



SPECIAL Alert

In This Issue

In this tenth Special Alert for 2009, we discuss the recently enacted ARRA COBRA subsidy extension. Employers will need to update communications and send notices regarding the extension to certain qualified beneficiaries.

We welcome your comments and suggestions regarding this issue of our Special Alert. For more information on this article, please contact your Account Manager or visit the McGrawWentworth website at www.mcgrawwentworth.com.

“ARRA COBRA Assistance Extended”

On December 21, 2009, President Obama signed into law the Department of Defense Appropriations Act, 2010. This law addressed a number of issues and included H.R. 3326, which provided an extension of the COBRA subsidy first included in the American Recovery and Reinvestment Act of 2009 (ARRA).

- Who are not eligible for any other group health coverage (such as through a spouse’s employer plan) or through Medicare; and
- Who actually elect and pay a portion of the COBRA premium.



The subsidy was due to expire at year end and the recent legislation extended the ARRA provisions.

Historical Overview

ARRA provided a government subsidy for medical, prescription, dental, vision and, in some cases, EAP COBRA coverage. The purpose of the subsidy was to make COBRA coverage more affordable for qualified beneficiaries who experienced an involuntary termination of employment between September 1, 2008 and December 31, 2009. The subsidy is equal to 65% of the COBRA premium and is available only to qualified beneficiaries defined as Assistance Eligible Individuals (AEIs). AEIs are qualified beneficiaries:

- Who became eligible for COBRA continuation coverage or state law continuation coverage at any time between September 1, 2008 and December 31, 2009;
- Who were eligible for COBRA due to an involuntary termination of employment during the time period noted in the previous bullet;

New Extended Subsidy Provisions

The new legislation primarily mandates two things:

1. It extended the end date for eligibility to the ARRA subsidy. The new expiration date of the subsidy is February 28, 2010. This means an AEI who has a qualifying event with COBRA effective on or before February 28, 2010 will be eligible for the COBRA subsidy.

2. It extended the maximum period to receive the subsidy for an additional six months. Initially, the ARRA subsidy was provided for 9 months, as long as a qualified beneficiary continued to meet the definition of an AEI. The new legislation extends that timeframe to 15 months.

The government has imposed a number of new communication requirements on employers to make sure their COBRA participants and former employees understand the new benefits available. The notice information is not particularly clear. In order to help clarify the notice situation that applies to your employees, we are going to segregate the notices into the different groups that address the employees that may be affected.

- **Group 1: Recently terminated former employees or AEIs:** Employers or their COBRA administrator need to send a special notice to all AEIs who elected COBRA on or after October 31st, or whose qualifying event is a termination of employment that occurred on or after October 31st. The notice should advise these individuals of the new 15 month timeframe. Employers are required to notify all current COBRA qualified beneficiaries and those in their election period about the extension of the subsidy to a 15 month timeframe. This basically amends the COBRA information sent initially that included the original ARRA information.



- **Group 2: AEIs that have lost or are close to losing the subsidy:** Because the government signed these changes into law after many AEIs lost the subsidy and needed to pay full premiums to continue coverage, employers must take special actions to address these individuals. Employers must allow a period for the retroactive payment of premiums for AEIs (i.e., individuals who were entitled to the subsidy) whose subsidy period expired on or after November 30th and who lost COBRA for failure to pay premium. Employers must reinstate coverage if the AEI pays premium for December and, in some cases, even January's coverage.

- The retroactive period to reinstate coverage is measured 60 days from December 21, 2009 or 30 days from the date you notify AEIs of the possibility of reinstatement (whichever is later).
- You must reinstate COBRA for any AEI that pays 35% of the applicable COBRA premium within the reinstatement period. COBRA should be reinstated back to the COBRA termination date.
- If AEIs continued to pay the full premium after the expiration of the subsidy, the same refund/credit rules that applied under the original bill apply to any AEI whose subsidy expired in November and who have since paid the full COBRA

premium. The permitted options are:

- ▶ The employer can simply reimburse the employee the 65% of the paid COBRA premium within 60 days; **or**
 - ▶ The employer can offer a credit toward future COBRA premium payments. For the employer to offer a premium credit there must be a reasonable expectation that the AEI will use the credits within 180 days.
- **Group 3: New COBRA Qualified Beneficiaries:** Employers must make sure all AEIs are notified of the extended timeframe to qualify for assistance. If your organization has qualified beneficiaries that are involuntarily terminated from employment as of January 1st and lose coverage as of January 1st, those individuals will be eligible for the COBRA subsidy providing they qualify as an AEI.

As with most legislation, HR 3326 contains just an outline of this extension. Many organizations will have detailed questions that likely aren't addressed by the legislation. However, the Department of Labor has done a good job of advising employers of the detailed requirements. The Department of Labor has a site devoted to ARRA requirements as they relate to COBRA. To keep abreast of the details as this law is implemented by employers, please

reference the Department of Labor website at <http://www.dol.gov/ebsa/cobra.html>. You can subscribe to this page and the Department of Labor will send you an e-mail whenever any updates are made to this webpage.

Action Steps

The good news is you can probably wait until after the holidays to send out your notices. When you get back for the New Year, make sure to address these key groups for notification:

- **Group 1: Recently terminated former employees or AEs:** Identify all qualified beneficiaries whose qualifying event is a termination of employment that occurred on or after October 31st. For these individuals, send a letter that advises them of the changes to the ARRA subsidy, including the new 15 month timeframe to qualify for the COBRA subsidy if the qualified beneficiaries meet the requirements of an AEI.
- **Group 2: AEs that have lost or are close to losing the subsidy:** These employees will need to be divided into 2 subgroups, depending on their payment situation:
 - Create a letter for those qualified beneficiaries that were AEs who lost the subsidy and continued paying the full COBRA premium. The notice should explain the extended timeframe for receiving the subsidy.



Require qualified beneficiaries to complete the Treatment as an AEI form again to verify they continue to be eligible. Also, include in this notice how you will refund or credit the 65% of the premium they paid in December and in some cases maybe even January.

- Identify the qualified beneficiaries that had COBRA terminate for non-payment once they lost the ARRA subsidy. For these individuals, create a notice that advises them of the extended timeframe for receiving the subsidy.

Explain that they can reinstate their COBRA coverage and receive the subsidy for an additional six months. Coverage

will be reinstated as of the date coverage was lost. Make sure you include the amount of the premium needed to reinstate coverage. In most cases, it will be 35% of December and January's premium. If you send the notice promptly, premium should be due by February 19th. If you send this notice after January 20th, the qualified beneficiary has 30 days from the date of notice to make the payment. Again, it makes sense to include the Treatment as an AEI form to make sure the qualified beneficiaries continue to

meet the requirements of AEs.

- **Group 3: New COBRA Qualified Beneficiaries:** Amend your current COBRA notices to include the new deadlines:
 - AEs that meet the requirements are eligible for 15 months of the ARRA subsidy.
 - Individuals will continue to qualify for the subsidy if they experience an involuntary termination of employment and are eligible for COBRA on or before February 28, 2010.

Keep copies of all the notifications sent for your records.

The regulations do not officially require the Department of Labor to create model notices for employers to use. It makes sense prior to sending out the notices to check the DOL website to make sure they have not released model notices or any additional details regarding these changes.

If you have any questions, please contact your McGraw Wentworth Account Manager. **MW**

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