

The content in this preview is based on the last saved version of your email - any changes made to your email that have not been saved will not be shown in this preview.



Advisory Bulletin

March 10, 2009

American Recovery and Reinvestment Act of 2009

Notice #3

It has been approximately four weeks since the President signed the American Recovery and Reinvestment Act (ARRA), also known as the 2009 Economic Stimulus Plan. The ARRA legislation made several important and significant changes to COBRA that requires employers and COBRA administrators to act quickly.

Benefit Strategies has provided information on this law as it relates to COBRA in two previous Advisories posted on February 17 and 25. This Advisory is being provided to provide clarification and additional information. It is not intended to completely summarize the law. Please refer to previous Advisories available on our website for more information: www.benstrat.com/news_advisories.html

The IRS and Department of Labor have also provided information on their websites about the new law and COBRA requirements:

1. **Internal Revenue Service** - www.irs.gov Do a search for COBRA. There are articles for employers, and information on the new 941 forms to report subsidy credits.
2. **Department of Labor** - www.dol.gov/ebsa/cobra.html There are several items of interest here and information for both employers and employees.

ARRA Overview As It Applies to COBRA (In Brief)

The ARRA contains provisions temporarily modifying COBRA as follows:

1. **Special Election Period**- Individuals involuntarily terminated after September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA, but let the coverage lapse, have a new special election period opportunity. Coverage under this special election period will be effective on March 1, 2009. Even

though there may be a break in coverage, pre-existing condition limitations will not apply. This special election period does not extend the maximum COBRA coverage period beyond the original maximum period (generally 18 months).

2. Government COBRA Premium Subsidies- The Act provides for the government to subsidize 65% of the COBRA premium obligation for certain "Assistance Eligible Individuals (AEI's)" for up to 9 months.

Please note that COBRA premium can include the 2% administration fee if normally assessed by the employer. Also, if an employer pays a portion of the COBRA premium for an individual under a severance agreement, the government will subsidize 65% of the portion of premium the individual is required to pay.

Individuals eligible for COBRA premium assistance must meet the following conditions:

- The individual must have become eligible for COBRA continuation coverage between September 1, 2008 and December 31, 2009 as a result of their involuntary termination of employment.
- The individual must not be eligible for other group health coverage (such as a spouse's plan) or Medicare.
- Individuals with adjusted gross income in the tax year in which the premium assistance would otherwise be received in excess of \$145,000 (or \$290,000 for joint filers), are not eligible for the subsidy. The subsidy will be reduced for individuals with incomes between \$125,000 to \$145,000 (\$250,000 to \$290,000 for joint filers)

Notice Requirement: Who Must Be Notified of ARRA?

In our earlier Advisory, it was not made clear which terminated employees must be notified of new COBRA rights under the ARRA. Current legal opinion from several sources reveals that employers/COBRA administrators are required to notify **ALL** health plan participants voluntarily or involuntarily terminated after 9/1/2008 regardless of the reason for termination (except gross misconduct). While not all terminated plan participants are eligible for the subsidy or the special election period, all must be informed of the changes and subsequent eligibility requirements.

Only those individuals whom the employer verifies were involuntarily terminated will ultimately be allowed to exercise their rights under the law and begin COBRA coverage and/or receive a subsidy.

ARRA and Small Employers ~ Mini-COBRA

COBRA is a federal law that generally applies to employers with more than 20 employees. Many states have laws that augment the federal law requiring employers with less than 20 employees to offer COBRA (also known as mini-COBRA). The ARRA is a new federal law, so a question arises as to whether small employers must comply. Through our discussions with a representative at the Department of Labor we have learned the following:

1. Small employers under Mini-COBRA do not have to offer a "Special Election Period" to individuals terminated between 9/1/2008 and 2/17/09 who either declined COBRA coverage when offered, or who let their COBRA coverage lapse.

2. Small employers under Mini-COBRA do have to notify individuals terminated after 9/1/2008 who are on COBRA of their right to receive a government subsidy. Additionally, COBRA-eligible individuals terminated after 2/17/2009 must be notified of their right to receive a government subsidy.

Please note that new information and interpretations of how the ARRA is to be applied becomes available on a daily basis. We are not able to dispense legal advice and encourage you to consult your corporate attorney for additional guidance.

Employer / COBRA Administrator Responsibilities

The ARRA has created new administrative actions that must be carefully implemented by employers and COBRA administrators including:

1. All individuals terminated between 9/1/2008 and 2/17/2009 must be notified of their possible rights under the ARRA including the special election period and government subsidy. The Department of Labor is required to provide a model notice by mid-March which will be posted on their website.
2. All individuals terminated between 2/17/2009 and 12/31/2009 must be notified of their rights under the ARRA to possibly obtain a 65% government subsidy to help pay COBRA premiums.
3. When an individual elects to enroll in COBRA coverage, the employer is required to make a determination of whether he/she was terminated voluntarily or involuntarily. Only individuals terminated involuntarily will ultimately be allowed to benefit under the law. The Department of Labor is expected to provide guidance on the definition of an involuntary termination. In questionable situations, it is recommended that employers consult legal advice.

The employer DOES NOT have to decide if an individual is eligible for a subsidy based on any other criteria such as income or health coverage eligibility. They would have no way of knowing such information. The individual is responsible to verify to the IRS that their income is below the limits, and that they are not eligible for other health coverage. Individuals who inappropriately receive a subsidy will be required to repay the subsidy to the IRS, and may be assessed a 10% penalty.

4. Eligible individuals must be enrolled in COBRA coverage and be required to pay 35% of the COBRA premium. Employers are required to pay the insurance bill, then later obtain reimbursement for the 65% subsidy by deducting it from their payroll tax obligation. IRS Form 941 has been revised to allow employers to claim credit for the subsidies. Employers must retain documentation supporting the amount of subsidy credit. Documentation should include:

- An attestation that involuntary termination triggered the basis for AEI's eligibility including the date of termination.
- Information on the receipt of the AEI's 35% share of premium, including dates and amounts.
- Proof of timely payment of insurance premium to the carrier by the employer
- The amount of payroll taxes offset by subsidy reimbursements for the reporting period.
- Taxpayer Identification Numbers for all covered employees.
- The subsidy amount reimbursed for each covered employee and qualified

beneficiary.

- A designation for each covered employee indicating whether the subsidy reimbursement covers one individual or two or more.

Benefit Strategies' Action Plan for COBRA Clients

Benefit Strategies continues to work closely with our COBRA software vendor and clients to meet the requirements of the ARRA.

To date, we have sent our clients the names of people who have been issued COBRA notices since 9/1/2008. These lists must be reviewed for completeness, and employers must decide if an individual was terminated voluntarily or involuntarily. Additional information needs to be provided on any individual not on the list who needs to be notified of rights under the ARRA. This is especially true for our new clients.

In accordance with the legal advice we have received, we recommend that the ARRA notice be sent to ALL individuals terminated since 9/1/2008, whether terminated voluntarily or involuntarily. Ultimately we will leave this decision up to our clients.

We will generate and mail ARRA notices to potential AEI's in the later part of March after the Department of Labor model notice is available and has been reviewed. Waiting to review the DOL notice ensures that our notice will contain all the information and language expected under the law.

In accordance with the law, notices must be mailed by April 12. We will ensure that our notices are sent well before that date.

After the notices are issued, we will enroll on COBRA the individuals who respond and who are verified to have been terminated involuntarily. Individuals eligible for the subsidy will remit 35% of COBRA premium and will be considered paid in full for that month.

At the end of the month, a report will be sent to the employer listing each person on COBRA, the premium amount they paid and the subsidy amount which may be taken as a credit by the employer from their payroll tax obligation.

At this time, it is primarily important for employers to have a plan and a timeline to meet the ARRA COBRA requirements. For additional information, the IRS and DOL websites are the most accurate sources. We will continue to provide updated information as well.

Please note that Benefit Strategies, LLC does not practice law. The information provided is designed to inform you of current regulations. If you require a legal interpretation, you should consult your own attorney.

As stated in our earlier advisories, Benefit Strategies stands ready to provide COBRA outsourcing services to any employer who does not want to take on the administrative burdens contained in this new law.

**If you would like additional information please contact:
Lori MacKnight at 888-401-3539 Ext. 1036**

 **SafeUnsubscribe®**

This email was sent to hr@benstrat.com by cobra@benstrat.com.

[Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

Email Marketing by



Benefit Strategies | 967 Elm Street | Manchester | NH | 03101