

Best Practices for administering COBRA under ARRA

Make Qualified Beneficiaries affirmatively “Elect” the COBRA Subsidy:

Once the Qualified Beneficiary elects COBRA, the ARRA premium subsidy cannot begin until the employee also chooses the premium subsidy. The reason is as follows:

To be eligible for the premium subsidy the individual:

- 1) Must qualify as to income (\$145,000 if single and \$290,000 if married filing jointly and partial phase-out of at incomes of \$125,000-\$145,000 if single and \$250,000-\$290,000 if married filing joint).
- 2) Must not be eligible for coverage under any other group health plan or for Medicare benefits
- 3) Must suffer an “involuntary termination” of employment, not just an involuntary termination of health coverage between September 1, 2008 and December 31, 2009, is eligible for COBRA and elects COBRA.

In the case of #1, the COBRA subsidy is recaptured as an increase in the individual’s Federal income tax liability possibly triggering an under-withholding penalty. The individual must be provided the subsidy unless the individual has notified the plan that the individual has elected a permanent waiver of the subsidy. See Notice 2009-27 # 45 and 46.

In the case of #2, if the employee receives ARRA subsidies and does not qualify, the tax penalty that applies is 110% of the premium reduction improperly received. The employer or the COBRA administrator usually cannot know this information without asking. Even if the employer “knows”, the employer is still best advised to get the election form the employee in writing.

The Qualified Beneficiary must also notify the group health plan if eligibility changes. If an assistance eligible individual becomes eligible for other group health plan coverage but does not enroll in the other group health plan coverage, the individual is no longer eligible for the subsidy as of the date the individual becomes eligible. The same is true when an assistance eligible employee’s spouse becomes eligible for his/her employer’s group health plan. If the spouse waives coverage for either himself/herself or dependent coverage, subsidy eligibility ends. The election of ARRA subsidy notice is best used to also notify the Qualified Beneficiary of this obligation or face the tax penalty consequences.

Keep in mind that COBRA Qualifying Events such as: loss of dependent status due to aging out of eligibility, divorce, death of an employee or absence due to illness or disability are not involuntary terminations of employment and do not qualify for the ARRA subsidy. Generally a reduction in hours also does not qualify. See Notice 2009-27 Q-3 for more on this topic.

Church Plans:

COBRA subsidies apply only to involuntary terminations under health plans that are subject to COBRA. Plans that are not subject to COBRA, such as Church Plans, that voluntarily offer COBRA are not eligible for COBRA subsidy benefits.

Severance Packages and COBRA Subsidies:

A termination elected by an employee in return for a severance package is an involuntary termination that is eligible for subsidy when the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee's group will be terminated.

Proceed with caution as eligibility for subsidy depends on how the employer treats their health coverage. Workers, who could be eligible for the COBRA subsidy based upon when they lost their job, could become ineligible if the employer continues health coverage as part of the severance package on a basis substantially the same as for active employees until after December 31, 2009. Employers that include coverage of COBRA premiums in severance packages must state clearly that an employee's COBRA coverage begins immediately and is counted against the months of eligible COBRA coverage the employee can receive in order to preserve eligibility for the subsidy.

Aside from the subsidy issue, be sure to check with your insurer to make sure the insurer does not object to what you propose. If self-insured, severance packages must meet nondiscrimination rules under Section 105(h).

The option to allow an assistance eligible individual a plan change:

Under ARRA you may allow an assistance eligible individual to elect different coverage. You are only obligated to offer the plan the QB was enrolled in as of the qualifying event. The COBRA subsidy will apply to the new coverage. However, the new coverage cannot have a higher premium than the QB's existing plan choice. With a 65% premium subsidy it makes little financial sense for an individual to select a cheaper plan since the QB will bear the full cost of the associated lower reimbursements and only 35% of the cost of the richer benefit plan. With a special 90-day election period to make such a change, if permitted, administration will be even more of a nightmare than it already is. Furthermore, the QB will have the right to change plans at Open Enrollment anyway.

Open Enrollment:

Although an assistance eligible individual may not increase his/her subsidy amount by switching to a more expensive plan during the special optional 90-day election period described above, at open enrollment be aware that QBs who change to richer plans will be entitled to a richer subsidy.

Another question that may come up at open enrollment is whether or not dependents added to the QB's plan at open enrollment qualify for the subsidy. The answer is "NO". COBRA subsidies apply only to QBs who were covered on the plan the day before the Qualifying Event. Also individuals covered under COBRA who are not Qualified Beneficiaries are not eligible for the subsidy.

Vision and Dental-Only Plans:

The premium reduction is available for these plans. This includes "voluntary" vision-only or dental-only plans whether or not the employer pays for a portion of the cost for active employees.

For further information go to www.dol.gov/COBRA