

FAQs on the COBRA Premium Reduction Extension Provisions Related to the Temporary Extension Act of 2010

Q1: I have heard that the stimulus package enacted in February 2009 included a temporary COBRA premium reduction and that the premium reduction period has now been extended. I would like more information.

Response: COBRA allows certain people to extend employer-provided group health coverage if they would otherwise lose the coverage due to certain events such as loss of a job. The stimulus package, which was enacted in February 2009 as the American Recovery and Reinvestment Act of 2009 (ARRA), temporarily reduces the premium for COBRA or comparable State continuation coverage for eligible individuals. The Department of Defense Appropriations Act, 2010 (2010 DOD Act) amended ARRA to extend the period to qualify for the COBRA premium reduction, as well as extended the maximum period for receiving the subsidy an additional six months (from nine to 15 months). The Temporary Extension Act of 2010 (TEA) was signed by the president on March 2, 2010. TEA amended ARRA to further extend the period to qualify for the COBRA premium reduction until March 31, 2010. TEA also provides that an involuntary termination of employment that occurs on or after March 2, 2010 but by March 31, 2010 is a qualifying event for purposes of ARRA if it was preceded by a qualifying event that was a reduction of hours occurring at any time from September 1, 2008 through March 31, 2010.

Individuals who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred during the period from September 1, 2008 through March 31, 2010 and who elect COBRA may be eligible to pay a reduced premium. Eligible individuals pay only 35% of the premium for COBRA coverage under their plans for up to 15 months. This premium reduction is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under comparable State continuation coverage laws.

Q2: I was recently laid off. How can I tell if I am eligible for the COBRA premium reduction?

Response: ARRA makes the premium reduction available for "assistance eligible individuals." To be considered an "assistance eligible individual" and receive reduced premiums you:

- ◆ MUST have a continuation coverage election opportunity ("qualifying event")* related to an involuntary termination of employment that occurred at any time from September 1, 2008 through March 31, 2010;
- ◆ MUST elect the coverage (within the appropriate timeframes);
- ◆ MUST NOT be eligible for Medicare; AND
- ◆ MUST NOT be eligible for coverage under any other group health plan, such as a plan sponsored by a successor employer or a spouse's employer.

*TEA also provides that individuals who lost coverage because of a qualifying event that was a

reduction of hours that occurred any time from September 1, 2008 through March 31, 2010 may be eligible for the premium reduction if the employee is then involuntarily terminated on or after March 2, 2010 and no later than March 31, 2010. The premium assistance for these individuals begins with the first period of coverage following the employee's involuntary termination (that occurs on or after March 2, 2010 through March 31, 2010). TEA also provides a new election opportunity for these individuals if they did not elect (or elected and discontinued) COBRA. **Note:** A reduction of hours is a qualifying event when the employee and his/her family lose coverage because the employee, though still employed, is no longer working enough hours to satisfy the group health plan's eligibility requirements.

Q3: What if I experienced a reduction of hours in employment and either elected and then discontinued COBRA continuation coverage, or did not make an election at all and have since been involuntarily terminated?

Response: If you experienced a reduction of hours during the period that begins with September 1, 2008 and ends with March 31, 2010, followed by an involuntary termination of employment on or after March 2, 2010 and by March 31, 2010, then your termination will constitute a qualifying event under TEA and you are entitled to a new election period for COBRA continuation coverage. Under the new election period, COBRA coverage (but not the 18-month COBRA period) and the 15 months of subsidy would begin starting with the first period of coverage after the termination. See FAQ #4 below for information on determining the beginning of the 18-month COBRA period.

Q4: If I experienced a reduction of hours during the period that begins with September 1, 2008 and ends with March 31, 2010, which was followed by an involuntary termination of employment on or after March 2, 2010 through March 31, 2010, when does the 18-month COBRA period begin?

Response: If you experienced a reduction of hours during the period that begins with September 1, 2008 and ends with March 31, 2010, and were subsequently terminated on or after March 2, 2010 but by March 31, 2010, your 18 months of COBRA is calculated, according to the plan's normal procedures, in relation to the initial qualifying event, which is either the date of the reduction of hours of employment resulting in a loss of coverage or the date of the loss of coverage. Under TEA, there is no requirement for a COBRA payment to be made during the period between the reduction of hours and the termination of employment.

Q5: If I experienced a reduction of hours during the period that begins with September 1, 2008 and ends with March 31, 2010, which was followed by an involuntary termination of employment on or after March 2, 2010 and by March 31, 2010, when does the 15 months of premium reduction begin?

Response: While the 18 months of COBRA continuation coverage will be measured (according to the plan's normal procedures) from the initial reduction of hours qualifying event, the 15-

month premium reduction period will not begin until the first period of COBRA coverage following the involuntary termination.

Q6: If I experienced a reduction of hours on August 7, 2009 that caused a loss of coverage on August 31, 2009 but was not terminated from employment until March 3, 2010, for how long will I be able to receive the premium reduction?

Response: Under the existing law, you would only be eligible for the premium reduction through June 30, 2011. The 18 months of COBRA continuation coverage would be measured from the initial reduction of hours qualifying event (generally, August 7, 2009 or September 1, 2009 – depending on the plan’s procedures), while the premium reduction period will not begin until April 1, 2010. Assuming the plan begins the 18-month COBRA period on the date of the loss of coverage, the 18 months of COBRA will end on February 28, 2011 - even though on that date you will have only used 11 months of your premium subsidy. An individual who becomes eligible for a disability extension may continue to pay reduced premiums beyond the initial 18-month period but an individual who experiences a second qualifying event may not. In States that require insurers to provide “comparable” continuation coverage beyond the 18 months required by Federal law, individuals, who are otherwise still eligible, may continue to pay reduced premiums until they reach the 15-month maximum.

Q7: If, during the applicable periods, I experienced a reduction of hours and did not elect COBRA, but then experienced a termination of employment and elected COBRA continuation coverage under the extended election period provided in TEA, will the lack of COBRA coverage between the reduction of hours and the new election count toward the 63-day break in coverage period?

Response: No. TEA provides that the absence of coverage during this period will not count as a break in coverage (for purposes of applying a preexisting condition exclusion) as long as the individual elects COBRA at the second opportunity.

Q8: I had a qualifying event that was a reduction of hours in October 2009. I elected COBRA, coverage started on November 1, 2010, and I have been paying the full premium. My employer terminated my employment on March 8, 2010. Can I now get the premium assistance, and if so, when would it start?

Response: An individual who was eligible for COBRA because of a reduction of hours at any time on or after September 1, 2008 and through March 31, 2010, who then had a termination of employment on or after March 2, 2010 but by March 31, 2010, may be eligible for the premium reduction. In this case, because the involuntary termination occurred on or after March 2, 2010 and by March 31, 2010, assuming the individual is otherwise eligible, the premium assistance is available beginning with the first period of coverage following the involuntary termination.

Q9: I was involuntarily terminated in October 2009 and have been receiving the subsidy since November 1, 2009, but my employer says that since the subsidy expires March 31, 2010, I will not get my full 15 months of subsidy. Is this correct?

Response: No. Although new eligibility for the subsidy ends March 31, 2010 (absent the passage of another extension), those individuals who become eligible on or before March 31, 2010 can receive the full 15 months as long as they remain otherwise eligible.

Q10: I was laid off on October 13, 2009 and elected COBRA which began on November 1, 2009. Due to the circumstances surrounding the layoff I was eligible for and received the 80% Health Coverage Tax Credit (HCTC) for my COBRA premiums. I obtained a new job that does not have health coverage and I will no longer be eligible to receive the HCTC after March 31, 2010. Can I now get the premium reduction?

Response: Yes. ARRA provides that a person can not receive the HCTC and the premium reduction in the same month. As long as you are not receiving the HCTC, then you would be eligible to receive the premium reduction. However, the premium reduction is generally measured from the beginning of COBRA coverage (see above for circumstances where it may not be). Therefore, the 15 months would generally be measured from November 1, 2009 and you would only receive 10 months of premium reduction.

Q11: I was covered by my employer's medical, dental and vision coverage before I was laid off in January 2010. I can get on my spouse's employer's plan for medical coverage, but they do not sponsor a dental or vision plan. Can I still get the subsidy for the dental and vision coverage offered through my former employer's COBRA continuation coverage?

Response: No. If you are eligible for other group health coverage or Medicare, you are not eligible for the subsidy.

Q12: What can I do if I believe I am eligible for the premium reduction but my plan sponsor has denied my request for treatment as an "assistance eligible individual"?

Response: If the plan determines that you are not eligible for the premium reduction, you can request an expedited review of the denial. The Department of Labor will handle requests related to private sector employer plans subject to ERISA's COBRA provisions. Applicants may either be the former employee or a member of the former employee's family who is eligible for COBRA continuation coverage or the COBRA premium assistance through an employment-based health plan. The Department of Health and Human Services will handle requests for Federal, State, and local governmental employees including public schools, public colleges and universities, or a police or fire department, as well as requests related to group health insurance

coverage provided pursuant to state continuation coverage laws. The Departments are required to make a determination regarding your request within 15 business days after receiving your completed application for review. The Secretary of Labor may assess a penalty against a plan sponsor (and similarly, the Secretary of HHS against a health insurance issuer) of not more than \$110 per day for a failure to comply with a determination within 10 days after the date of the receipt of the determination.

Note: Appeals to the Department of Labor must be submitted on the U.S. Department of Labor application form. The form is available at www.dol.gov/COBRA and can be completed online or submitted by mail or fax as indicated in the instructions. If you believe you have been inappropriately denied eligibility for the premium reduction, you may wish to speak with an Employee Benefits Security Administration Benefits Advisor at 1.866.444.3272 before filing this form. Appeals to the Department of Health and Human Services must be submitted on the Centers for Medicare & Medicaid Services application form. The form is available at www.continuationcoverage.net and can be submitted by mail or fax as indicated in the instructions. For more information about the review of denials, individuals can also contact Maximus, a CMS-sponsored contractor, at 1.866.400.6689.

Q13: Is there any other action I can take under ARRA, as amended by TEA, if I am wrongfully denied COBRA premium assistance?

Response: In addition to the expedited review process discussed above and civil actions that may be brought to enforce applicable law, an individual may file a civil suit to enforce a determination by the Secretary and for appropriate relief.

Q14: What notices must plan administrators provide to individuals under ARRA, as amended?

Response: Notice requirements depend on the particular situation. In addition to the FAQs below, a summary of the notice requirements and several models created by the Department are available by clicking on the link below.

[EBSA Model Notices.](#)

Q15: What kind of notice must I receive if I experience a qualifying event that is an involuntary termination of employment after February 28, 2010 and how long will I have to make a COBRA election?

Response: If you are involuntarily terminated at any point from September 1, 2008 through March 31, 2010, and have not yet been provided a COBRA election notice your Plan must provide an ARRA General Notice updated to reflect the changes made by the 2010 DOD Act and TEA. You will have at least 60 days from the date an updated election notice is provided to then elect for 18 months of COBRA continuation coverage. For individuals who have already been provided an election notice (including an earlier version of the ARRA General Notice) there may be additional notice requirements. See the summary of the notice requirements and the models created by the Department at ([EBSA Model Notices](#)) and the FAQs below for more information.

Q16: On March 10, 2010, our company, which is subject to the Federal COBRA continuation coverage provisions, laid off several employees. The layoff caused the employees and their dependents to lose health coverage. Which notice must our plan provide to these people?

Response: The plan must provide an updated ARRA General Notice that reflects the changes made by the 2010 DOD Act and TEA to each individual who experienced a loss of health coverage in connection with the involuntary termination, which in this case includes the employee AND their dependents. This notice must be provided within the required timeframe for providing a COBRA election notice.

Q17: One of our employees had a reduction of hours in August of 2009 that caused a loss of her health coverage. She was provided the ARRA General Notice but did not elect COBRA. On March 5, 2010, she was laid off. What notice must she get and what is the timing requirement?

Response: Because she now has a second opportunity to elect COBRA continuation coverage and to request treatment as an assistance eligible individual, she must get the Notice of New Election Period within 60 days of the March 5, 2010 date of her involuntary termination.

Q18: One of our employees had a reduction of hours in June of 2009 causing a loss of health coverage. She was provided the ARRA General Notice, elected COBRA, and has since been paying the full premium. On March 20, 2010, she was laid off. What notice must she get and what is the timing requirement?

Response: She must get the Supplemental Information Notice informing her of the availability of the premium reduction within 60 days of the March 20, 2010 date of her involuntary termination.

Q19: One of our employees had a reduction of hours in November of 2009 and lost health coverage. He was provided the ARRA General Notice, elected COBRA, but then discontinued his coverage. On March 18, 2010, he was laid off. What notice must he get and what is the timing requirement?

Response: He should get the Notice of New Election Period within 60 days of the March 18, 2010 date of his involuntary termination.

Q20: Are plans required to provide notices to all individuals who experience a reduction of hours followed by any termination of employment or just involuntary terminations?

Response: According to the language in TEA, plans are only required to provide notice to individuals who experience an involuntary termination. However, because employers may be subject to civil penalties if it is later determined that the termination was involuntary, the Department strongly recommends that notice be provided to individuals who experienced any termination of employment.

Q21: On March 1, 2010, our company, which is subject to the Federal COBRA continuation coverage provisions, laid off several employees. As part of the termination paperwork, each employee was provided a standard COBRA election notice. The plan does not offer dependent coverage. Have we satisfied our notice requirements?

Response: No. The notices provided to these individuals did not contain information regarding rights under ARRA, as amended by the 2010 DOD Act and TEA. Accordingly, the Plan must provide the “additional notification,” as described in ARRA §3001(a)(7), to these individuals. Depending on whether these individuals elected or waived their right to COBRA continuation coverage, the Department has made two models available to satisfy these requirements. The Notice of Extended Election Period may be used for individuals described above who chose not to elect (or elected COBRA but subsequently discontinued) COBRA continuation coverage. The Supplemental Information Notice may be used for individuals described above who elected and maintained COBRA continuation coverage. Regardless of which notice is used, it must be provided within the required timeframe for providing a COBRA election notice.

FAQs on the COBRA Premium Reduction Extension Provisions Related to the 2010 DOD Act.

Q22: What is a “transition period” and how does it affect my ability to make retroactive payment of unpaid reduced premiums related to the extension?

Response: An individual’s “transition period” is the period that begins immediately after the end of the maximum number of months (generally nine) of premium reduction available under ARRA prior to its amendment by the 2010 DOD Act. An individual is in a transition period only if the premium reduction provisions would continue to apply due to the extension from nine to 15 months and they otherwise remain eligible for the premium reduction. Individuals in a transition period must be provided notice of the extension within 60 days of the first day of their transition period. The notice must include information on the extension from nine to 15 months and the ability to make retroactive payments for certain unpaid reduced premiums. The transition period may include multiple periods of coverage. The retroactive payment(s) for the period(s) of coverage must be made by the later of February 17, 2010, 30 days from when the notice was provided, or the end of the otherwise applicable payment grace period.

Q23: If my eligibility for the premium reduction under ARRA expired (after receiving it for nine months) in November 2009 and I did not pay the December 2009 premium, will I be able to re-enter the program and get the additional six months of subsidy?

Response: Yes, as long as you otherwise remain eligible for the premium reduction program. The 2010 DOD Act has a retroactivity provision, but 35% of the premium must still be paid for each month for coverage to remain in effect. Individuals who now have additional months of reduced premiums available (because the 2010 DOD Act extended ARRA's maximum period from nine to 15 months and they otherwise remain eligible for the premium reduction) are in a "transition period" and will have additional time to pay certain unpaid reduced premiums related to the extension. Accordingly, to continue their coverage, individuals described above must pay 35% of the full premium for the December and January periods of coverage by the later of February 17, 2010 or 30 days after notice of the extension is provided by their plan administrator.

Q24: If my eligibility for the premium reduction under ARRA expired (after receiving it for nine months) in November 2009 and I paid the full premium for December 2009 – will I be reimbursed for the additional health premium covered by this subsidy?

Response: ARRA, as amended by the 2010 DOD Act, entitles individuals to pay reduced premiums for the six months immediately following the initial nine months (assuming continued eligibility for the premium reduction program). Individuals who paid the full 100% premium in December should contact their plan administrator, employer sponsoring the plan, or insurance issuer to discuss the refund or credit against future payments they are entitled to under the amendment.

Q25: My eligibility for the premium reduction under ARRA expired in November 2009 (after receiving it for nine months) but I am eligible for a premium reduction in December 2009 under the 2010 DOD Act. If I am billed in December 2009 for the full rate, should I pay the full or reduced premium rate? And if I pay the full amount, will it be applied against future premiums or reimbursed?

Response: The new provisions require that a notice of changes made to the premium reduction program be provided within 60 days of the first day of your "transition period." The "transition period" begins with the first day of the first period of coverage that would be eligible for the premium reduction because of the 2010 DOD Act extension (in this case, December 1, 2009). If you have not made the December payment, to continue your coverage you need only pay 35% of the full premium by the later of February 17, 2010 or 30 days after notice of the extension is provided by your plan administrator. If you paid the full 100% premium in December 2009, you should contact your plan administrator or employer sponsoring the plan or insurance issuer to discuss a refund or credit against future payments.

Q26: My eligibility for the premium reduction under ARRA expired (after receiving it for nine months) in November 2009 and I did not pay the December 2009 premium. If I now pay the 35% share of the premium for December 2009, will my health care expenses be covered in December 2009?

Response: Yes, as long as you otherwise remain eligible for the premium reduction program. If you did not pay for December 2009, but pay the 35% of the full premium by the later of February 17, 2010 or 30 days after the notice of the extension is provided by the plan administrator, coverage will be retroactive and will cover health care costs that occurred in December 2009.

Q27: I have used nine months of the premium reduction program. How much longer can I receive it?

Response: You will be eligible to pay reduced premiums for up to six more months for a total of 15 months as long as you otherwise remain eligible for the premium reduction program. Reasons for losing eligibility include becoming eligible for other group health plan coverage or reaching the end of your COBRA continuation coverage.

Q28: I am eligible for the premium reduction now. Do I have to do anything to qualify for the additional six months of coverage?

Response: No. You will automatically be eligible to pay reduced premiums for up to six more months for a total of 15 months as long as you remain eligible for the premium reduction program.

Q29: I have used nine months of the premium reduction program. Do I have to wait for my plan administrator to send me an updated bill or the new notice required by ARRA, as amended, before I can pay the reduced premium(s) related to the extension?

Response: No. An assistance eligible individual who pays the reduced premium pursuant to ARRA, as amended, must be treated by the plan as having paid the full premium.

Q30: What notices must plan administrators provide to individuals under ARRA, as amended?

Response: Plan administrators must provide, as part of the COBRA election notice materials, a General Notice to all qualified beneficiaries, not just covered employees, who experience a qualifying event at any time from September 1, 2008 through March 31, 2010, regardless of the type of qualifying event. Certain individuals who were provided a COBRA election notice package that did not include information that was updated to reflect the changes made to ARRA by the 2010 DOD Act must also be provided notice of these changes.

Listed below are the affected individuals and the associated timing requirements.

- Individuals who were “assistance eligible individuals” as of October 31, 2009 (unless

they are in a transition period - see below) and individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated General Notice) must have been provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act by February 17, 2010;

- Individuals who are in a “transition period” must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act within 60 days of the first day of the transition period. (The transition period begins immediately after the end of the nine months of premium reduction in effect under ARRA before the amendments made by the 2010 DOD Act, as long as the premium reduction provisions of the 2010 DOD Act would apply due to the extension from nine to 15 months).

Q31: If an individual notifies the plan on or after October 31, 2009 that they have become eligible for other group health plan coverage or Medicare, must they be provided notice pursuant to ARRA, as amended?

Response: No.