

# Overview and FAQs on the New COBRA Requirements of the American Recovery and Reinvestment Act of 2009 (ARRA)

## What is it?

- A nine-month 65% COBRA subsidy for involuntarily terminated employees. If the former employee pays 35% of the COBRA premium; the employer fronts the other 65% and is reimbursed after the quarterly 941 or by reducing their payroll taxes per payroll.
- A “second chance” election period for individuals who were involuntarily terminated after 9/1/08 and did not elect COBRA at the time of termination, or who elected COBRA but coverage was terminated.
- Applicable to all plans which COBRA or state mini-COBRA laws apply, other than FSAs.

## Who is considered an Assistance Eligible Individual (AEI)?

- Individuals who were involuntarily terminated between 9/1/08 and 12/31/09 for reasons other than gross misconduct; and
- who are, or would have been, COBRA-qualified beneficiaries; and
- are not eligible for any other group (including their spouse’s group) or Medicare coverage; and
- have a modified adjusted gross income less than \$125,000 (or less than \$250,00 for joint filers); and
- who timely elect the subsidized COBRA and pay their 35% premium

Individuals with an adjusted gross income above \$125,000 (\$250,000 for joint filers) may be AEIs but they may be taxed on all or a portion of the premium subsidy. Note: the income burden is on the individual and not the former employer. If at the end of the year, the individual’s income exceeds these limits, they are assessed a tax so the IRS can recoup the stimulus amount paid to the former employer.

## What are the Notification Requirements?

On or before April 18<sup>th</sup> 2009, all COBRA qualified beneficiaries with a termination date on or after September 1, 2008 must be sent notice of the COBRA subsidy regardless if they are AEIs.

### **For Individuals Terminated Between 9/1/08 and when re-notification letters are sent:**

These individuals should have already received a standard COBRA Election Notice from the employer or TPA. Regardless if they were voluntarily or involuntarily terminated, they are now required by law to be re-sent new Election Notices outlining their rights under the new stimulus COBRA along with the revised prices. Sending letters to all terminated employees who were on group benefits during this period should satisfy this requirement.

The revised Election Notice should also address all three of the following scenarios:

#### **If the individual DID NOT ELECT COBRA with the first Election Notice:**

They can now elect COBRA starting on 3/1/09 and it will run through their original 18 month end date had they elected COBRA at termination. *However, only the first 9 months will be at the subsidized rate.*

#### **If the individual DID ELECT COBRA with the first Election Notice:**

These individuals are eligible for the subsidized COBRA premium beginning 3/1/09. This includes individuals who elected coverage but then coverage was terminated (most likely due to non-payment). *The first 9 months will be at the subsidized rate but coverage may continue through the normal COBRA period (18 months from the original loss of coverage date).*

#### **If the individual is still in their COBRA ELECTION PERIOD from the first Election Notice:**

They can elect COBRA starting on their loss of coverage date. Subsidized COBRA can begin 3/1/09.

## **For Individuals Terminated after the re-notification letters are sent and 12/31/09**

These individuals should be sent one of two different Election Notices:

**Voluntary Terminations** should be sent a standard COBRA Election Notice.

**Involuntary Terminations** should be sent a COBRA Election Notice that addresses their rights under the stimulus COBRA law and details the reduced premium amount.

## **Electing COBRA Coverage**

Once notified, the AEI has 60 days to elect COBRA coverage. They must submit the required information to the former employer who determines if they are eligible for the COBRA subsidy. If they are determined to be eligible and make their 35% premium payment, the former employer must enroll them in COBRA with the insurance company and pay the other 65% of the premium due. If the employer does not agree that they are eligible for the COBRA stimulus, the individual has the right to appeal the employer's decision with the Department of Labor.

## **Employer Substantiation Responsibilities**

In order to receive reimbursement from the IRS, an employer must claim the tax credit on their quarterly 941 or their payroll taxes. The tax credit can only be claimed after the AEI pays their 35% portion.

### **Supporting documentation for subsidy reimbursement:**

- Attestation of the AEI's involuntary termination, including date
- Proof of eligibility for COBRA coverage during time of subsidy
- Receipt date and dollar amount of the AEI's 35% premium payment
- Proof of premium payment to insurance company
- For each subsidized employee, track their SSN, subsidy amounts, type of coverage (ee, ee and spouse, etc.)

# Collecting Your Reimbursement From the IRS

## Two IRS Reimbursement Methods

1. Claim a refund at the end of the quarter on your 941
2. Reduce your payroll taxes on a per-payroll basis

### To Claim a Refund at the End of the Quarter

If the total of payroll tax deposits plus the total of COBRA premium assistance payments is greater than the taxes owed, a refund is due the employer.

At the end of each quarter you'll complete your 941 with the total amount of COBRA premium assistance payments on line 12a and the number of individuals who received the COBRA subsidy on line 12b.

### For example:

- The total premium for family coverage is \$1,000.
- Two assistance eligible individuals elect COBRA and each pay 35% of the \$1,000 premium which is \$350.
- The employer must pay \$2,000 in premiums to the insurance company. The employer has the 35% premium payments from the AEIs totaling \$700, and the employer must front the other 65% which is \$1,300.
- On line 12a of the 941 the employer would enter the \$1,300 they subsidized in premium payments.
- On line 12b the employer would enter 2 for the number of AEIs receiving assistance.
- The 941 tax deposits along with the COBRA assistance payments should exceed the total liability by \$1,300.
- The IRS issues the employer a check for the \$1,300.

### **To Claim a Refund by Reducing Payroll Taxes During the Quarter**

Instead of waiting until the end of the quarter to claim your reimbursement, this method provides you an immediate refund with your next payroll.

#### **For example:**

- The total premium for family coverage is \$1,000.
- Two assistance eligible individuals elect COBRA and each pay 35% of the \$1,000 premium which is \$350.
- The employer must pay \$2,000 in premiums to the insurance company. The employer has the 35% premium payments from the AEs totaling \$700, and the employer must front the other 65% which is \$1,300.
- On the next payroll the employer can reduce the payroll tax deposit by \$1,300.
- At the end of the quarter the 941 tax deposits along with the COBRA assistance payments should equal the total liability.

## Frequently Asked Questions (FAQs)

**Q: There is reference to the 3/1/09 start date for the stimulus COBRA. Our plan's coverage ends on the day of termination. Does the 3/1/09 date apply?**

A: No, the start date for the stimulus COBRA could be as early as 2/18/09. The 3/1/09 date is used since the majority of plans are on a calendar month basis.

**Q: What does "involuntary termination" mean?**

A: We are still waiting for clarification as to how the Department of Labor will interpret this.

**Q: If the employee did not have medical coverage at Date Of Termination, can he or she elect COBRA now under the extended election period?**

A: No

**Q: Can the former employee add his or her spouse/dependents during the extended election period?**

A: A spouse or dependent that was not covered at the time of the employee's termination cannot be added to COBRA during the extended election period because they are not COBRA "qualified beneficiaries" and hence, not AEs. A former employee can add a spouse or dependent later during the next annual enrollment period or upon occurrence of a HIPAA Special Enrollment event. An exception to this is made for children born to or adopted by a former employee who is eligible for the subsidy and who were born between September 1, 2008 and the date of the former employee's COBRA election. These children receive special treatment under COBRA due to their HIPAA special enrollment rights. If the former employee does elect COBRA during the special election period, the plan must treat the new baby/adopted child as a qualified beneficiary who is eligible for COBRA coverage and the COBRA premium subsidy. The child's coverage will begin when the former employee's coverage begins.

**Q: What happens if you have any employee who was on COBRA, discontinued coverage and is now covered under another plan whether it be through a new employer's group policy, spouse's plan or on their own and they decide that it's cheaper to go back on COBRA?**

A: Former employees who are eligible (actual coverage not required) for coverage under another group plan (another employer) or Medicare are not eligible for the subsidy or to enroll in COBRA under your plan now as part of the new extended election period. Former employees with individual coverage would be able to take advantage of the subsidy and extended election period. Of course, you won't know the status of these former employees' other coverage. All you have to do is send the notices and process the elections. They are supposed to tell you when they are no longer eligible for the subsidy and are subject to fine by the IRS if they don't. You should keep good records about how you substantiated eligibility for the subsidy in case the IRS chooses to audit your quarterly Forms 941 and finds an underpayment of payroll tax due to an overstatement of subsidy.

**Q: Is the employer supposed to know who is a high-income individual and report the tax to the IRS?**

A: No, an employer is not responsible for knowing the modified adjusted gross income of an AEI. However, if the AEI reports his or her high-income status to you and requests that you terminate their subsidy, you must comply or risk an underpayment of employment tax penalty. We anticipate the 2009 Forms W2 and 1040 will include reporting of the subsidy amount so that any tax due by high-income individuals can be recaptured. If you know that you paid a former employee a significant amount more than \$145,000 in 2009 before you terminated him or her, you might want to warn them about the potential tax on the subsidy for high-income individuals.

**Q: As part of our severance agreements, we pay 100% of the COBRA premium for the former employee for the first 6 months of COBRA. What effect does this have on subsidy eligibility?**

A: For any month in which the employer pays 100% of the COBRA premium, the former employee is not eligible for the subsidy. It is unclear whether the employer's payment of the full premium postpones the start of the 9-month period of subsidy or reduces it.

**Q: Does the second chance election restart the 18-month COBRA period?**

A: No, the 18 month COBRA period is measured from the original qualifying event date.

**Q: After my former employee terminated, our plan had open enrollment. He did not elect COBRA upon DOT. Does he get a chance to redo open enrollment and change his coverage option?**

A: No, you must only offer him the option he had the day before his qualifying event date. You can, but are not required to, allow him to elect a cheaper plan option.

**Q: What happens if the former employer of the AEI goes out of business?**

A: COBRA coverage and the subsidy terminate when the employer (determined on a control group basis) no longer offers any group health coverage to any employee.

**Q: How long after electing COBRA during the extended election period does an AEI have to pay the first premium due?**

A: We are still waiting for clarification from the Department of Labor.

**Q: We are self insured for health insurance. What recourse does the IRS have to verify the amounts being deducted on the 941?**

A: The IRS has audit rights and can verify this information at any time.

**Q: Currently we charge 102% of the premium. Can we now charge 37% to these individuals?**

A: No, you can only charge 35% of the 102%.

Example - \$1,000 rate X 102% = \$1,020

Employee would owe \$357 (35%)

Employer would be reimbursed \$663. (65%)

Insurance bill would still be \$1,000

Employer or TPA would receive \$20

**Q: If I don't claim a credit during a quarter, can I claim it the next quarter?**

A: Yes, as long as it is in the same calendar year.

**Q: What if all of my assistance payments exceed all of my taxes during a pay period. Do I get a refund?**

A: Not during a pay period. The balance would be applied against the taxes in the next payroll. Refund checks are only issued by the IRS at the end of the quarter.

**Q: The stimulus law states that it is for employees terminated during September 1st of 2008. Will Paycom send the re-notification letter on our behalf?**

A: If you are a Paycom COBRA client, we will do that for you during the first few weeks of April 2009, after the Department of Labor issues their language

**Q: What is the cost for Paycom to administer my COBRA?**

A: Please get with your sales consultant and they will be glad to provide you with that information.