

## **The American Recovery Reinvestment Act of 2009 Overview**

The American Recovery Reinvestment Act (ARRA) was signed into law by President Obama on February 17, 2009. As is normal with new laws, more guidance will be necessary in order to fully understand the requirements. When and as we learn more, we will let you know. Listed below are the provisions that are clear in the law at this time.

### **Premium Subsidy**

Premium relief in the form of a subsidy of 65% (eligible QBs would pay 35% of the applicable premium) is available for individuals that lost their group health plan coverage due to involuntary termination (for other than gross misconduct).

*This subsidy applies to the group medical plan only. "Involuntary" is not specifically defined in the law.*

The subsidy also applies to coverage under a State program that provides "comparable continuation coverage." "Comparable continuation coverage" is not defined.

The *subsidy does not* apply to dental or vision coverage, coverage for counseling or referral, health flexible spending arrangements (health FSA) or Health Reimbursement Arrangements (HRA).

Premium subsidies are available for individuals with annual gross incomes up to \$125,000 (single) or \$250,000 (joint return). Subsidies are phased out for those with adjusted gross income up to \$145,000 (single) and \$290,000 (joint return).

### **Who is Eligible for the Premium Subsidy?**

Qualified Beneficiaries (QBs) (and their spouse, and/or dependents) that lose coverage due to *involuntary termination* (excluding gross misconduct) are eligible for the subsidy. However, the qualifying event date must have occurred on or after September 1, 2008 and not later than December 31, 2009.

An employee who elected COBRA initially but then lost coverage due to nonpayment of premiums will also be entitled to the premium subsidy. The premium subsidy will last up to 9 months from the date of the first month's subsidy or:

- When a terminated employee is either offered other employer health coverage or becomes eligible for Medicare, or
- COBRA is exhausted, or
- The individual fails to pay his or her 35% share of the premium.

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The QB will be required to notify the COBRA administrator when he or she becomes eligible under another group health plan. Failure to notify the COBRA administrator may result in a penalty of 110% of the premium assessed to the individual.

### **2nd 60-Day Election Period**

An eligible individual who was previously offered COBRA and did not elect as of the enactment of the bill will get a second 60 day election period after notice of the new requirements is provided.

Also, any eligible individual who is currently in their initial 60 day election period will have an additional 60 day election period after notice of the new requirements is provided.

A notice detailing this right to elect coverage along with the steps necessary to elect coverage must be provided to these individuals within 60 days of the enactment of ARRA (which was February 17, 2009), along with any forms that are necessary in order for them to establish their eligibility for the premium subsidy.

These individuals will then have 60 days after the notice is provided in which to elect COBRA coverage. However, coverage is not retroactive to prior periods during which the individual was eligible but had not elected COBRA.

### **Employer Responsibilities**

The employer/plan sponsor is responsible for confirming whether termination was voluntary or involuntary. The entity (employer) providing the COBRA coverage will receive reimbursement for the subsidy via an employment tax credit. Reporting by the employer to the IRS will be required in order for the entity to receive reimbursement.

Summary of reporting requirements:

- Attestation of involuntary termination of each assistance-eligible individual
- Report payroll taxes offset for the current period (and the estimated offset for the subsequent period)
- Report the taxpayer identification numbers (TINs) of assistance-eligible individuals
- Report the amount of subsidy received and whether the subsidy covered one or more qualified beneficiaries

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## **When Does Coverage Begin**

COBRA changes could take effect as early as March 1, 2009, applying only to periods of coverage (generally months) beginning on or after March 1, 2009. If the individual elects COBRA coverage, the coverage is not required to be retroactive to the date of the loss of regular coverage.

## **Notice Requirements**

Eligible individuals already on COBRA must be provided a notice of their subsidy rights. Individuals who are not enrolled under COBRA but are eligible for the 2nd election period must also be provided a notice of new election rights. These notices must be provided within 60-days of enactment of the law, which was February 17, 2009, making the deadline, April 18th, 2009.

Notices must include:

- The availability of the subsidy
- 2nd chance election rights
- Information required to establish eligibility for the subsidy
- How to elect the subsidy
- The option to elect less expensive alternative coverage if allowed by the employer (*This is strictly optional according to ARRA*).
- The individual's obligation to notify the COBRA administrator when the individual is eligible for other coverage or Medicare.

These notice criteria may be included in existing COBRA election notices or may be provided as a separate notice sent with an election notice.

The DOL is required to draft model notices within 30 days after the Act became law on February 17, 2009, which would be March 20.

## **Miscellaneous Provisions**

### **Other coverage options:**

ARRA also provides involuntarily terminated employees and their dependents up to 90 days to select coverage under a different, lower-cost coverage option than the one they were enrolled in at the time of involuntary termination, if such option exists. Also, qualified beneficiaries have this option only if the employer allows these elections. The new coverage option also would have to be offered to active employees and may not be a limited option such as dental, vision or health FSA benefits, or certain treatment provided by on-site medical facilities.

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**Eligible individuals that pay full COBRA premium for either March or April coverage:**

Because of the short timeframe for compliance, ARRA provides that the plan's sponsoring employer must either refund the 65% subsidy amount to an eligible individual or credit the subsidy against the eligible individual's future COBRA premiums.

**Coverage gap:**

Any resulting gap in coverage may not be counted toward a 63-day break in coverage that would otherwise cause the individual's creditable coverage to be lost, thereby subjecting the individual to another preexisting condition limitation or exclusion.

**Retiree Coverage:**

An individual with retiree coverage is not eligible for the subsidy unless the retiree is eligible for the 2nd chance election.

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