include it in their tax liability when filing income tax return(s).

Eligibility for the premium assistance subsidy will end when an individual becomes eligible for coverage under any other group health plan³, becomes Medicare eligible, after nine months of the subsidy, or when the maximum period of COBRA continuation coverage ends, whichever occurs first. It is the individual's responsibility to notify the group health plan of his/her ineligibility for the premium assistance subsidy in writing. If an individual does not comply, they may be subject to a penalty of 110% of the premium assistance subsidy.

Please Note: The definition of "involuntary termination" is not clearly defined in the legislation; however, we expect future guidance from the Department of Labor by mid-March.

COBRA Premium Assistance Subsidy

The ARRA provides a 65% government subsidy of COBRA premiums for eligible individuals for a period of nine months. The subsidy amount is based on the total COBRA premium that an eligible individual and family would have been required to pay for coverage.

Individuals who are eligible for the premium assistance subsidy who were also offered COBRA premium assistance from an employer as part of a severance or settlement package will only be required to pay 35% of the premium not paid for by the employer.

Special Election Period

Employers and plan sponsors will be responsible for sending notices within 60 days of enactment to **all** individuals who experienced a qualifying event that entitled them to elect COBRA between September 1, 2008 and February 16, 2009. Individuals receiving this notice will have 60 days from the date the notice is provided to confirm their eligibility with their employer for the COBRA premium assistance subsidy and elect COBRA coverage if it was not previously elected after the original qualifying event or an individual was terminated from COBRA for non-payment of premiums. The special election period opportunity does not apply to coverage sponsored by employers with less than 20 employees that is subject to State law.



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If coverage is elected during the special enrollment period, the coverage will begin with the first coverage period after the date of enactment. For most plans this will be March 1, 2009. Coverage is not retroactive to the original qualifying event date or the date an individual was terminated from COBRA for non-payment of premiums. Therefore, individuals electing the COBRA continuation during the special enrollment period will only be responsible for premium on or after March 1 and coverage will only apply to claims incurred on or after this date.

Any gaps in coverage beyond the 63-day rule under the HIPAA Portability Act will be waived for individuals who enroll during the special enrollment period.

Please Note: *If an individual newly enrolls or re-elects COBRA coverage during the Special Enrollment Period, the actual 18 month COBRA continuation period begins as of the date of the original qualifying event not the date the coverage was elected with the premium assistance subsidy.*

Plan Enrollment Options

Employers or plan sponsors may provide individuals who are eligible for the COBRA premium assistance subsidy the right to change medical plans. While employers and plan sponsors are not obligated to do this, they can allow eligible individuals the ability to change from the medical plan offered at the time of the original qualifying event to any health plan option that is offered to active employees that has premiums of the same or less costs. Eligible individuals will have 90 days from the date the notice is provided to make their election (60 days for individuals electing coverage through the special enrollment period).

Please Note: *The legislation is not clear if the intent is to allow eligible individuals the opportunity to elect only from plans of equal or lesser cost that were offered to them as an active employee or from plans offered to any class of active employees. We have requested further guidance on this topic.*

Premium Assistance Subsidy Reimbursements

Employers, plan sponsors, or insurers⁴ that will be providing the government COBRA premium assistance subsidy will have the ability to offset the subsidy through a payroll tax credit against an employer's wage withholdings and/or FICA payroll taxes. In the event that the subsidy amounts exceed the payroll taxes, the Department of Treasury will reimburse the employer directly for the amount in excess.

It is important to note that an employer, plan sponsor, or insurer⁴ cannot take the payroll tax credit until the eligible individual remits their share of the premium payment.

Individual Premium Reimbursements

Eligible individuals who pay the full COBRA premiums during the 60 day period following the enactment (the subsidy begins the first of the month after the enactment), will be entitled to a reimbursement or credit for the amount paid in excess of the 35% due by the individual. If it is reasonable to expect that the individual will use the credit within 180 days of the date the full premium amount was paid, the employer, plan sponsor, or insurer may apply the credit to the individual's subsequent premium pay-

ments. If on any day it is not reasonable to expect that the credit will not be used within 180 days, a reimbursement will need to be issued for the excess payment or remaining amount of the excess payment within 60 days of that day.

Notices and Obligations

The Department of Labor is expected to provide additional guidance and model notices within 30 days of the enactment (March 19th, 2009). These notices will be used for the period of time in which the subsidy will be available to eligible individuals. Notifications for the special enrollment period must be provided to the individual within 60 days of the enactment (April 17, 2009).

Suggested Actions for Employers and Plan Sponsors with More Than 20 Employees (regardless of funding type)

These are suggested next steps but employers and plan sponsors should consult with their own legal counsel for further guidance.

- 1 Identify current and potential assistance eligible individuals (AEIs) who may be eligible for the premium assistance subsidy program.
 - a) Current AEIs: Individuals who were involuntarily terminated on or after September 1, 2008 who were eligible for COBRA on or after September 1, 2008 who have elected COBRA coverage and whose COBRA coverage is currently in effect.
 - b) Potential AEIs:
 - i) Individuals who were involuntarily terminated on or after September 1, 2008 who were eligible for COBRA coverage on or after September 1, 2008 and did elect COBRA coverage but it was not in effect as of February 17, 2009.
 - ii) Individuals who were involuntarily terminated on or after September 1, 2008 and did not elect COBRA coverage within the 60 day election period or are still within their 60 day COBRA election period but have yet to elect COBRA.
- 2 Identify who will be preparing and sending notifications of the special enrollment period or additional notifications of the availability of the premium assistance subsidy (and the option to enroll in different coverage if permitted) to all individuals who were/are eligible for COBRA between September 1, 2008 and December 31, 2009.
 - a) Determine if model notices supplied by the Department of Labor will be used or if the Employer or Plan Sponsor will create their own letter with the information.
 - b) Determine deadlines for sending notifications out for special enrollments (60 days after the ARRA was enacted) and additional notifications of the availability of the premium assistance subsidy (and the option to enroll in different coverage if permitted).

- 3 Plan Enrollment Options
 - a) Determine if you will permit this option and what coverage will be made available
 - b) Confirm with TPA, vendors, and/or insurers the ability to handle election changes
 - c) Include a description of the plan enrollment options in the notification
- 4 Develop a tracking system to determine who is eligible, premium assistance subsidy elections and waivers, changes in eligibility, and/or denials.
 - a) Maintain the information to report to the Department of Labor and Department of Treasury.
 - b) Maintain information to attest to an individual's eligibility or ineligibility to receive the premium assistance subsidy.
 - c) Maintain information on any premium assistance subsidy waiver for high income or otherwise.
- 5 Review the current payroll tax process and determine if this can be used to report COBRA premium assistance credits or if a new process needs to be put in place to accommodate the reform.
 - a) Develop a system or process for tracking the individual's premium subsidy
 - b) Develop or modify a system or process for submitting for reimbursement of the employer portion of the premium assistance subsidy
- 6 Consult with the employer's, plan sponsor's, etc. tax attorney and compliance attorney or vendor for further guidance on the ARRA.

Outstanding Items That Need Further Guidance

Additional guidance and model notices are expected to be released by the Department of Labor on or before March 19, 2009.

- 1 Definition of "involuntary termination"
- 2 Definition of "active employee"
- 3 Confirmation that all plans subject to COBRA (including plans that require active employees to pay 100% of the premium) are eligible for the premium assistance subsidy
- 4 Limitations or rules around the "buy down" plan options that an employer can permit

- 5 Confirmation on whether or not W-2s will be needed to report the amount of subsidy paid on an AE's behalf
- 6 Confirmation of eligibility or rules regarding the subsidy for individuals who are provided continuation coverage but are not qualified beneficiaries under federal COBRA
- 7 409A Implications
- 8 Reporting requirements for insurance companies that may be required to fund the COBRA premium assistance subsidy
- 9 State continuation plans
- 10 Model notices

CIGNA's Role in Helping Employers and Plan Sponsors Comply with the ARRA Changes

CIGNA is preparing our systems and making changes to our processes to accommodate the needs of our clients that are required to comply with the ARRA. We have a dedicated team working together to facilitate compliance with the new requirements.

We will continue to keep our clients informed of any changes that may affect them or how they work with CIGNA in the future. We plan to release additional guidance on or before March 12, 2009.

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¹ Some states require employers with 2-19 employees to offer continuation coverage similar to federal COBRA continuation coverage.

² Insurers will need to comply with this legislation on behalf of an employer if they are required to administer continuation coverage for certain state mandated continuation plans.

³ Qualified plans exclude: (a) coverage that includes only dental, vision, counseling or referral services (or a combination of such services); (b) a flexible spending arrangement as defined by the IRS; or (c) coverage that provides coverage for services or treatment furnished in an on-site medical facility maintained by an employer or that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination of such care).

⁴ Insurers will need to comply with this legislation on behalf of an employer if they are required to administer continuation coverage for certain state mandated continuation plans.

We reference CIGNA and Great-West Healthcare to accommodate all covered individuals. CIGNA individuals, please disregard Great-West Healthcare references.

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