



# Employer *Bulletin*

Employer Communication Center (608) 264-7900 Toll free: 1-888-681-3952 <http://etf.wi.gov>

## COBRA Subsidy Part of American Recovery & Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law on February 17, 2009. The ARRA is an economic stimulus bill that includes several important changes to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The ARRA provides for a subsidy for the COBRA premium and additional election opportunities. This applies to all benefits for which COBRA is available, which include health insurance, EPIC, Anthem DentalBlue and OptumHealth.

As described below, this is a summary of employer responsibilities, which include:

- Issue general notice;
- Acknowledge application for COBRA coverage and determine eligibility for subsidy;
- Notify ETF (or optional plan vendor) of COBRA election;
- Subsidize the premium, if eligible; and
- Claim credit for the subsidy.

**Assistance Eligible Individuals (AEI):** An AEI is any qualified beneficiary that is eligible for COBRA due to a covered employee's involuntary termination of employment (for reasons other than gross misconduct) occurring between September 1, 2008, and December 31, 2009. Note that the U.S. Department of Labor does not *define* "involuntary termination of employment," but does state that it is "a termination that is at the direction of the employer." The Internal Revenue Service (IRS) will be issuing more guidance on its web site, [www.irs.gov](http://www.irs.gov), defining "involuntary termination."

COBRA defines a qualified beneficiary as the covered employee, spouse and dependent. Qualified beneficiaries have separate election rights under COBRA. Therefore, even if the former employee does not elect COBRA, a covered spouse or covered child of the involuntarily terminated employee may qualify as an AEI and be eligible for the subsidy.

**Extended Election Periods:** An extended election period is available to former employees who were involuntarily terminated any time from September 1, 2008 through February 16, 2009 and either did not elect COBRA or elected it but subsequently discontinued COBRA. These employees and their qualified beneficiaries will have another 60-day COBRA election period. AEIs that elect coverage during the extended election period will have coverage effective March 1, 2009, and will likely have a gap in coverage.

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**Notification:** The ARRA requires employers to provide a special notice to covered employees and their qualified beneficiaries that have a qualifying event and become eligible for COBRA when both occur between the dates of September 1, 2008 and December 31, 2009. The notice describes all of the following:

- A description of the qualified beneficiary's right to a reduced premium.
- A description of the extended election period, if applicable.
- The forms necessary for establishing eligibility for the subsidy.
- The name, address and phone number of the contact person at the former employer for information in connection with the subsidy.
- A description of the qualified beneficiary's obligation to notify the employer if they become eligible for coverage under another group health plan or Medicare and the penalty for failure to provide the notice.

ETF developed a [notice](#) to meet these requirements. The notice (a fill-in PDF) is available on ETF's Internet site, under the Employers Menu. Note that you must complete the fill-in areas of the notice and print the first page on your letterhead before issuing. **Pursuant to ARRA, you must issue this notice to:**

- Any former covered employees (and their qualified beneficiaries) who had an involuntary termination of employment from September 1, 2008 through February 16, 2009, and
- All covered employees and their qualified beneficiaries who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event, who were provided a continuation election form, which is the *Continuation - Conversion Notice* (form ET-2311) for health insurance, on or after February 17, 2009.

For more information on "qualified beneficiaries" and "qualified events," please refer to Chapter 6 of the *Health Insurance Administration Manual* (ET-1118).

**Premium Subsidy:** An AEI must pay 35% of the COBRA premium to their former employer. The former employer must then pay 100% of the premium to the plan, thus providing a 65% subsidy. Employers will get reimbursed for their portion of premium through payroll taxes on the *Employer's Quarterly Federal Tax Return* (IRS Form 941).

The subsidy is available beginning with coverage for the month of March 2009 and will automatically terminate at the earliest of:

- Nine months after it begins;
- When the AEI's COBRA eligibility ends;
- If the AEI becomes eligible for another group health plan; or
- If the AEI becomes eligible for Medicare.

The AEI is responsible for notifying the employer in writing if they become eligible for coverage under another group health plan or Medicare. If the AEI fails to provide this notification in a timely manner and continues to be subsidized after their eligibility for the subsidy ends, a financial tax penalty is imposed on the AEI, as explained in the notice.

**Sick Leave:** At the time of layoff, employees may elect to continue their health insurance coverage up to five years by using converted sick leave to pay premiums, followed by up to 36 months of coverage under COBRA continuation provisions. Employees are eligible for the

subsidy only when COBRA coverage is in effect when both the qualifying event (i.e., involuntary termination of employment) and the effective date of the COBRA coverage occurs between September 1, 2008 and December 31, 2009.

If employees choose to elect COBRA coverage at the time of layoff and forgo use of their sick leave, they are ineligible to use their sick leave later unless, in accordance with the Office of State Employment Relations (OSER) regulations, they reinstate employment with the State within five years or have 20 years of State service and are eligible to escrow their sick leave. For more information about layoff benefits, see OSER's July 3, 2003, bulletin, which is available on OSER's web site at [http://oser.state.wi.us/bulletins/bulletin\\_get.asp?bid=89](http://oser.state.wi.us/bulletins/bulletin_get.asp?bid=89).

**Option to Switch Plans:** ARRA provides for an option to allow AEIs to switch to a lower-cost plan for COBRA. This option is available for the health insurance and Anthem DentalBlue plans. AEIs who want to switch to a lower-cost option may do so by submitting an application within their 60-day COBRA election period indicating their new plan. Employers must verify the AEI's newly selected plan is lower-cost. Coverage with the new, lower-cost plan will begin on the effective date of the COBRA coverage unless the AEI specifies the change to the new plan to be effective on the first of the month following the employer's receipt of the application.

**Employer's Responsibilities:** The process to comply with the changes to COBRA under the ARRA is outlined below:

- **Issue General Notice:** Identify former covered employees (and their qualified beneficiaries) who had an involuntary termination of employment from September 1, 2008 through February 16, 2009 and any covered employees and their qualified beneficiaries who were provided a continuation election form on or after February 17, 2009. Issue the notice to those employees and their qualified beneficiaries, even though in some cases, they are not eligible for the subsidy. Notice to the employee constitutes notice to all qualified beneficiaries if the information you have available indicates the qualified beneficiaries reside at the same address.

**Note:** You must provide notice by April 18, 2009 to those former employees and their qualified beneficiaries that had an involuntary termination of employment from September 1, 2008 through February 16, 2009.

- **Acknowledge Application for COBRA Coverage and Determine Eligibility for Subsidy:** Former employees and their qualified beneficiaries that elect COBRA and request the subsidy must submit their completed forms, including the continuation election form and the *Request for Treatment as an Assistance Eligible Individual* form (ET-2314) that is included in the notice, and application, if required, to the employer. The employer will complete and return the *Request for Treatment as an Assistance Eligible Individual* form to the applicant that acknowledges receipt of the information and confirms whether the applicant is approved for the COBRA subsidy. The applicant is eligible for the subsidy if the COBRA offering is due to involuntary termination of employment between September 1, 2008 and December 31, 2009. For approved requests, employers are strongly encouraged to also provide specific instructions on how the AEI is to submit their 35% portion of the premium to the employer, such as to whom to make the check payable, address to mail the payment, and timeframe to submit the payment.

If the employer determines that the applicant is not eligible for the COBRA subsidy and denies the request, the applicant may file a complaint with the U.S. Department of Health and Human Services who will make a binding determination within 15 days of receipt of the appeal.

- **Notify ETF (or optional plan vendor) of COBRA Election:** If health insurance is elected, fax the forms completed by the applicant along with a copy of completed *Request for Treatment as an Assistance Eligible Individual* form to ETF at (608) 266-5801, Attention: Brian Schroeder. ETF will electronically transmit the information to the health plan, which will, in turn, issue ID cards and send a billing statement to the subscriber. COBRA subscribers are set up on “direct pay” contracts with the health plan and are not to be included in the employer’s monthly coverage reports.

If a plan other than health insurance is elected, for example, a dental plan, forward the applicant’s completed forms along with a copy of the completed *Request for Treatment as an Assistance Eligible Individual* form to the appropriate vendor. The vendor will bill the COBRA subscriber directly.

- **Subsidize the Premium, If Eligible:** When COBRA subscribers that are approved for the COBRA subsidy (AEIs) receive the premium billing statement from the health plan or optional plan, they must submit the billing statement and payment for 35% of the billed amount to the employer. Employers must then write a check payable to the health plan or optional plan for 100% of the premium and submit the payment to the health plan or optional plan.

**Note:**

- ▶ The initial bill may be for multiple months of premium, depending on the timing of the billing cycle and the due date, which varies between health plans and the optional plans.
  - ▶ The AEI is deemed to have paid 35% of the premium if the payment is made by another person other than the individual’s employer and is given to the employer prior to the end of the grace period. The grace period, provided by State law, is the 30-day period following the due date.
  - ▶ Employers must take note of the due date for premium payment and promptly process the payments. Payment received after the grace period expires may lead to coverage being cancelled due to late premium payment. Coverage will need to be reinstated when it is determined the AEI made timely payment to the employer.
  - ▶ Employers may want to take steps to ensure the AEI has sufficient funds to cover their payment for 35% of the premium. *Retroactive refunds are not available for health insurance after employers submit payment to the health plan for 100% of the premium.*
  - ▶ During the first two months of enactment while the premium subsidy is being implemented (March and April), AEIs may be required to pay 100% of the premium. You must credit the amount of the resulting premium overpayment against the AEIs premium payment for future months as long as it can be used within 180 days of the overpayment. If it cannot be used within 180 days, you must reimburse the overpayment to the employee within 60 days of receipt.
  - ▶ For AEIs with an adjusted gross income for the taxable year between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers) the subsidy is reduced proportionately. The AEI can waive the subsidy or be subject to a recapture tax as explained on the notice.
- **Claim Credit for Subsidy:** Employers must claim the COBRA subsidy amount (65%) on lines 12a and 12b of the IRS Form 941. Employers will then be reimbursed for the subsidy amount through a credit on payroll taxes. Employers do not need to submit documentation when claiming the credit on IRS Form 941. However, they must maintain supporting documentation, which the IRS may require to be submitted at any time to verify the payroll tax credit claimed.

Documentation must include:

- ▶ Information on the receipt, including dates and amounts, of the AEI's 35% share of the premium.
- ▶ Copy of the invoice and proof of timely payment of the full premium to the health plan and/or optional plan.
- ▶ Attestation of involuntary termination by the employer, 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 AEI'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 Social Security Numbers of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual (single coverage) or 2 or more individuals (family coverage).
- ▶ Other documents necessary to verify the correct amount of reimbursement.

More information about the ARRA is available on the DOL Internet site, [www.dol.gov/COBRA](http://www.dol.gov/COBRA).

If you have any questions on the content of this *Bulletin*, please contact the Employer Communication Center toll free at (888) 681-3952 or locally at (608) 264-7900.

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