



ARRA COBRA Provision Update

The American Recovery and Reinvestment Act (ARRA) was enacted on February 17, 2009. The Act provides for a 65% COBRA premium subsidy for a maximum of 9 months for involuntary terminations that occur between September 1, 2008 and December 31, 2009. The subsidy is effective prospectively only, for months beginning after the enactment date – generally March 1, 2009. It includes a special 60 day election period for any qualified beneficiary who is eligible for the subsidy and has not elected COBRA continuation as of the date of enactment.

For participants electing coverage under the special election period (not having elected coverage under the original COBRA election notice), the coverage would be prospective from the date of enactment and would not include any coverage prior to that date. The required 18 months of coverage would not be extended beyond the original 18 months from the initial qualifying event date.

The Act imposes an income limit threshold of \$145,000 for an individual or \$290,000 for joint filers. Taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers) are entitled to a proportionately reduced subsidy. Individuals have an option to make a permanent election to waive the right to the premium subsidy for all periods of coverage. This cannot later be revoked. Policing of this limitation appears to occur at the individual level, with recapture of the non-qualifying subsidy on their income tax return.

Employers are reimbursed for the subsidy by credits against federal income tax withholding and FICA payroll taxes. If the subsidies exceed payroll tax liabilities, the Secretary of Treasury shall reimburse the employer directly for the excess.

ARRA directs the Secretary of Labor to provide model language for the additional required notices within 30 days. It also provides authority to the Secretary of the Treasury to issue regulations or other guidance to carry out the provision.

The GOOD NEWS is that the provision in the original version of the act extending COBRA for beneficiaries over age 55 with 10 years of service to age 65 was deleted from the final version.

7 a.m. – 5 p.m.

Monday – Friday
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BENEFITS BRIEFING

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What needs to be done now?

- First, calm down and be patient. The Secretary of Labor has 30 days to provide model notice language and will most likely take all or most of those days. The Secretary of the Treasury is responsible for issuing regulations and other guidance on administration.
- Tri-Star will immediately add new COBRA qualifying event codes of “Involuntary Termination of Employment” and “Voluntary Termination of Employment” to replace the current “Termination of Employment” code. This will allow us to distinguish between voluntary terminations not eligible for the subsidy and involuntary terminations. Employers will need to do the same.
- Employers will need to “look back” at COBRA qualifying events on or after September 1, 2008 and identify qualified beneficiaries (involuntary terminations) eligible for the subsidy and the special 60 day election period notice. Once model language is available, the required notices can then quickly be sent out.
- It appears that notices will be required for all individuals who terminated after September 1, 2008, regardless of their eligibility for this subsidy. We assume guidance will include separate language for those eligible for the subsidy and those not.
- For COBRA Administration clients, Tri-Star will prepare a list of all COBRA eligible notices sent for “Termination of Employment” with effective dates of 9/1/08 and later to assist employers in reviewing and/or identifying those eligible for the subsidy and 60 day special enrollment.
- Tri-Star will revise their COBRA reports to identify the subsidized participants and assist employers in reporting the subsidies to be recovered from payroll taxes.

Tri-Star will continue to monitor the situation, review guidance as issued and react quickly.

For the language in the final bill, see the Conference Agreement on pages 40-41 at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_record&docid=cr12fe09-149.pdf .