



The American Recovery and Reinvestment Act of 2009 (ARRA)

Originally Issued: March 26, 2009

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To assist Colorado employers and health insurance carriers with the implementation of the American Recovery and Reinvestment Act of 2009, the Colorado Division of Insurance has obtained the following information from guidance issued by the Employee Benefits Security Administration (EBSA) section of the U.S. Department of Labor. This information should *not* be considered a legal interpretation of any federal law.

Specific questions related to COBRA eligibility and the premium subsidy program should be directed to:

U.S. Department of Labor: Employee Benefits Security Administration (EBSA)

Toll-free Hotline: 866-444-3272

EFAST Help line: 866-463-3278

TTY: 877-889-5627

Website Information: <http://www.dol.gov/ebsa/cobra.html>

Answers to questions regarding the premium subsidies may also be found by visiting the Internal Revenue Services' website (<http://www.irs.gov/faqs/>) and entering *ARRA* in the search field.

1. **BACKGROUND INFORMATION**

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009, commonly called the "Stimulus" Plan or referred to as "ARRA". The new law provides a subsidy that may reduce the cost of COBRA and state group continuation coverage by 65% for employees who involuntarily lose their jobs. It also provided a special COBRA election period for certain affected employees who met the definition of an "assistance-eligible individual." With the enactment of HB09-1349, which was signed by Governor Ritter on June 1, 2009, a special election period also applied to assistance-eligible employees who were eligible for state continuation coverage due to an involuntary loss of their job. Please see the section titled "Special Election Period" for more information.

Addendum: On December 19, 2009, President Obama signed HR 3326, the Department of Defense Appropriations Act of 2010 (DoDAA), which extends the ARRA subsidy. This document has been revised to reflect the extensions enacted. The major changes include:

- Previously, the ARRA eligibility for involuntary terminations of employment ended on December 31, 2009. This has been extended to February 28, 2010.
- The maximum ARRA subsidy period is now fifteen (15) months for all assistance-eligible individuals and includes individuals whose subsidy expired on November 30, 2009.
- An extended grace period is being provided for those assistance-eligible individuals whose subsidy ended on November 30, 2009. It is extended until 60 days after DoDAA's enactment (February 17, 2010) or, if later, 30 days after the DoDAA notice is sent to them.
- Two new notifications are required:
 - All individuals who were "assistance-eligible individuals" as of October 31, 2009 or later must be notified of the changes due to the DoDAA enactment.
 - The notification of the extended grace period for those assistance-eligible individuals whose subsidy ended on November 30, 2009.

2. ELIGIBILITY

An “assistance-eligible individual” is the employee or dependent who:

- √ is eligible to elect COBRA or state continuation coverage as the result of the employee’s involuntary termination of employment during the period of September 1, 2008 and February 28, 2010;
- √ is not eligible for other group health coverage (such as a spouse’s plan) or Medicare; and
- √ elects COBRA or state continuation coverage.

Other COBRA or state continuation eligibility situations such as an employee who quits his/her job or divorced or surviving spouses are not considered to be “assistance-eligible individuals”.

3. NOTICE

Plan administrators must provide notice about the premium reduction to individuals who have a qualifying event during the period from September 1, 2008 through February 28, 2010. Plan administrators may provide notices separately or along with notices they provide following a qualifying event.

COBRA: This notice must go to all individuals, whether they currently have COBRA coverage or not, who had a qualifying event from September 1, 2008 through February 28, 2010.

State Continuation: The notice must go to individuals who were, *as of February 17, 2009*, covered via Colorado’s state continuation requirement who had a state continuation-qualifying event on or after September 1, 2008 and to employees who have a continuation-qualifying event from February 17, 2009 through February 28, 2010. Additionally, with the enactment of HB09-1349, which was signed by Governor Ritter on June 1, 2009, health carriers or plan administrators were required to send a notice about the new “special election” privilege that applied to assistance-eligible employees who were eligible for state continuation coverage due to an involuntary loss of their job from September 1, 2008, but who did not have continuation coverage in effect as of February 17, 2009.

The U.S. Department of Labor has issued and posted on its website model notices, including a model notice that can be used in connection with state continuation plans.

4. SPECIAL ELECTION PERIOD

COBRA: If assistance-eligible individuals are eligible for COBRA due to the employer’s size (20 or more employees) they were provided a *special election period* if they did not elect COBRA when first eligible beginning on September 1, 2008 or if they did elect COBRA when it was first offered, but are no longer enrolled. This special election period began on February 17, 2009 and ended 60 days after the plan administrator provided the required notice.

The effective date of this COBRA coverage was not retroactive to the first date that the individual *could have been* covered based on the qualifying event but it was retroactive to the first coverage period *following* February 17, 2009, which in most cases was March 1, 2009. However, the COBRA coverage period, typically 18 months, is calculated from the first date the individual *could have been covered* had he/she originally elected the COBRA coverage.

Switching Benefit Options: As part of the special election process, if an employer offers additional coverage options to active employees, the employer may have, but was not required to, allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have had the *same or lower premiums* as the individual’s original coverage. The different coverage could not have been coverage that provided only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

State Continuation: If assistance-eligible individuals are eligible for Colorado's continuation coverage due to the employer's size (less than 20 employees) or if they are not eligible for COBRA, they were provided a *special election period* if they did not elect continuation when first eligible beginning on September 1, 2008 or if they did elect continuation when it was first offered, but were no longer enrolled on February 17, 2009. This special election period began on June 1, 2009 and it ended 60 days after the health carrier or plan administrator provided the required notice of this special election privilege.

The effective date of this continuation coverage was not retroactive to the first date that the individual *could have been* covered based on the qualifying event but it was retroactive to the first coverage period *following* the qualified beneficiary's election of coverage. However, the maximum duration of the continuation coverage period will not exceed 18 months and is calculated from the first date the individual could have been covered had he/she originally elected the state continuation coverage.

5. PREMIUM REDUCTION

Assistance-eligible individuals may elect to pay 35% of their COBRA or state continuation premiums and the remaining 65% is reimbursed to the employer, plan administrator or health carrier through an employment tax credit.

The premium reduction applies to periods of health coverage beginning on or after February 17, 2009 and, with the enactment of DoDAA on December 19, 2009, lasts for up to fifteen (15) months or until the COBRA or state continuation period expires, whichever comes first. (Prior to the enactment of DoDAA, the subsidy period was nine (9) months.) If the COBRA or state continuation premium is paid on a monthly basis, the first coverage period it would be applicable to would be March 1, 2009 or, for those individuals enrolling via Colorado's special election privilege, the first coverage period following their election.

There are certain income limits applicable to these premium subsidies which are calculated based on the assistance-eligible individual's modified adjusted income for the tax year in which the premium assistance is received. Due to the impact this premium subsidy could have on the calculation of individuals' personal income taxes, individuals may permanently waive the right to the premium reduction, which means they cannot change this decision at a later time if it turns out that their income is less than anticipated.

COBRA Beneficiaries

- If the premium is payable to the employer who then sends the money to the health carrier, the employer pays the 65% difference on behalf of the COBRA beneficiary and then receives certain employment tax credits in that amount.
- If the COBRA beneficiary pays his/her premium directly to the health carrier, they will only have to pay 35% of the required premium and the health carrier will receive certain employment tax credits for the premium subsidy amount.

State Continuation Beneficiaries

It is the health carrier, not the employer, who receives the employment tax credits to offset the state continuation beneficiaries' reduced premium payments even if the beneficiary pays the reduced premium to the employer or other plan administrator. Employers are encouraged to contact their health carriers to find out how the carrier wants to be notified of the state continuation beneficiaries that are eligible for and who have elected to participate in the premium subsidy program.

6. AGENCY CONTACT INFORMATION

- Specific questions related to COBRA eligibility and the premium subsidy program should be directed to:

U.S. Department of Labor: Employee Benefits Security Administration (EBSA)

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Questions regarding the premium subsidy program may also be answered by visiting the Internal Revenue Services' website (<http://www.irs.gov/faqs/>) and entering *ARRA* in the search field.

- Specific questions regarding Colorado's state continuation insurance laws should be directed to:

Colorado Department of Regulatory Agencies: Division of Insurance

Metro Denver: 303-894-7490
Toll-free (in-state): 800-930-3745
V/TDD: 711

Email: insurance@dora.state.co.us