



New COBRA Regulations

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended, provides for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. The premium assistance is also available for continuation coverage under certain State laws. "Assistance Eligible Individuals" pay only 35 percent of their COBRA premiums; the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

Eligibility for the Premium Reduction

An "assistance eligible individual" is the employee or a member of his/her family who elects COBRA coverage timely following a qualifying event related to an involuntary termination of employment that occurs at any point from:

- September 1, 2008 through May 31, 2010; or
- March 2, 2010 through May 31, 2010 if:
 - the involuntary termination follows a qualifying event that was a reduction of hours; and
 - the reduction of hours occurred at any time from September 1, 2008 through May 31, 2010. (A reduction of hours is a qualifying event when the employee and his/her family lose coverage because the employee, though still employed, is no longer working enough hours to satisfy the group health plan's eligibility requirements.)
- Generally, the maximum period of continuation coverage is measured from the date of the original qualifying event (for Federal COBRA, this is generally 18 months). However, ARRA, as amended, provides that the 15 month premium reduction period begins on the first day of the first period of coverage for which an individual is "assistance eligible." This is of particular importance to individuals who experience an involuntary termination following a reduction of hours. Only individuals who have additional periods of COBRA (or state continuation) coverage remaining after they become assistance eligible are entitled to the premium reduction.
- For purposes of ARRA, COBRA continuation coverage includes continuation coverage required under Federal law (COBRA or Temporary Continuation Coverage) or a State law that provides comparable continuation coverage (for example, so-called "mini-COBRA" laws).
- Those who are eligible for other group health coverage (such as a spouse's plan or new employer's plan) or Medicare are not eligible for the premium reduction.

There is no premium reduction for periods of coverage that began prior to February 17, 2009.

- Assistance eligible individuals who pay 35 percent of their COBRA premium must be treated as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes.

What is COBRA?

COBRA gives workers and their families who lose their health benefits the right to purchase group health coverage provided by the plan under certain circumstances.

If the employer continues to offer a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed, but generally the cost is lower than that for private, individual health insurance coverage.

The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage; otherwise, they lose all rights to COBRA benefits.

COBRA generally does not apply to plans sponsored by employers with fewer than 20 employees. Many States have similar requirements for insurance companies that provide coverage to small employers. The premium reduction is available for insurers covered by these State laws.

Period of Coverage

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 15 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Notice Requirements

ARRA, as amended by the Continuing Extension Act of 2010 (CEA), mandates that plans notify certain current and former participants and beneficiaries about the premium reduction. The Department has updated its existing models to help plans and individuals comply with these requirements. Each model notice is designed for a particular group of individuals and contains information to help satisfy ARRA's notice provisions, including those modified by CEA.

Plans subject to the Federal COBRA provisions must provide a **General Notice** to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through May 31, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. Plans must provide the updated General Notice within the required timeframes for providing a COBRA election notice. The updated model General Notice includes information on the premium reduction as well as information required in a COBRA election notice.

Plans that are subject to COBRA continuation provisions under Federal or State law should provide a **Notice of New Election Period** to all individuals who:

- experienced a qualifying event that was a reduction of hours at any time from September 1, 2008 through May 31, 2010;
- subsequently experience a termination of employment at any point from March 2, 2010 through May 31, 2010; and
- either did not elect COBRA continuation coverage when it was first offered or elected but subsequently discontinued COBRA.

Generally, individuals who have experienced a qualifying event that consists of a reduction of hours and who, from March 2, 2010 through May 31, 2010, experience an involuntary termination of employment must be provided this notice within 60 days of the event. Pursuant to CEA, for the April 1, 2010 through April 14, 2010 period, the notice requirement attaches to any termination of employment. The Department strongly recommends that notice be provided to individuals who experienced any termination of employment because employers may be subject to civil penalties if it is later determined that the termination was involuntary and notice was not provided. The Department has updated its model Notice of New Election Period. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

Plan administrators must also provide notice to certain other individuals who have already been provided a COBRA election notice that did not include information regarding ARRA, as amended by CEA. The Department has updated two existing models to assist plans in these areas.

Plans that are subject to COBRA continuation provisions under Federal law and insurers subject to continuation coverage requirements under State law must provide the **Supplemental Information Notice**. It should be provided to all individuals who elected and maintained continuation coverage based on the following qualifying events:

- terminations of employment that occurred at some time on or after March 1, 2010 through April 14, 2010 for which notice of the availability of the premium reduction available under ARRA was not given; or
- reductions of hours that occurred during the period from September 1, 2008 through May 31, 2010 which were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by May 31, 2010.

For the first item above plans must provide this notice to all individuals with a qualifying event related to any termination of employment if they have not already been provided notice of their rights under ARRA. This notice must be provided before the end of the required time period for providing a COBRA election notice. For the second item above, generally, individuals who experience an involuntary termination of employment from March 2, 2010 through May 31, 2010 after experiencing a qualifying event that consists of a reduction of hours must be provided this notice within 60 days of the termination of employment. However, as has been noted, CEA requires plans to provide notices to all individuals with qualifying events related to any termination of employment that occurred from April 1, 2010 through April 14, 2010. In those cases, this notice must be provided before the end of the required time period for providing a COBRA election notice. Because employers may be subject to civil penalties if it is later determined that the termination was involuntary, the Department strongly recommends that notice be provided to individuals who experienced any termination of employment. The Department has updated its model Supplemental Information Notice. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

Plans that are subject to COBRA continuation provisions under Federal law and insurers subject to continuation coverage requirements under State law must provide the **Notice of Extended Election Period**. It must include the information described above and be provided to all individuals who experienced a qualifying event that was a termination of employment from April 1, 2010 through April 14, 2010, were provided notice that did not inform them of their rights under ARRA, as amended by CEA, and either chose not to elect COBRA continuation coverage at that time or elected COBRA but subsequently discontinued that coverage. This notice must be provided before the end of the required time period for providing a COBRA election notice. The Department has updated its model Notice of Extended Election Period. Using this model satisfies the requirements of ARRA, as amended by CEA.

Insurance issuers that provide group health insurance coverage must provide notice to persons who became eligible for continuation coverage under a State law. The Department updated its model **Alternative Notice** to assist issuers with satisfying this requirement. However, 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 one (or more) of the other models appropriate for use in certain situations.

Expedited Review of Denials of Premium Reduction

Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The official application form can be found at:

<http://www.dol.gov/ebsa/COBRA/main.html> and can be filed online or submitted by fax or mail.

Switching Benefit Options

If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage cannot be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

Income limits

If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

New Penalty Provision

ARRA provides that the appropriate Secretary may assess a penalty against a plan sponsor or health insurance issuer of up to \$110 per day for each failure to comply with such Secretary's determination 10 days after the date of the plan sponsor's or issuer's receipt of the determination.