

*HR Simplified, Inc. presents*

# COBRA and The American Recovery and Reinvestment Act of 2009

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# Definitions

- ARRA = American Recovery and Reinvestment Act of 2009
- AEI = Assistance Eligible Individual
- QB = Qualified Beneficiary
- QE = Qualifying Event

# OVERVIEW

## *American Recovery & Reinvestment Act of 2009 (ARRA)*

ARRA adds **NEW** COBRA rights and imposes **NEW** responsibilities in various ways.

Today we will cover:

- COBRA Premium Assistance (subsidy)
- Extended Election Period
- Plan Enrollment
- Employer Premium Reimbursement
- New QE Notices
- Services Performed by HR Simplified

# OVERVIEW

## *American Recovery & Reinvestment Act of 2009 (ARRA)*

### ARRA impacts:

- Employer-provided health benefits (with the exception of (health FSA's & HSA's)
- QBs who lose or have lost group health coverage due to an involuntary termination of employment.
- Allows AEs who were QBs but not currently receiving continuation coverage a second opportunity to elect continuation coverage in order to access the premium subsidy.
- Not only expands COBRA but also extends the premium subsidy to federal and state laws similar to COBRA.

# OVERVIEW

## *American Recovery & Reinvestment Act of 2009 (ARRA)*

- Allows employers the option to offer AEs a limited opportunity to switch coverage to a group health plan option other than the one in which they were enrolled at the time of the qualifying event.
  - As long as the new premium is not more than the premium that was in effect as of the QE date.
  - Optional for Employers

## How does ARRA affect Employers?

ARRA provides:

- COBRA premium subsidy that applies to AEI
- For AEI's who experienced an involuntary loss of employment (for reasons other than gross misconduct)
- Between September 1, 2008 and December 31, 2009.

## How does ARRA affect Employers?

### The subsidy

- The AEI pays 35% of the applicable COBRA premium.
- The remaining 65% is subsidized by the employer.
- The subsidy is available for any health coverage
  - Examples: medical, dental only, vision only, HRA's some EAP's
  - Excludes: FSA's, & HSA's (but not the qualifying health plan) on-site medical clinic.

## How does ARRA affect Employers?

### Employer Reimbursement

- The employer is reimbursed by claiming the amount of subsidy as a credit against its payroll taxes.
- Payroll tax penalties apply if the employer reduces its payroll taxes for subsidy amounts that are not eligible.

## ARRA Effective Date of Premium Assistance

- The ARRA enactment date was February 17, 2009.
- The COBRA revisions are generally effective March 1, 2009.
- Notices explaining the subsidy and who is eligible must be mailed to ALL QB's, not just AEIs, no later April 18, 2009.

# What is the duration of the subsidy?

What is the duration of the premium assistance?

Assistance ends on the earliest of:

- 9 months after the first day of the first month of coverage period
  - The date following the expiration of the maximum coverage period
  - The date following expiration of the period of coverage that would have been required if COBRA had been elected
- Assistance terminates early if AEI is **eligible** for coverage under any other GHP or Medicare
    - Does not terminate if coverage is:
      - Only dental, vision, counseling, or referral services
      - Flexible spending arrangement (FSA)
      - On-site medical clinic

## Extended Election Period

When does coverage begin and end if elected during the extended election period.

- No reach back (can't retro coverage start date)
- Begins with first period of coverage on or after Feb. 17, 2009 (March 1, 2009)
- Will not extend beyond the period of COBRA coverage that would have been required if COBRA had been elected in normal manner

## Expanded HIPAA Provision

Special HIPAA rule applies if AEI elects coverage during the extended period.

- Period beginning on the date of the QE and ending on the beginning of the period of coverage is disregarded for purposes of the 63-day break in creditable coverage rules of HIPAA

## Definition of "Involuntary Termination"

- ARRA itself does not define "involuntary termination"
- DOL and the Treasury may provide more guidance
- Anyone that is terminated involuntarily or laid off by their employer,
  - except in the cases where involuntary termination is due to gross misconduct.
- Involuntary termination does not include individuals who experienced an involuntary reduction in hours (from full-time to part-time employment), FMLA.

## Who must receive the new COBRA premium subsidy notices?

- All QB's who experienced **ANY** qualifying event September 1, 2008 or later
  - QB's who did not elect to continue
  - QB's who elected and may not be covered now (due to non-payment of premium)
  - QB's who are currently covered
- Only QB's who were involuntarily terminated September 1, 2008 through December 31, 2009 will be considered AElS and be eligible for the subsidy.

## Who is not eligible for the premium subsidy?

- Any QB who's QE was not as a result of involuntary termination occurring on or after September 1, 2008.
- A domestic partner and/or his/her children who are not dependents of the employee;
- A spouse or dependent child who did not timely report the divorce or loss of dependent status as required by COBRA.
- Individuals who experienced a qualifying event prior to September 1, 2008 or who exhausted their COBRA coverage prior to September 1, 2008.

## Who is not eligible for the premium subsidy?

- AEs **eligible** for other group health plan coverage,
  - including coverage through a spouse's employer or Medicare.
    - Excludes: dental only, vision only, counseling, referral services, FSAs, on-site medical clinic

# Who is not eligible for the premium subsidy?

## Recapture for high-income individuals

- High income earners
  - Phase out for incomes above \$125,000 for a single individual and \$250,000 for married couples. The subsidy is phased out entirely for incomes above \$145,000 for single individuals and \$290,000 for married couples.
  - High-income individuals can waive assistance
  - Not treated as an AEI if they make a permanent election to waive
  - Must notify the entity to whom premiums are reimbursed of the election
  - Ultimately between the IRS and the QB

## How is the ARRA subsidy calculated?

- ARRA subsidy is calculated based on 102% of the total premium
- The QB eligible for the subsidy would pay 35% of the total premium.
  - Example
    - Total Premium (including the 2% fee) = \$1,000
    - QB must pay \$350
    - ER subsidy is \$650

## Who is responsible to pay the 65% and receive the subsidy reimbursement?

- In most cases, the employer is responsible for paying the 65% subsidy and is entitled to the 65% subsidy reimbursement through its payroll taxes whether the plan is fully-insured or self-insured.

There are two exceptions:

- multiemployer plans (such as a Taft-Hartley plan), in which case the plan that is responsible
- When the insurer provides the State Continuation administration and is responsible to collect the premium directly from the qualified beneficiaries.

## How is the 65% subsidy collected?

- The employer will receive reimbursement of 65% of the premium in the form of a credit in the amount of payroll tax due by the amount of subsidy reimbursement.
- The employer must file a claim for reimbursement with the IRS when they submit their payroll taxes.
- The IRS has updated form 941 and is now available on the IRS website <http://www.irs.gov/pub/irs-pdf/f941.pdf>

For information on 941 filing and W-2 reporting, please contact your payroll provider or tax advisor for more information.

## QB's Under a Current ER Subsidy – prior to ARRA

- If you, as the employer, currently offer QB's a subsidy toward their COBRA premium, the amount of the employee paid ARRA subsidy is based on the employee-paid portion of the premium, not the full premium amount.

### Example:

- An employer subsidizes 50% of the premium for the first six months of the COBRA coverage period
  - QB was involuntarily terminated.
  - The QB pays the remaining 50%

## Subsidy Example

- Current total premium = \$1,000
- Current ER subsidy = 50% or \$500
- QB premium = \$500
  - AEI new premium = 35% of their \$500 or \$175
  - Employer credit = 65% of the QB \$500 or \$325

## ARRA Premium Subsidy (March & April)

Special rule for first or second premium payment

- If AEI pays full premium, employer or insurer must reimburse or provide a credit that reduces subsequent payments
- Must reimburse within 60 days of full payment of premium, if it is unreasonable to believe credit will be used within 180 days

## Employer documentation is required for reimbursement

### Attestation of involuntary termination of employment

- Report of:
  - Amount of payroll taxes offset
  - TINs of all covered employees
  - Amount of subsidy reimbursed for each covered employee and each QB
  - Whether coverage is for one individual only or 2 or more individuals

## Notices Requirements to ALL QBs

- Name, address, telephone number to contact the plan administrator and any other relevant person
- Description of the extended election period
- Description of the obligation of the QB to notify the plan of eligibility for subsequent coverage
- Description (displayed in a prominent manner) of QB's right to a reduced premium
- Description (displayed in a prominent manner) of any conditions on entitlement to a reduced premium
- Description of the option of the QB to enroll in different coverage (if the employer permits)
- Must include forms necessary to establish eligibility

## Notices for Extended Period

- For any potential AEI who became entitled to COBRA before, but has no coverage on, Feb. 17, 2009
  - Plan administrator must provide for notification within 60 days after Feb. 17, 2009
  - Includes QBs who did not elect COBRA or who elected but dropped
  - Notify of right to extended election period, premium assistance, and plan enrollment option

## Notices & The DOL

- DOL must provide models
  - Not later than 30 days after Feb. 17, 2009
  - DOL to provide outreach and education
  - DOL dedicated website for guidance related to COBRA premium assistance

<http://www.dol.gov/ebsa/COBRA.html>

## Other Notices and Changes

### Revisions to:

- Initial notice
  - Revise to include new information in election notice
- SPD disclosures
- Revise or distribute SMM with new information in election notice

## AEI and Notices

AEI must notify the plan in writing if no longer eligible for premium assistance

- Notice to be provided to The Plan in time and manner specified by the DOL
- Penalty - 110% of the premium reduction after termination of eligibility
- Reasonable cause exception

## DOL and review of denials of AEI treatment

- Available if an individual requests treatment as an AEI and is denied the Plan
- DOL will provide for expedited review of the denial
  - Individual must make application to the DOL
  - Form of application to be provided by DOL
  - DOL has 15 business days after receipt of application to make a determination of individual's eligibility

## Noncompliance

- ERISA \$110/day penalties for failure to provide COBRA notices
- IRS Code \$100/day excise taxes for failure to comply with COBRA
- Lawsuits under ERISA or other
- Possible “other relief” for COBRA notice failures

## HR Simplified Services

- Our software is being updated to comply
- Waiting for Model DOL notice (3/17/09)
- Identify ALL current and potential AEI's
- Preparing two separate mailings
  - All involuntarily terminated QE's
  - All other QE's

All QB's from September 1, 2008 on must be re-notified.

## HR Simplified Services - Notice 1

### Notices to all Current and Potential AEI's

- Involuntary termination
- On or after 9/1/08 who are eligible for COBRA
- Who have elected COBRA
- No COBRA election is in effect
- QE's who's coverage terminated early
- QE's who are still in their 60 day election period.

## HR Simplified Services - Notice 2

### Notice To All Other QE's

- Regardless of QE
- Include notice of extended election period
- Right to premium reduction option based on their QE status.
- DOL review of denial information

# Thank you!

- We will post any new and additional information on our website: [www.hrsimplified.com](http://www.hrsimplified.com)
- E-mail questions to: [arra@hrsimplified.com](mailto:arra@hrsimplified.com)