



Flexible Spending Accounts

As of 3/1, transit accounts will match the current maximum deductions allowed for parking. Therefore, all parking and transit account maximums will be \$230.00 a month. At this time, the language in the law indicates that this is only through 2010. There is a possibility that Congress will sign this into permanent law by the end of the year, however at this time, the message is this temporary change in maximum is only through 12/31/10.

COBRA Changes

There are many changes to the COBRA legislation that went into effect on 2/17/09 with the American Recovery and Reinvestment Act of 2009 (ARRA) and some of the details are still getting worked out. However, at this time we know:

Applicability

- Provides a 65 percent federal government subsidy of COBRA continuation coverage premiums for a maximum of nine months for certain individuals who are COBRA qualified beneficiaries because of a covered employee's involuntary termination of employment. Federal COBRA includes continuation of Medical, Dental and Vision coverage.
- Requires employers to pay the 65 percent portion upfront, and then allows them to deduct those costs from their Social Security and Medicare taxes, on a quarterly basis.
- Retroactively allows workers who became jobless as early as Sept. 1, 2008 and rejected COBRA coverage to reconsider and receive COBRA benefits.

Plan administrators of group health care plans subject to COBRA must:

- Implement administrative procedures necessary to provide the subsidy, including putting new COBRA letters together.
- Provide notices required by the ARRA to COBRA qualified beneficiaries who are eligible for the subsidy, immediately.
- Implement the extended COBRA coverage periods.

In addition, group health plan documents or SPDs will need to be amended to incorporate these changes.

New Update – COBRA generally does not apply to plans sponsored by employers with less than 20 employees. Many States have similar requirements for small plans providing benefits through an insurance company. The premium reduction is available for plans covered by these State laws. **(updated 3/3/09)**

IRS Releases Guidelines and updated 941 form for businesses to gain tax credit (updated 3/3/09) – notice was received on 2/26/08 that the IRS has released guidelines, FAQs & an updated 941 form for businesses to get the quarterly tax credit. This information can be found by the following link:

<http://www.irs.gov/newsroom/article/0,,id=204505,00.html>

The employer must also maintain documentation to support the credit claimed to the government (keep on file not to be submitted):

- Receipt of dates and amounts of the eligible individual's 35% share of the premium payment
- Copy of COBRA invoice from carrier, with proof of timely payments
- Report or other record documenting: social security number; amount of subsidy reimbursed for each employee & tier break out
- Proof of coverage between 9/1/08 through 12/31/09 and the election notice for COBRA
- Confirmation of involuntary termination – to include: the date of involuntary termination for each COBRA participant the employer is requesting the subsidy
- If a self funded plan – proof of premium & coverage for each individual

The IRS has released updated Q&A's for Employers (updated 3/31/09). This information can be found on the following link:

<http://www.irs.gov/newsroom/article/0,,id=204708,00.html>

Frequently Asked Questions on COBRA Premium Subsidy

What premium subsidy does the ARRA provide?

The government is subsidizing 65% of the COBRA premium actually charged to an 'assistance eligible individual' (AEI) for up to 9 months, starting March 1, 2009.

How do I define "assistance eligible individuals"?

An AEI is a COBRA qualified beneficiary who meets all of these criteria:

- Someone who is eligible for COBRA coverage at anytime between Sept. 1, 2008 & Dec. 31, 2009.
- Elects COBRA coverage either during the original COBRA election period or during the special election period.
- Is a COBRA qualified beneficiary because of an involuntary termination of a covered employee's employment (other than for gross misconduct) that occurs on or after Sept. 1, 2008 and on or before Dec. 31, 2009.

An AEI may be a covered employee or a covered employee's covered spouse or dependent child who became a qualified beneficiary because of the involuntary termination of the covered employee's employment.

The subsidy will not apply for any months that begin after the qualified beneficiary becomes eligible for coverage under another group health plan or Medicare.

ARRA treats assistance eligible individuals who pay 35 percent of their COBRA premium as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the employer, insurer or plan for the excess. **(updated 3/3/09)**

Is there an Income Limitation for AEI?

A qualified beneficiary is not entitled to a COBRA subsidy during a year in which he or she is a taxpayer, or spouse or dependent of a taxpayer, whose federal modified adjusted gross income exceeds \$145,000 (or \$290,000 in the case of a taxpayer filing a joint return). The available COBRA subsidy is reduced for years in which gross income exceeds \$125,000 (or \$250,000 for joint returns).

- The income limitation is applied by increasing the qualified beneficiary's federal income tax by the amount of the COBRA subsidy overpayments made on his or her behalf. As a result, employers and insurers will not have to consider this income limitation when making COBRA subsidy payments or taking payroll tax credits.

What is the Special Enrollment Period?

If an individual did not elect COBRA between 9/1/08 and current, they must be given the opportunity to elect COBRA coverage. This special election period begins on the date of the enactment of the ARRA and ends 60 days after the plan administrator provides the required notice (second COBRA letter) to all individuals.

What happens if an AEI elects COBRA during this special enrollment period?

COBRA coverage is not retroactive to the date the AEI originally lost their job. It will be effective on the first day of the period beginning after the date of enactment. Meaning, if your group plan has a COBRA effective date of the first of the month, the effective date is 3/1/09. NOTE – COBRA coverage still would end based on the original qualifying date, had the COBRA participant taken COBRA when they were separated from work. Therefore, the termination date is based on the original COBRA qualifying date, or the original termination date of the employee. In addition, no pre-existing limitations will be upheld during this time period.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009. **(updated 3/3/09)**

Notice Requirement. If a qualified beneficiary becomes eligible for another group health plan or Medicare during the subsidy period, the qualified beneficiary must provide notice of such eligibility to the plan. A qualified beneficiary who does not provide this notice will be liable for 110 percent of the improperly paid subsidy amount.

The premium reduction starts on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 9 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. **(updated 3/3/09)**

What is the Employer Option to Offer Additional COBRA Coverage Options?

There is an opportunity for an Employer to allow AEIs the option to choose to select a different plan that is currently offered to active employees. Normally under COBRA law, the COBRA participant is only allowed to elect the plan in which they were previously covered. Under this new option, the Employer can (this is not mandated) give them COBRA participant the option to change to a lesser plan. The COBRA premium cannot EXCEED the COBRA premium the AEI was enrolled in prior to their separation. The different coverage cannot also provide only dental, vision, EAP or flexible spending accounts. This is strictly for medical coverage only.

If an Employer elects to offer the different coverage, they must provide the AEI an election notice and allow an election period of not less than 90 days.

What should I do immediately as an Employer or Group Benefit Administrator?

You must take all steps necessary to provide the 65% subsidy to AEIs beginning March 1, 2009. The goal is to ensure that the AEI is only paying the subsidized 35% portion of the benefit. It is probably more than likely that employers are not going to have their notices and such out in a timely manner, due to the quick implementation of this bill. Therefore, the AEI may pay the full COBRA premium for one or two months. The employer will then have to either create a credit, exhausted within 180 days, for the subsidized portion thereafter or provide for a refund within 60 days.

What should I do for the remainder of the year?

If you have an individual who becomes a qualified COBRA beneficiary after 3/1, you must include the new COBRA election notice and forms specific to the subsidy's availability. You must also provide notices to two groups of AEIs within 60 days of the enactment of the ARRA. The first notice is for all current COBRA beneficiaries outlining the availability of the subsidy and its requirements. The second notice must go to all individuals who are entitled to the special enrollment period(see above) if the individual qualifies as an AEI and is not currently on a COBRA program. The notice must explain the subsidy, the requirements and the forms to elect in this special enrollment period.

What are the open items we expect to have further explanation on?

There are no defined timelines with regard to payments, as there are with the current COBRA programs. It is expected that the existing COBRA rules (45 days from election) will probably apply, however this has yet to be confirmed. **Existing COBRA payment guidelines do apply.** (updated 3/31/09)

We expect the Department of Labor (DOL) to provide Model Notices within 30 days of the enactment of ARRA. **The DOL has released Model Notices including the ARRA language (updated 3/31/09).** The Model Notices can be found at this link:

<http://www.dol.gov/ebsa/COBRAmode notice.html>

Below are brief summaries of the notices:

ARRA COBRA GENERAL NOTICE Plans subject to the Federal COBRA provisions must send the General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event. This full version includes information on the premium reduction as well as information required in a COBRA election notice.

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 (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who:

1. Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and
2. Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

This notice includes information on ARRA's additional election opportunity, as well as premium reduction information. This notice must be provided by April 18, 2009.

Alternative Notice Insurance issuers that provide group health insurance coverage must send the Alternative Notice to persons who became eligible for continuation coverage under a State law. Continuation coverage requirements vary among States, and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model Alternative Notice or the abbreviated model General Notice appropriate for use in certain situations.

Please note, this email and memo are meant for guidance and information only. Specifics can be found on both the Department of Labor's website as well as the government's site for the ARRA. This memo is not meant to provide any sort of legal advice or representation.