



# SPECIAL Alert

## In This Issue

*In this third McGraw Wentworth Special Alert for 2010, we will discuss the Temporary Extension Act of 2010. The Extension Act extended the eligibility period for the ARRA COBRA premium subsidy through March 31, 2010. The Act also added an additional situation where the ARRA premium subsidy could apply.*

*Employers may need to draft a new notice to address the new situation where the premium subsidy may apply.*

*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 McGraw Wentworth web site at [www.mcgrawwentworth.com](http://www.mcgrawwentworth.com).*

## “ARRA Subsidy Extended”

President Obama recently signed into law the “Temporary Extension Act of 2010” (Extension Act). This Act provided an extension of the eligibility period for the ARRA COBRA subsidy and changed one aspect in regard to the applicability of the ARRA subsidy.

Let’s tackle the easiest change first. The eligibility period for the ARRA COBRA premium subsidy has been extended through March 31, 2010.

To be eligible for the premium reduction, the employee must experience an involuntary termination of employment on or before March 31, 2010. In the initial ARRA guidance, the involuntary termination and the loss of coverage had to occur before the eligibility end date. The December guidance amended the language and only the involuntary termination of employment needed to occur on or before the expiration date of the subsidy eligibility period. For now (until another extension is passed), an individual must experience an involuntary termination of employment on or before March 31, 2010 to qualify for the ARRA subsidy. If the loss of coverage occurs after March 31, 2010, the individual would still be eligible for the premium reduction.

This Extension Act also broadened the potential situations when the ARRA COBRA premium subsidy would apply. Individuals who lost coverage due to a reduction of work hours were **not** initially eligible for the premium reduction if they continued to work for the employer.



The Extension Act allows that individuals, who experience an involuntary termination of employment that occurs on or after March 2, 2010 following

a qualifying event that was a reduction of hours that occurred at any time from September 1, 2008 through March 31, 2010, could be considered an Assistance Eligible Individual (AEI) and eligible for premium reduction.

The new regulations also recognize an individual may not have elected COBRA at the point coverage was lost due to a reduction of work hours. If the individual subsequently experiences an involuntary termination of employment after March 2, 2010, the individual may qualify as an AEI. The individual would need to meet all the other eligibility requirements needed to be an AEI such as not being eligible for any other group health coverage or Medicare.

These individuals must be given a second opportunity to elect COBRA coverage, now that they may be eligible for the ARRA COBRA premium subsidy. The Extension Act added a new employer notification requirement:

- Employers must send a special notification to individuals who lost health coverage between September 1, 2008 through March 31, 2010 due to a reduction of work hours and subsequently experienced an involuntary termination of employment on or after March 2. The notice must explain the availability of the ARRA COBRA premium subsidy and provide a second election opportunity.
- This notice must be provided within 60 days of the involuntary termination of employment and provide the details of the ARRA COBRA premium subsidy.
- COBRA coverage will be reinstated if the individual pays 35% of the applicable premium by the later of:
  - 60 days from March 2, 2010 (the date the Extension Act was passed).
  - 30 days from the date the employer provides the required notice.

In order to reinstate coverage, payment must be received before the original expiration of the continuation period. Unfortunately, it is not particularly clear on **when**

coverage must be reinstated if COBRA is elected during the secondary election period. If the government is thinking logically, COBRA coverage will likely be reinstated back to the involuntary termination of employment date because that is the first day the individual would be eligible for ARRA premium assistance. This point unfortunately is not clear and we likely will need to wait for the DOL and IRS to clarify the issue.

- COBRA continuation maximum coverage periods are still measured from the original qualifying event date, the reduction of work hours.
- The period of time the employee did not have coverage between the reduction of work hours and the second election of COBRA will **not** be treated as a break in coverage for HIPAA pre-existing condition purposes.

Perhaps this will be easier to understand with an example:

ABC Company requires employees work 35 hours per week to qualify for the health plan. As of January 5, 2010, Jane Doe’s work hours are



reduced to 20 hours per week. Under ABC Company’s plan, Jane loses health plan coverage on January 31, 2010. She is sent all the required notices and Jane does not elect COBRA.

ABC Company involuntarily terminates Jane’s employment on March 11, 2010.

What should happen with the new ARRA provisions? Jane may qualify as an AEI and ABC Company must send Jane a special notice explaining the ARRA

premium subsidy and Jane’s right to elect COBRA. The notice should require Jane to fill out a “Treatment as an AEI” form. Jane elects COBRA the second time around. Jane’s coverage should be reinstated as of March 11, 2010 once she submits 35% of the required premium. Jane’s maximum coverage period expires July 31, 2011. Providing Jane remains eligible, the ARRA premium subsidy would be available until June 11, 2011.

Employers will need to take action to meet the requirements of the Extension Act.

## NOTABLE THOUGHTS

**THE GREATER THE OBSTACLE, THE MORE GLORY IN OVERCOMING IT.**

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## Employer Action Steps

From an employer's perspective, it makes sense to identify all employees who lost coverage due to reduction in work hours between September 1, 2008 and March 31, 2010. If any of those employees subsequently are involuntarily terminated from employment on or after March 2, 2010, then you must send an additional COBRA notification about the ARRA COBRA premium subsidy that they may be qualified to receive.

The notice should include the following information:

- Information describing the ARRA premium subsidy and spell out the requirements to qualify as an AEI.
- Information regarding the secondary election period. Advise the individuals that the COBRA continuation maximum coverage period will be measured from the original qualifying event date.
- Information on the cost of COBRA if the individual qualifies as an AEI. Include information on the payment requirements and when payment must be received to reinstate coverage. Be clear on what date coverage will be reinstated.
- Information on what is needed to elect COBRA coverage. Include completion of the "Treatment as an AEI" form in your requirements.



The DOL is not compelled by the legislation to draft a model notice but since they have provided them throughout the time ARRA has impacted employers' health plans, it is likely they will draft a model notice for this purpose.

In addition, employers need to amend their current COBRA notices that refer to ARRA COBRA premium subsidy. At a minimum the notice will need to be amended to reflect that the eligibility period for the COBRA ARRA premium subsidy has been extended to March 31, 2010. You may also want to clarify that

only the involuntary termination of employment has to occur on or before March 31, 2010. It does not matter if health plan coverage is lost after the March 31, 2010 date.

It only matters that the involuntary termination of employment occurs on or before March 31, 2010.

The DOL is likely to provide additional clarifications of the Extension Act provisions. To get the latest information on the COBRA subsidy, subscribe to the DOL webpage at <http://www.dol.gov/ebsa/cobra.html>.

Several other measures Congress is currently considering include additional extensions to the ARRA COBRA premium subsidy, so it is likely we will see more changes in the future.

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

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