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COBRA Subsidy Guidance for Employers

During the last month, we have been patiently waiting for the IRS, Department of Labor, and the Department of Health and Human Services to develop the revised COBRA Initial Notice and Election forms for the COBRA Subsidy plan under the American Recovery and Reinvestment Act (ARRA). Now that the revised COBRA Notice and Election forms have arrived, it is time for you to take action.

Below is guidance and our recommended action steps to meet your requirements under the ARRA changes to COBRA. If you have a COBRA vendor, they may be performing many of these steps for you.

Model Notice Forms that Must be sent by April 20, 2009

We are including three Model Notice forms as provided by the Department of Labor relating to the ARRA COBRA changes. One or more of these model forms will need to be completed by you and sent to Assistance Eligible Individuals (AEI).

1. [Model Notice in Connection with Extended Election Periods \(Special Notice\)](#) – This must be sent to all involuntarily terminated individuals with a qualifying event that occurred from September 1, 2008 to February 16, 2009.
2. [Model General Notice \(abbreviated version\)](#) – To be used for involuntarily terminated individuals already on COBRA with an effective date of September 1, 2008 or after.
3. [Model General Notice \(full version\)](#) – To be used for all Voluntary and Involuntary loss of coverage as well as other qualifying events with effective date as of February 17, 2009 and after.

[Click here to download the forms directly from the DOL](#)

Step 1 - Data Gathering

1. All employers need to determine which employees were involuntarily terminated between September 1, 2008 and December 31, 2009, and their qualified dependents. Employees who will qualify for the subsidy are now known as Assistance Eligible Individuals (AEI).
 - An involuntarily terminated employee is one who lost their job due to a lay off, reduction in work force, fired or whose position was eliminated.
 - A notice must also be mailed to those who have previously declined COBRA or terminated COBRA due to nonpayment during this time period.
2. The employer is NOT the “watch dog” in determining the adjusted gross income of the employee and spouse.



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- To qualify for the subsidy, an AEI's adjusted gross income must not exceed \$125,000 or \$250,000 for joint filers. AEI is responsible for determining the taxable effect of the subsidy, it is not a concern of the employer.
 - Electing the premium reduction disqualifies the individual for the Health Coverage Tax Credit. Additionally, certain high-income individuals may have to repay the amount of the premium reduction through an increase in their income taxes. If the amount earned for the year is above the parameters listed above, individuals may have to repay all or part of the premium reduction through an increase in their income tax liability for the year.
3. The earliest effective date of the subsidy is March 1, 2009, if your COBRA runs on a calendar month (per Federal guidelines).
 4. The Subsidy is only available for up to nine (9) months, regardless of the initial qualifying event date.
 5. The employee and dependents are eligible for benefits and coverage levels in which they were previously enrolled (prior to termination). Benefits included in the subsidy are medical, dental, vision, EAP, and HRA. (FSA is not eligible.)
 6. The employer is NOT required to "police" whether the participant has other insurance coverage. You must send out the notice if they qualify as listed above.
 7. If you have multiple plan options for your benefits (i.e. two medical plans offered), you must decide whether you will allow the eligible COBRA member the ability to change their option to a LOWER benefit plan during the first 90 days they are eligible for the subsidy. If you decide to offer this, this could mean that the option must be available to ALL active employees. Thus, offering a second open enrollment to your current employees.

Step 2 - Mailing of Revised Initial Notice and Election Form(s)

1. The notice and election form(s) must be mailed out First Class USPS by April 20, 2009 to the last known address on record for the AEI. This notice must be sent to all AEI's as determined in Step 1 above.
2. The employer needs to determine the 35% of the COBRA premium.
3. COBRA generally does not apply to plans sponsored by employers with less than 20 employees. Many States have similar requirements for small plans providing benefits through an insurance company. The premium reduction is available for plans covered by these State laws. (Wisconsin OCI stated they are one of these states which will mirror the Federal changes.)
4. For those employees who do not qualify for the subsidy, the employer should continue to utilize Model General Notice (full version). These individuals include qualifying events of divorce, death, and change in student/dependent status, legal separation, Medicare eligibility or voluntary termination.



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Step 3 - Receipt of Election Form(s) by Employer

1. The completed election forms must be received by the employer within 60 days of receipt by the AEI.
2. If the AEI elects COBRA coverage, and was not already enrolled in COBRA coverage, the employer must notify the carrier(s) to reinstate the coverage.
3. The AEI must send in the payment to bring them paid-to-date within 45 days of the receipt of the election notification.
4. The employer must notify their payroll department or payroll vendor of the AEI's election to take subsidized COBRA. Note: there are limited instructions on how to make this notification.

Step 4 - Employer Collection of Subsidy from Government

1. Complete Federal Form 941 quarterly or 941X Form (amendment form).
 - The COBRA subsidy amount is reimbursed by being claimed as a credit on the Form 941. The Form 941 has been revised to allow for this credit.
 - This credit is claimed on Line 12a of the January 2009 revision of the Form 941.
2. The subsidy credit can only be applied once the 35% AEI premium has been collected by the employer.
3. For AEI's who have already paid full COBRA premium for March and/or April, the plan administrator must credit the subsidized portion of the premium against future COBRA premiums (if the plan administrator reasonably expects the overpayment to be fully applied to future COBRA premiums within 180 days) or refund the subsidized portion within 60 days.
4. Those employers claiming the credit must maintain supporting documentation for the credit claimed. Payroll Departments must maintain all documentation on the subsidy eligibility and payments made for the credit claimed. Such documentation includes:
 - Information on the receipt, including dates and amounts, of the AEI's 35% share of the premium.
 - In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
 - In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the AEI.
 - Attestation of involuntary termination, 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.



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- Proof that notices were sent out to AEI's, and copies of the signed elections.

Disclaimer

1. While The Benefit Companies, Inc. are not a COBRA vendor, we are providing this information as a service for our clients. The guidelines listed above are based on information received by the US Department of Labor and the US Internal Revenue Service and are not intended to be legal or tax advice. Please consult a competent legal or tax professional.
2. We would be more than happy to recommend or obtain a proposal from our preferred COBRA providers to assist you through this process.

For More Information

Department of Labor -

For more information on the COBRA provisions and notice requirements under American Recovery and Reinvestment Act (ARRA), contact the U.S. Department of Labor's Employee Benefits Security Administration at: 1-866-444-3272, or visit www.dol.gov/COBRA

[COBRA Continuation Coverage Assistance Under the American Recovery and Reinvestment Act of 2009](#) (General Web page)

[Fact Sheet: COBRA Premium Reduction](#)

[FAQs About COBRA Premium Reduction For Workers And Their Families](#)

FAQs for [Consumers](#)

Internal Revenue Service –

For more information on the tax provisions of ARRA contact the IRS at: www.irs.gov

[COBRA Health Insurance Premium Subsidy](#)

[COBRA Answers for Employers](#)

The Benefit Companies -

Continue to watch our website for updates as we learn of them <http://www.benefitsinc.com/legislative.html>