

COBRA Premium Subsidy Guidance

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The Service has released a series of 58 questions and answers providing detailed guidance relating to premium assistance for COBRA continuation coverage, enacted under ARRA 2009 (see *Tax Facts News*, March 2009, page 4.). This article concentrates on just a few of the many issues addressed in the Service's lengthy notice. For an explanation of what "involuntarily termination" means with respect to eligibility for the premium subsidy, see page 2 of this issue. **Who qualifies as an "assistance eligible individual"?**

An individual must be an "assistance eligible individual" to be eligible for the premium reduction. Under ARRA 2009, an "assistance eligible individual" is: (1) a "qualified beneficiary" as the result of an "involuntary termination" (see page 2 of this issue) that occurred during the period from September 1, 2008, through December 31, 2009; (2) is eligible for COBRA continuation coverage at any time during that period; and (3) elects the COBRA continuation coverage. In order to be a "qualified beneficiary," the individual must be covered under the group health plan on the day before the involuntary termination (except in the case of a child born to or adopted by a covered employee during a period of COBRA continuation coverage or in certain circumstances where coverage was wrongfully denied the individual (see Treasury Regulation Section 54.4980B-3, Q&A-1)). For purposes of COBRA, an individual who loses group health coverage in connection with the termination of a covered employee's employment by reason of the employee's gross misconduct is not a qualified beneficiary and, thus, cannot be an assistance eligible individual. **What premium amount is used to determine the 35% share that must be paid by (or on behalf of) an assistance eligible individual?**

The premium used to determine the 35% share that must be paid by (or on behalf of) an assistance eligible individual is the cost that would be charged to the assistance eligible individual for COBRA continuation coverage if the individual were not an assistance eligible individual. If, without regard to the subsidy, the assistance eligible individual is required to pay 102% of the "applicable premium" for continuation coverage (i.e., generally the maximum permitted under the COBRA rules), the assistance eligible individual is required to pay only 35% of the 102% of the applicable premium. However, if the premium that would be charged the assistance eligible individual is less than the maximum COBRA premium--for example, if the employer subsidizes the coverage by paying all or part of the cost--then the amount actually charged the assistance eligible individual is used to determine the assistance eligible individual's 35% share.

In determining whether an assistance eligible individual has paid 35% of the premium, payments on behalf of the individual by another person (other than the employer with respect to which the involuntary termination occurred) are taken into account. For example, some (or all) of the assistance eligible individual's 35% share of the premium could be paid on behalf of the individual by a parent, guardian, state agency, or charity. **When does the premium reduction first apply to an assistance eligible individual?**

The premium reduction applies as of the first period of coverage beginning on or after February 17, 2009 (the date of enactment of ARRA 2009), for which the assistance eligible individual is eligible to pay only 35% of the premium (as determined without regard to the premium reduction) and is treated as having made full payment. For this purpose, a period of coverage is a monthly or shorter period with respect to which premiums are charged by the plan with respect to such coverage. Therefore, the exact date when the first period of coverage beginning on or after February 17, 2009, begins depends on the period with respect to which premiums are charged by the plan. **For how long does the premium reduction apply to an assistance eligible individual?**

The premium reduction applies until the earliest of: (1) the first date the assistance eligible individual becomes eligible for other group health plan coverage (with certain exceptions) or Medicare coverage; (2) the date that is nine months after the first day of the first month for which the ARRA 2009 premium reduction provisions apply to the individual; or (3) the date the individual ceases to be eligible for COBRA continuation coverage. *SEK*

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