



Employee Benefits Security Administration
U.S. Department of Labor

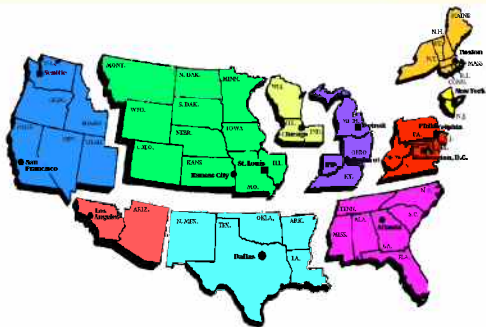
EBSA, COBRA and the COBRA Provisions in the American Recovery and Reinvestment Act of 2009

EBSA's Mission Statement

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- The Employee Benefits Security Administration protects the integrity of pensions, health plans, and other employee benefits for more than 150 million people. Our Agency mission is to:
 - Assist workers in getting the information they need to exercise their benefit rights
 - Assist plan officials in understanding the requirements of the relevant statutes in order to meet their legal responsibilities
 - Develop policies and regulations that encourage the growth of employment-based benefits
 - Deter and correct violations of the relevant statutes through strong administrative, civil and criminal enforcement efforts to ensure workers receive promised benefits

EBSA's Field Offices





- EBSA has jurisdiction over:
 - Employee Retirement Income Security Act (ERISA)
 - The Consolidated Omnibus Budget Reconciliation Act (COBRA)
 - The Health Insurance Portability and Accountability Act (HIPAA)
 - The Newborns' and Mothers' Health Protection Act (Newborns')
 - Mental Health Parity Act (MHPA)
 - Women's Health and Cancer Rights Act (WHCRA)

COBRA

**Consolidated Omnibus Budget Reconciliation
Act of 1985**

The Law

- COBRA amended:
 - ERISA (Sections 601-608)
 - Internal Revenue Code (IRC Sec. 4980B)
 - Public Health Service Act



What is COBRA Continuation Coverage?

- It is continuation coverage that group health plans must offer to qualified beneficiaries (i.e., employees, spouses, dependents) when group health plan coverage would otherwise be lost due to a qualifying event (such as termination or reduction of hours of employment, divorce, death of covered employee).

Who is Entitled to COBRA?

- An individual will be entitled to COBRA if 3 basic requirements are met:
 - The group health plan is covered by COBRA (plan coverage)
 - A qualifying event occurs (QE)
 - They are a qualified beneficiary (QB)



Plans Covered by COBRA

COBRA applies to:

- Group health plans
 - Sponsored by private-sector employers, or
 - Employee organizations (labor unions)
- That employed at least 20 employees in previous calendar year

Other laws may have similar provisions for group health plans sponsored by:

- Federal government
- State or local governments

Qualifying Events & Duration of Coverage

- QEs for **Covered Employees**:
 - Voluntary or involuntary termination of EE's employment for any reason other than "gross misconduct" (18 months)
 - Reduction of EE's hours of employment (18 months)
- QEs for **Spouse and Dependent Child** of covered EE:
 - Termination of covered EE's employment for any reason other than "gross misconduct" (18 months)
 - Reduction in hours worked by covered EE (18 months)
 - Covered EE becomes entitled to Medicare (36 months)
 - Divorce or legal separation of spouse from covered EE (36 months)
 - Death of covered EE (36 months)
- In addition to above, a QE for a **Dependent Child**:
 - Loss of "dependent status" under the plan rules (36 months)
- Other events: 11-month Disability Extension and Multiple Qualifying Events

BASIC COBRA Operation

- Plan administrators are required to notify qualified beneficiaries upon many qualifying events
- Qualified beneficiaries are required to notify plans about some qualifying events
- Qualified beneficiaries can be required to pay 102% of the cost of coverage
- Coverage is effective from date of qualifying event

ARRA COBRA Overview

- **COBRA Subsidy**
 - Certain qualified beneficiaries can pay a reduced premium of 35%
 - Remaining 65% reimbursed to employer, plan, or insurer via a payroll tax credit
 - Can last up to 9 months
 - Affects periods of coverage beginning on or after February 17, 2009
- **Extended time periods for COBRA for certain individuals**
 - Certain individuals getting from PBGC (for life)
 - Certain TAA eligible individuals (30 months)

Overview (continued)

- Subsidy available for plans covered by Federal COBRA *and State continuation laws*
- Applies to all group health plans excluding Flexible Spending Plans
- Includes second election period for plans subject to Federal COBRA
 - Plans subject to State continuation MAY have the Extended Election Period

Where to get Assistance

EBSA's dedicated COBRA Web site at www.dol.gov/COBRA

Individuals can subscribe to the Web page to be notified about updates and to access links to important information, including:

- The statute
- DOL's Model Notices (in English and Spanish)
- IRS Notice 2009-27 and other IRS info
- Frequently asked questions for employees and employers
- Archived copies of WebCasts

Assistance Eligible Individual

- Generally, an individual:
 - Who is a qualified beneficiary because of the involuntary termination of employment during the period from September 1, 2008 through December 31, 2009;
 - Who is eligible for COBRA continuation coverage at any time during the period; AND
 - Who elects coverage
- Both the involuntary termination and the loss of coverage must occur between September 1, 2008 and December 31, 2009.

Assistance Eligible Individual- Involuntary Termination

- **Definition of Involuntary Termination in IRS Notice 2009-27:**
 - “An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services...”
- **Includes:**
 - Layoffs
 - Failure to renew a contract at the time contract expires
 - Retirement, IF the employer would have terminated the employee’s services, and the employee knew it
 - Employees accepting a severance or buyout

Assistance Eligible Individual- Involuntary Termination

- **Involuntary termination excludes these qualifying events:**
 - Employee’s death
 - Divorce
 - Loss of dependent child status
 - Reduction in hours (where the employee is still working some hours)

Maximum Duration

- **Premium reduction generally available**
 - From later of:
 - Beginning of COBRA continuation coverage; or
 - Date of enactment.
 - Until earliest of:
 - 9 months;
 - Eligibility under other group health plan or Medicare; or
 - End of COBRA continuation period.



Eligibility for Other Coverage

Eligibility for the Subsidy is eliminated if the AEI is eligible for any other group coverage

- Eligibility for other group coverage
 - Employer or employee organization-sponsored plan (not individual coverage)
 - Must have become "eligible" after February 17, 2009
 - Eligibility is counted as of the date the person could become covered – does not include any waiting period

Medicare (not Medicaid)

Extended Election Period

Reminder: Extended or second election period only applies to plans subject to Federal COBRA

ARRA provides "second chance" to elect COBRA for certain individuals who do not have COBRA coverage on the date of enactment.

- Election limited to individuals who are qualified beneficiaries because of an employee termination any time from September 1, 2008 to February 17, 2009 under a plan subject to Federal continuation coverage, and either did not elect COBRA, or elected and subsequently discontinued it
- Individual has 60 days after receiving the notice to elect COBRA
- Resulting COBRA coverage begins with the first period of coverage after enactment

Extended Election Period

NO REACH BACK

- Coverage retroactive to the first period of coverage beginning on or after February 17, 2009 – *not back to the actual qualifying event date.*
- Does NOT extend the total period of available COBRA coverage measured from the date employment ended.

NO BREAK IN COVERAGE

- A break in coverage beginning on the date of the qualifying event and ending on the first period of coverage beginning on or after February 17, 2009 will not count toward a 63-day break in coverage.

Miscellaneous Provisions

Independent Elections – Individuals who are otherwise qualified can still elect COBRA independently and get the subsidy.

Coordination with the Health Care Tax Credit – If an AEI received the premium reduction for any month during the taxable year, then they are not eligible for the HCTC for that month.

Switching Benefit Option – If an employer offers additional coverage options to active employees, the employer may allow AEIs 90 days to switch options in conjunction with their COBRA election.



Notices and Plan Information

Plan sponsors are required to provide information about the COBRA Premium Reduction to individuals who become eligible to elect COBRA on or after September 1, 2008 through December 31, 2009.

- The Department of Labor provided model notices.
- Employers can amend existing election notices or include information about the premium reduction separately.
- Failure to provide the additional information shall be treated as a failure to meet the notice requirements.

ARRA Full General Election Notice

Plans subject to the Federal COBRA provisions must send the General Election Notice to:

- **All** qualified beneficiaries (not just covered employees)
- Who had a qualifying event at any time from September 1, 2008 through December 31, 2009, and
- Who have not yet been provided an election notice or who were provided an election notice on or after February 17, 2009 but not the additional ARRA information.

Abbreviated General Election Notice

An abbreviated version of the General Notice that includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information. This notice may be sent in lieu of the full version to:

- All qualified beneficiaries who experienced a qualifying event on or after September 1, 2008,
- Have already elected COBRA coverage, and
- Still have it.

Notice in Connection with Extended Election Periods

Plans subject to the Federal COBRA provisions must send the Notice in Connection with Extended Election Periods to any **assistance eligible individual** who:

- Had a qualifying event at any time from September 1, 2008 through February 17, 2009; and
- Either did not elect COBRA continuation coverage or elected it but subsequently discontinued it.
- This notice must include information on ARRA's additional election opportunity, as well as premium reduction information, and must have been provided by April 18, 2009.



Alternative Notice

- Insurance issuers that provide group health coverage must send the Alternative Notice to persons who become eligible for continuation coverage under State law.
- Continuation coverage requirements vary among States. In addition to providing the ARRA information, issuers should conform those notices to applicable State law.

Premium Reduction Calculations

The 35%/65% split is applied to the cost that would otherwise be charged to the AEI for COBRA:

- If 102% of the premium is charged to the individual, the split applies to the 102%
- If the employer pays part of the premium as part of a layoff or severance arrangement, the split still applies only to the part that would be charged to the employee
- Not affected by payments made by anyone other than the employer
- Doesn't matter what the employer contribution was prior to the QE
- Same COBRA grace periods apply

Tax Mechanics

Subsidy is not treated as taxable income for the qualified beneficiaries.

Employer, plan, or issuer receives reimbursement through payroll taxes.

Form 941

- Although employers generally deposit their payroll taxes either biweekly or monthly, they file the Form 941 quarterly.

Overpayments and reconciliations

- If more is paid out in subsidy than received in overall payroll taxes, then the IRS sends a refund.

Recapture/Penalty Tax

If an assistance eligible individual fails to notify the plan of eligibility for other coverage, 110 percent tax generally applies to premium assistance received after eligibility

Employer is not responsible for refunding the subsidies to the IRS for individuals who failed to notify the plan that they were eligible for other coverage

If assistance eligible individual's income for the same year exceeds certain levels (\$125,000 for individuals or \$250,000 for those filing joint returns), all or part of premium assistance received is repaid with a 100 percent tax.

Expedited Review

If the plan determines that a QB is not eligible for the premium reduction, a QB can request an expedited review of the denial.

The Department of Labor handles appeals related to private sector employer plans subject to ERISA's COBRA provisions.

The Department of Health and Human Services handles appeals for governmental employees and those related to group health insurance coverage provided pursuant to state continuation coverage laws.

The Departments are required to make a determination regarding appeals within 15 business days after receiving a completed application for review.

Appeals to the Department of Labor must be submitted on a specified form, available at www.dol.gov/COBRA.

Additional Resources

- Guidance and other information are available on the Department of Labor Web site at www.dol.gov/COBRA. You can subscribe to the Web page to be notified about updates.
- Individuals can also call [1-866-444-3272](tel:1-866-444-3272) to speak to an EBSA Benefits Advisor.
- Information about ARRA's premium reduction provisions is also available from the **IRS** and the **Department of Health and Human Services**, which, along with the Department of Labor, share responsibility for COBRA and the new requirements added by ARRA.

Questions?