

# FAQs For Employers About COBRA Premium Reduction Under ARRA

## **Q1: What is the new COBRA subsidy provision contained in the stimulus package signed by the President?**

The stimulus package, which was enacted as the American Recovery and Reinvestment Act of 2009 (ARRA) temporarily reduces the premium for COBRA coverage for eligible individuals. COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) allows certain people to extend employer-provided group health coverage, if they would otherwise lose the coverage due to certain events such as divorce or loss of a job.

Individuals who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred from September 1, 2008 through December 31, 2009 and who elect COBRA, may be eligible to pay a reduced premium. Eligible individuals pay only 35% of the full COBRA premiums under their plans for up to 9 months. The employer (or other responsible entity) may recover the remaining 65% of the premium by taking the subsidy amount as a credit on its quarterly employment tax return. This premium reduction is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under state continuation coverage laws.

If the individual was offered Federal COBRA continuation coverage as a result of an involuntary termination of employment that occurred at any time from September 1, 2008 through February 16, 2009, and that individual declined to take COBRA at that time, or elected COBRA and later discontinued it, he/she may have another opportunity to elect COBRA coverage and pay a reduced premium.

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## **Q2: What plans are subject to the premium reduction provisions?**

The COBRA premium reduction provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by State or local governments subject to the continuation provisions under the Public Health Service Act, and plans in the Federal Employee Health Benefits Program (FEHBP). The premium reduction is also available for group health insurance that is required by State law to provide comparable continuation coverage (such as "mini-COBRA").

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## **Q3: Who is eligible to receive the COBRA premium reduction?**

ARRA makes the premium reduction available for "assistance eligible individuals." An Assistance Eligible Individual is a COBRA qualified beneficiary who meets the following requirements:

- Is eligible for COBRA continuation coverage at any time during the period from September 1, 2008 through December 31, 2009;
- Elects COBRA coverage (when first offered or during the additional election period provided by ARRA); and

- The COBRA election opportunity relates to an involuntary termination of employment that occurred at some time from September 1, 2008 through December 31, 2009.

However, if the individual is eligible for other group health coverage (such as through a new employer's plan or a spouse's plan) or Medicare he/she is not eligible for the premium reduction.

If the employee's termination of employment was for gross misconduct, the employee and any dependents generally would not qualify for COBRA or the premium reduction.

Electing the premium reduction disqualifies the individual for the Health Coverage Tax Credit. Additionally, certain high-income individual may have to repay the amount of the premium reduction through an increase in their income taxes. If the amount earned for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), individuals may have to repay all or part of the premium reduction through an increase in their income tax liability for the year. For more information, visit the [IRS web page](#) on ARRA.

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#### **Q4: Employees were laid off from work in December. Is that an involuntary termination of employment?**

Being told not to come back to work until further notice is a termination of employment for purposes of COBRA and the ARRA premium reduction provisions. For more information on what is an involuntary termination of employment, see [IRS guidance](#).

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#### **Q5: Who is eligible for the second election opportunity for COBRA coverage?**

Qualified beneficiaries whose qualifying event was an involuntary termination of employment during the period from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA but are no longer enrolled (for example, those who dropped COBRA coverage because they were unable to continue paying the premium) have a new, second election opportunity. Individuals eligible for the extended COBRA election period must receive a notice informing them of this opportunity. This notice must be provided by April 18, 2009 and individuals have 60 days after the notice is provided to elect COBRA. However, this special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009.

Under ARRA, this special election period opportunity is not required to be provided with respect to State continuation coverage that is provided pursuant to State insurance law. A State can take action, however, to provide an additional election period in its continuation coverage program for individuals involuntarily terminated from September 1, 2008 through February 16, 2009 in order for them to request premium assistance based upon involuntary termination occurring during that period. For more information on rights and responsibilities regarding election periods under State law, contact your State insurance commissioner's office or [CMS](#).

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## **Q6: Does ARRA impose any new notice requirements?**

Yes, plans and issuers are required to notify qualified beneficiaries regarding the premium reduction and other information about their rights under ARRA as follows:

- A general notice to all qualified beneficiaries, whether they are currently enrolled in COBRA coverage or not, who have a qualifying event during the period from September 1, 2008 through December 31, 2009. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event.
- A notice of the extended COBRA election period to any Assistance Eligible Individual (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect); who had a qualifying event at any time from September 1, 2008 through February 16, 2009; and who either did not elect COBRA continuation coverage or who elected but subsequently discontinued COBRA. This notice must be provided within 60 days following February 17, 2009.

Unless specifically modified by ARRA, the existing COBRA notice manner and timing requirements continue to apply.

Under the State programs, the issuer of the group health plan must provide the notice to qualified beneficiaries with the information on how to apply for the premium reduction. These notices must be provided within the time required by State law.

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## **Q7: What information must the notices include?**

The notices must include the following information:

- The forms necessary for establishing eligibility for the premium reduction;
- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium reduction;
- A description of the second election period (if applicable to the individual);
- A description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan or Medicare and the penalty for failing to do so;
- A description of the right to receive the premium reduction and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

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## **Q8: Has the DOL developed model notices?**

Yes. The Department of Labor has developed [model notices](#) that are available.

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**Q9: Can employees currently enrolled in COBRA continuation coverage switch to a different coverage option offered by the plan?**

Yes. Group health plans are permitted, but not required, to allow qualified beneficiaries to enroll in coverage that is different than the coverage they had at the time of the qualifying event. ARRA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium reduction, provided that:

- The premium for the different coverage is the same or lower than the coverage the individual had at the time of the qualifying event;
- The different coverage is also offered to active employees; and
- The different coverage is not limited to only dental coverage, vision coverage, counseling coverage, a flexible spending account, or an on-site medical clinic.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice of their opportunity to change. Individuals have 90 days to elect to change their coverage after the notice is provided.

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**Q10: If the employee is required to pay only 35% of the premium, how is the employer reimbursed for the remaining 65% of the premium?**

The employer (or other responsible entity) may recover the subsidy provided to Assistance Eligible Individuals by taking the subsidy amount as a credit on its IRS Form 941 quarterly employment tax return.

For more information on the Form 941 credit and the tax provisions in ARRA, visit the [IRS web site](#).

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**Q11: Does the premium reduction apply to premiums paid for periods of coverage prior to enactment of the ARRA?**

No. There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.

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**Q12: If a plan receives payment of 100 percent of the premium for coverage for March or April from an individual determined to be eligible for the premium reduction, what does the plan do with the overpayment?**

If an individual meets the requirements of an Assistance Eligible Individual and pays 100 percent of the premium in March or April for coverage in those months, the overpayment can be applied as a credit toward subsequent premiums as long as it can be used within 180 days of the

overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

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**Q13: If the employer denies the employee's request for the premium reduction does the employee have appeal rights?**

Yes. Individuals who are denied treatment as Assistance Eligible Individuals and thus denied eligibility for the premium reduction may request an expedited review of the denial. The Department of Labor will handle appeals related to private sector employer plans subject to ERISA's COBRA provisions. The Department of Health and Human Services will handle appeals for Federal, State, and local governmental employees, as well as appeals related to group health insurance coverage provided pursuant to state continuation coverage laws. The Departments must make a determination within 15 business days of receipt of a completed request for review. The Department of Labor is currently developing a process and an official application form that will be required to be completed for appeals. The process will include obtaining information from the employer, plan or insurer where appropriate. There will be a very short turn around time for submission of this information due to the short time for the determination.

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**Q14: To whom should plans subject to the Federal COBRA provisions send the full version of the General Notice?**

Plans subject to the Federal COBRA provisions must send the full version of the General Notice to individuals meeting all of the following criteria:

- 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); **and**
  - Who either:
    - **Have not yet been provided** an election notice; **or**
    - Who were **provided an election notice on or after February 17, 2009** that did not include the additional information required by ARRA.
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**Q15: Does the answer to question 14 mean that a qualified beneficiary whose qualifying event was, for example, divorce, aging out of dependent coverage, or voluntary termination of employment, is entitled to a general notice?**

Yes, if the qualified beneficiary meets all the other criteria of the answer to question 14. That is, the type of qualifying event does not matter for purposes of the General Notice.

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**Q16: Who should receive the abbreviated version of the General Notice?**

The abbreviated version of the general notice, which 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, may be sent in lieu of the full version to individuals who meet all of the following criteria:

- Have experienced a qualifying event on or after September 1, 2008;
  - Have already elected COBRA coverage; **and**
  - Currently have COBRA coverage.
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#### **Q17: Who is required to send the Alternative Notice?**

States may impose separate continuation coverage requirements on health insurance issuers. Health insurance issuers that provide group health insurance coverage comparable to COBRA should send the Alternative Notice to individuals covered by State-mandated continuation coverage laws (including mini-COBRA laws). Continuation coverage requirements vary among States. Therefore, issuers should conform these notices to applicable State law.

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#### **Q18: Who should receive the 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 **AEI (or any individual who would be an AEI if a COBRA continuation election were in effect)** who:

- Had a qualifying event that was an involuntary termination of employment at any time from September 1, 2008 through February 16, 2009; **and**
- Either did not elect COBRA continuation coverage, or elected but subsequently discontinued COBRA.

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

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#### **Q19: Are issuers subject to comparable State continuation coverage requirements required to send the Notice in Connection with Extended Election Periods?**

Issuers are not required to send this notice under ARRA. However, State laws may require an additional election period and may require issuance of a similar notice.

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**Q20: Individual A has a qualifying event on September 15, 2008. The plan provides a COBRA election notice on October 15, 2008, prior to ARRA's**

**enactment. A subsequently enrolls in COBRA coverage and remains enrolled. What notice should the plan send to A after ARRA's enactment?**

**Individual A** should get an abbreviated general notice because **A** had a qualifying event during the ARRA required period (from September 1, 2008 through December 31, 2009), enrolled in COBRA coverage, and still has it. (**Note:** it does not matter what type of qualifying event made **A** eligible for COBRA.)

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**Q21: Individual B had an involuntary termination of employment on October 2, 2008. The plan provides a COBRA election notice on October 31, 2008. B could not afford, and did not enroll in, COBRA coverage. What notice should the plan send to B after ARRA's enactment?**

**Individual B** should get a Notice of Extended Election Period because **B's** qualifying event was an involuntary termination of employment that occurred during the period between September 1, 2008 and February 16, 2009 (before ARRA's enactment) and **B** did not elect COBRA coverage.

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**Q22: Individual C has a qualifying event that is a divorce on January 6, 2009. The plan provides a COBRA election notice on January 19, 2009 that meets the requirements of 29 CFR 2590.606-4. C does not elect COBRA. Is the plan required to send a notice to C after ARRA's enactment?**

No. **C** is not entitled to the General Notice because **C's** election notice met the requirements of 29 CFR 2590.606-4 and was provided before ARRA's enactment. **C** is not entitled to the Notice in Connection with Extended Election Periods because **C's** qualifying event was not an involuntary termination of employment.

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**Q23: Individual D's qualifying event was an involuntary termination of employment that occurred on January 11, 2009. The plan provides a COBRA election notice on February 22, but it does not include information regarding the premium subsidy (or other information required under ARRA). What notice should the plan send to D?**

If **Individual D** does not have a COBRA election in effect on February 17, 2009 (the date of ARRA's enactment), **D** is entitled to a Notice in Connection With Extended Election Periods. In addition, **D** is entitled to a full general notice because **D** had a qualifying event during the ARRA-required period (September 1, 2008 through December 31, 2009); **D's** election notice was provided on or after ARRA's enactment (that is, on or after February 17, 2009); and it did not contain the additional information required by ARRA. Even though **D's** qualifying event occurred before ARRA's enactment, the election notice was provided after ARRA's enactment and did not contain the additional information required by ARRA. **D's** plan may combine information to avoid duplication, but the information should make clear that **D** has two separate election periods, each election period has a different coverage start date, and that **D** is eligible for the premium reduction for periods of coverage beginning on or after February 17, 2009, regardless of which election period **D** exercises.

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**Q24: Individual E had an involuntary termination of employment on January 24, 2008. Prior to the qualifying event E was covered by the medical and dental group health plans. The plan provided a COBRA election notice on February 26, 2009. E subsequently enrolls in COBRA coverage for the medical plan and still has it. E did not elect COBRA for the dental plan. What notice should the plan send to E after ARRA's enactment?**

*Individual E* should get an abbreviated general notice for the medical plan because *E* had a qualifying event during the ARRA-required period (from September 1, 2008 through December 31, 2009), enrolled in COBRA coverage, and still has it. (**Note:** it does not matter what type of qualifying event made *E* eligible for COBRA.) *Individual E* should also get a Notice of Extended Election Period for the dental plan because *E's* qualifying event was an involuntary termination of employment that occurred during the period between September 1, 2008 and ARRA's enactment (February 16, 2009) and *E* did not elect COBRA coverage for the dental plan. *E's* plan may combine information to avoid duplication, but the information should make clear that *E* has the opportunity to elect COBRA for the dental plan and that both the medical and dental plan are eligible for the premium reduction for periods of coverage beginning on or after February 17, 2009.

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**Q25: Individual F's qualifying event occurred on February 28, 2009. The plan provides a COBRA election notice on March 17, 2009, but it does not include information regarding the premium subsidy (or other information required under ARRA). What notice should the plan send to F?**

Even though the plan has already provided a COBRA election notice, *Individual F* should get a full general notice because *F* had a qualifying event during the ARRA-required period (September 1, 2008 through December 31, 2009); *F's* election notice was provided on or after ARRA's enactment (that is, on or after February 17, 2009); and the notice did not contain the additional information required by ARRA. (**Note:** it does not matter what type of qualifying event made *F* eligible for COBRA and *F's* election period remains open until 60 days after a complete notice, including the new ARRA disclosures, is provided.)

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**Q26: Individual G's qualifying event occurs on April 11, 2009. The plan provides a COBRA election notice on May 1, 2009. What notice should the plan send to G?**

*Individual G* should get a full general notice because *G* had a qualifying event during the ARRA-required period (September 1, 2008 through December 31, 2009), and has not yet received an election notice. (**Note:** it does not matter what type of qualifying event made *G* eligible for COBRA.) Sending the full general notice satisfies the requirements of both 29 CFR 2590.606-4 and ARRA.

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**Q27: Where can I go to find more information?**



Guidance and other information is available on the Department of Labor's dedicated COBRA web site at [www.dol.gov/COBRA](http://www.dol.gov/COBRA). You are encouraged to subscribe to this page so that you will receive updates as new information is added to the site. You can also call 1.866.444.3272 to speak to an Employee Benefits Security Administration Benefits Advisor.

For specific information about how you claim credit for the 65% of COBRA premiums and filing your Quarterly Federal Tax Return (Form 941) you should visit the [IRS web site](#). The IRS will continue to update its web site with more information on the ARRA premium assistance provisions as it becomes available.

For more information on continuation coverage requirements for small employers under State law (including state "mini-COBRA laws"), contact your State insurance commissioner's office or [CMS](#).