

Information Every Business Needs to Know



# HR & BENEFITS ADVISOR

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Brought to you by: LAW OFFICES OF TRAVIS BOWEN, PC

## New Model Notices

### NEW MODEL NOTICES RELATED TO...COBRA Continuation Coverage Assistance Under the American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit.

The premium reduction applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period. The TAA Health Coverage Improvement Act of 2009, enacted as part of ARRA, also made changes with regard to COBRA continuation coverage.

Individuals who request the premium reduction from their group health plan, but are denied may appeal to the Department. The Department is developing a process for reviewing denials and an official application form that must be used to file an appeal that will be available shortly.

### Notices

**Summary of the COBRA Premium Reduction Provisions under ARRA**

President Obama signed the American Recovery and Reinvestment Act (ARRA) on February 17, 2009. The law gives "Assistance Eligible Individuals" the right to pay reduced COBRA premiums for periods of coverage beginning on or after February 17, 2009 and can last up to 9 months.

To be considered an "Assistance Eligible Individual" and get reduced premiums you:

- MUST be eligible for continuation coverage at any time during the period from September 1, 2008 through December 31, 2009 and elect the coverage.
- MUST have a continuation coverage election opportunity related to an involuntary termination of employment that occurred at some time from September 1, 2008 through December 31, 2009;
- MUST NOT be eligible for Medicare; AND
- MUST NOT be eligible for coverage under any other group health plan, such as a plan sponsored by a successor employer or a spouse's employer.\*

Individuals who experienced a qualifying event as the result of an involuntary termination of employment at any time from September 1, 2008 through February 28, 2009 and were offered, but did not elect, continuation coverage OR who elected continuation coverage and subsequently discontinued it may have the right to an additional 60-day election period.

**♦ IMPORTANT ♦**

1. If, after you elect COBRA and while you are paying the reduced premium, you become eligible for other group health plan coverage or Medicare you **MUST** notify the plan in writing. If you do not, you may be subject to a tax penalty.
2. Electing the premium reduction disqualifies you for the Health Coverage Tax Credit. If you are eligible for the Health Coverage Tax Credit, which could be more valuable than the premium reduction, you will have received a notification from the IRS.
3. The amount of the premium reduction is capped for certain high income individuals. If the amount you owe for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return) all or part of the premium reduction may be recognized by an increase in your income tax liability for the year. If you think that your income may exceed the amounts above, you may wish to consider waiving your right to the premium reduction. For more information, consult your tax preparer or visit the IRS website on ARRA at [www.irs.gov](http://www.irs.gov).

For general information regarding your plan's COBRA coverage you can contact [your name of party responsible for COBRA administration for the Plan, with telephone number and address].

For specific information related to your plan's administration of the ARRA Premium Reduction or to notify the plan of your inability to continue paying reduced premiums, contact [your name of party responsible for ARRA Premium Reduction administration for the Plan, with telephone number and address].

If you are denied treatment as an "Assistance Eligible Individual" you may have the right to have the denial reviewed. For more information regarding reviews or for general information about the ARRA Premium Reduction go to: [www.dol.gov/COBRA](http://www.dol.gov/COBRA) or call 1-866-444-EBSA (3272).

\* Generally, this does not include coverage for self-insured, vision, counseling, or school services coverage under a health flexible spending arrangement, or treatment that is furnished at an on-site medical facility maintained by the employer.

ARRA mandates that plans notify certain current and former participants and beneficiaries about the premium reduction.

The Department created model notices to help plans and individuals comply with these requirements. Each model notice is designed for a particular group of qualified beneficiaries and contains information to help satisfy ARRA's notice provisions.

[General Notice](#) (Full version) Plans subject to the Federal COBRA provisions must send the General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event. This full version includes information on the premium reduction as well as information required in a COBRA election notice.

[General Notice](#) (Abbreviated version) The abbreviated version of the General Notice includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event during on or after September 1, 2008, have already elected COBRA coverage, and still have it.

[Alternative Notice](#) Insurance issuers that provide group health insurance coverage must send the Alternative Notice to persons who became eligible for continuation coverage under a State law. Continuation coverage requirements vary among States, and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model Alternative Notice or the abbreviated model General Notice appropriate for use in certain situations.

[Notice in Connection with Extended Election Periods](#) Plans subject to the Federal COBRA provisions must send the Notice in Connection with Extended Election Periods to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who:

- Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and
- Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

This notice includes information on ARRA's additional election opportunity, as well as premium reduction information. This notice must be provided by April 18, 2009.

***For more information***

- [www.dol.gov/ebsa/COBRA.html](http://www.dol.gov/ebsa/COBRA.html)
- [www.dol.gov/ebsa/COBRAmodeInotice.html](http://www.dol.gov/ebsa/COBRAmodeInotice.html)

***Additional Resources***

- [COBRA Premium Reduction Fact Sheet](#)
- [COBRA Continuation Health Coverage FAQs](#)
- [Flyer for Employers](#)
- [Flyer for Employees](#)
- [Job Loss Poster](#) (11" x 17")
- [Job Loss Poster](#) (8½" x 11")

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## ADMINISTERING THE COBRA CONTINUATION PREMIUM SUBSIDY TO FORMER EMPLOYEES

Do you have questions on how to administer the COBRA continuation premium subsidy to former employees? Check out these [FAQs](#).

Employers should use the updated [Form 941](#), Employer's Quarterly Federal Tax Return, to report their COBRA premium assistance payments. The [Form 941 Instructions](#) explain how to complete lines 12a and 12b, which address the COBRA premium assistance payments.



No additional information relating to the COBRA subsidy is to be submitted with the Form 941, either electronically or in paper form. However, those claiming the credit must maintain supporting documentation for the credit claimed. Such documentation includes, but is not limited to:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 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 assistance eligible individuals.
- 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 assistance eligible individual'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.

**Note:** COBRA generally does not apply to plans sponsored by employers with less than 20 employees. However, the premium reduction is available in states that have similar requirements for small plans providing benefits through an insurance company.

Under the Act, certain individuals who are eligible for COBRA continuation health coverage, or similar coverage under State law, may also receive the subsidy. These individuals are required to pay only 35 percent of the premium. The employer may recover the subsidy provided to assistance-eligible individuals by taking the subsidy amount as a credit on its quarterly employment tax return. The

employer may provide the subsidy -- and take the credit on its employment tax return -- only after it has received the 35 percent premium payment from the individual.

#### Links and Resources

- [COBRA Health Insurance Continuation Premium Subsidy](#) (IRS Page)
- [COBRA Premium Reduction Provision](#)
- DOL Information Related to the [American Recovery and Reinvestment Act of 2009](#)
- IRS Information Related to [Tax Provisions in the American Recovery and Reinvestment Act of 2009](#)
- Joint Explanatory Statement of the Committee of Conference on the [COBRA Premium Reduction Provision](#)

If you have specific questions about your situation and how these new rules apply to you, you may wish to speak with a Benefits Advisors by calling 1.866.444.3272. You should also check the Employee Benefits Security Administration's dedicated Web page at [www.dol.gov/COBRA](http://www.dol.gov/COBRA), for FAQs and new information related to the process you should follow to apply for COBRA and/or the premium reduction.

We will continue to monitor developments, and will post new information to the site as it becomes available.

Be sure to visit our [new page](#) on [www.HRandBenefits.com](http://www.HRandBenefits.com), devoted to the American Recovery and Reinvestment Act of 2009 (The Economic Stimulus Bill) and, in particular, the COBRA provisions of the Act.



#### APRIL 1, 2009 STARTS NEW COMPLIANCE OBLIGATIONS FOR GROUP HEALTH PLANS

Under the Children's Health Insurance Program Reauthorization Act of 2009

Although group health plan sponsors are busy focusing on the COBRA subsidy enacted this past February, there are laws impacting group health plans that have compliance dates ranging from April 2009 to February 2010.

One of the laws, "The Children's Health Insurance Program Reauthorization Act of 2009", also enacted in February 2009, imposes compliance obligations on group health plans that start as early as April 1, 2009.

The Children's Health Insurance Program Reauthorization Act of 2009 extends and expands the state children's health insurance program (CHIP). The following key provisions affect group health plans and note that some obligations must be complied with by April 1, 2009.

- **Premium Assistance Subsidy for Employer Coverage.** States may elect to offer a premium assistance subsidy to help CHIP and Medicaid eligible children obtain

**“qualified employer-sponsored coverage”**. The subsidy may be provided as a reimbursement directly to the employee or as a direct payment to the employer. Employers can opt out of direct payments.

- **Notice of Premium Assistance Subsidy.** Employer group health plans in states that provide Medicaid or CHIP premium assistance subsidies must give notice to employees of the availability of the subsidy. The Department of Health and Human Services is required to develop model notices by February 4, 2010. The notices can be provided with open enrollment materials or with the SPD. The notice requirement is effective for plan years beginning after the date the model notices are issued.
- **Disclosure to States.** Plan administrators of group health plans are required to disclose information about the plan to states upon request. The Departments of Labor and Health and Human Services are required to develop a model disclosure form for plan administrators. States may not request the disclosure until the first plan year beginning after the date the model disclosure form is issued.
- **New Special Enrollment Rights.** In addition to existing special enrollment rights, group health plans must now also allow employees and dependents who are eligible but not enrolled for coverage to enroll under the following additional circumstances.
  - The dependent or employee loses eligibility for CHIP or Medicaid. If the dependent or employee loses eligibility for CHIP or Medicaid, enrollment must be requested within 60 days after the termination of the CHIP or Medicaid coverage. Note that the 60 day period is in contrast to other special enrollment rights which can be limited to 30 days.
  - The employee or dependent becomes eligible for a premium assistance subsidy through Medicaid or CHIP. If the employee or dependent becomes eligible for premium assistance through Medicaid or CHIP, enrollment must be requested within 60 days after eligibility is determined.

Plans must comply with the special enrollment right provisions as of April 1, 2009.

### **What Plans Need to Do**

Plans, sponsors, and/or administrators will need to take the following actions:

- **comply with the new special enrollment rules by April 1, 2009;**
- **update plan documents, SPDs, cafeteria plan change in election rules, health plan change in election rules, and special enrollment right notices, as soon as possible, to reflect the expanded special enrollment rights;**
- **determine whether the subsidy described above is available in states where employees reside;**
- **provide notice of the subsidy when the government issues the model notices; and**
- **disclose plan benefit information to states upon request after the government agencies issue model disclosure forms.**

If you have any questions, please contact Travis Bowen at 801.364.0123 (or [tbowen@bowenlaw.com](mailto:tbowen@bowenlaw.com)).

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