



AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) OF 2009

COBRA QUICK FACTS AND REFERENCES

February 17, 2009 (“the Enactment Date”) President Obama signed the economic stimulus package, otherwise known as the American Recovery and Reinvestment Act of 2009 (“the Act”), into law.

[American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009)] **For a copy:**
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.txt.pdf

Assistance Eligible Individual (AEI)

An AEI is a qualified beneficiary is someone:

- (1) who at any time during the period that begins September 1, 2008, and ends December 31, 2009, is **eligible for COBRA** (due to involuntary termination);
- (2) who **elects COBRA**; and
- (3) whose qualifying event is the **involuntary termination** (except for reasons of gross misconduct) of a covered employee's employment during such period.

FAQ for Employees on the DOL website posted March 19, 2009 included the following clarification relative to involuntary termination:

Q16: I was laid off from my job in December. Is that an involuntary termination of employment?

Being told not to come back to work until further notice is a termination of employment for purposes of COBRA and the ARRA premium reduction provisions.

COBRA Premium Assistance

First of all, the Act provides for 65% COBRA premium Subsidy for up to nine months for certain assistance eligible individuals (AEIs) for periods of coverage beginning on or after February 17, 2009--generally March 1. The Act is effective on the date of enactment (February 17, 2009) and provides premium assistance, for most plans, as of March 1, 2009.

Second, employees who lost coverage on or after September 1, 2008, but who did not make a timely COBRA election, or who allowed COBRA coverage to lapse, are provided an extended opportunity to elect (or re-elect) COBRA (Under ARRA, this special election period opportunity is not required to be provided with respect to State continuation coverage that is provided pursuant to State insurance law. A State can take action, however, to provide an additional election period in its continuation coverage program for individuals involuntarily terminated from September 1, 2008 through February 16, 2009 in order for them to request premium assistance based upon involuntary termination occurring during that period. For more information on rights and responsibilities regarding election periods under State law, contact your State insurance commissioner's office or Center of Medicare and Medicaid Services CMS.)

For any AEI who became entitled to COBRA before February 17, 2009, the plan administrator must provide a notice of the assistance and the extended period to elect COBRA, within 60 days after February 17, 2009 (**April 18, 2009**).

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COBRA COMPLIANCE UNDER ARRA RESOURCES

IRS RELEASES REVISED FORM 941 AND Q&As ABOUT CLAIMING SUBSIDY

[IRS Form 941 for 2009: Employer's Quarterly Federal Tax Return (Jan. 2009); "COBRA: Answers for Employers" (Feb. 26, 2009); IRS News Release IR-2009-15 (Feb. 26, 2009)]

For a copy of the Form: <http://www.irs.gov/pub/irs-pdf/f941.pdf>

For a copy of the Instructions: <http://www.irs.gov/pub/irs-pdf/i941.pdf>

For a copy of the Q&As: <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>

==> **Revised Form 941.** Employers that make COBRA premium assistance payments for AEIs are allowed a payroll tax credit for such payments on Form 941. The instructions for line 12a of Form 941 explain that an employer's premium assistance payments should be 65% of the total unreduced COBRA premiums for AEIs. The instructions also state that for self-funded plans, COBRA premium assistance payments are treated as having been made for each AEI who pays 35% of the COBRA premium. In addition, the instructions for line 12b direct the employer to enter the total number of individuals for whom COBRA premium assistance payments were reported on line 12a.

In addition, the Q&As state that the **due date for the first quarter 2009 Form 941 is not being extended.** They explain, however, that under a transition rule, the regular premium amount may continue to be paid for up to two months after the enactment of ARRA (e.g., for March and April), and that the Subsidy can be provided retroactively. The employer can decide to either offset the payroll tax deposits or claim the Subsidy as an overpayment at the end of the quarter.

DOL ADDS WEBPAGE AND POSTS FACT SHEET, FAQs, POSTERS, AND FLYERS ON THE NEW COBRA PREMIUM ASSISTANCE RULES

[COBRA Continuation Coverage Assistance Under the American Recovery and Reinvestment Act of 2009 Webpage] Available at: <http://www.dol.gov/ebsa/COBRA.html>

The DOL has set up a new webpage with information on COBRA continuation premium assistance under the American Recovery and Reinvestment Act of 2009 (ARRA). Among other things, the webpage currently includes links to the new COBRA statutory provisions and legislative history, a COBRA premium reduction fact sheet, employee and employer FAQs, job loss posters, and flyers for employees and employers. The webpage allows readers to subscribe to the page for notification of updates as guidance, educational information, and tools are added.

The Department of Labor (DOL) **released the model notices on March 19, 2009** that can be used by employers to satisfy the Notice provisions of the American Reinvestment and Recovery Act (ARRA) of 2009. Updated versions of the "**Premium Reduction FAQs**" have been posted in both Employer and Employee versions and address common questions and concerns.

Most notably, you will find there are questions that address the second election period as it relates to State Continuation and questions about layoffs.

Please contact our COBRA Specialist Sonja Kerr at skerr@bdgflex.com if you have questions, concerns or would like information on our COBRA Administration services.