

## FREQUENTLY ASKED QUESTIONS (FAQs)

The **American Recovery and Reinvestment Act of 2009** (“ARRA”) which President Obama signed into law on February 17, 2009 was amended on December 19, 2009 by the Department of Defense Appropriation Act, 2010. This ARRA is designed to encourage economic recovery by providing a 65% federal subsidy towards eligible individuals’ COBRA premiums. For a period not to exceed 15 months, eligible individuals will be responsible for paying just 35% of their COBRA premium, and the federal government will subsidize the rest.

### **The Department of Defense Appropriations Act, 2010 amended the ARRA: What specific changes did it make concerning the continuation coverage premium subsidy?**

The amendment made the following changes:

- It increased the maximum length of the premium subsidy from nine months to 15 months.
- It extended the premium reduction eligibility period for an additional two months, to February 28, 2010. As a result, a qualified beneficiary who has a qualifying event of involuntary termination of employment any time from September 1, 2008 through February 28, 2010 (previously December 31, 2009) can apply for the subsidy.
- It clarified that only the date of involuntary termination of employment must fall within the September 1, 2008 through February 28, 2010 time frame, and that the date of the related loss of group coverage need not occur within that time frame.

For purposes of ARRA, COBRA coverage includes federal COBRA coverage applicable to group health plans of private sector and state and local government employers; continuation coverage applicable to the federal government employee benefit plan; and state continuation coverage that is comparable to that provided under federal COBRA requirements. COBRA coverage does not include medical Flexible Spending Account (FSA) coverage offered through a cafeteria plan.

### **How does an employer determine whether it is covered under federal COBRA or state continuation provisions?**

In general, employers with 20 or more employees are subject to federal COBRA requirements. This is the case whether the employer is self-insured or purchases insurance. Church plans (as specifically defined under federal law) are an exception to the general rule—they are not subject to federal COBRA requirements, regardless of their size. Although employers with fewer than 20 employees and church plans are not subject to federal COBRA requirements, if they purchase health insurance they are subject to state continuation provisions.

To determine if COBRA’s small employer exception applies for a particular calendar year, an employer generally determines the number of employees it had on at least 50% of its typical

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business days during the preceding calendar year. For example, **an employer will not be subject to federal COBRA for calendar year 2010 if the employer employed fewer than 20 employees on at least 50% of its typical business days during 2009.** Federal law provides detailed rules concerning how to count employees for COBRA purposes, including who is considered an employee for these purposes (all employees need to be considered, not just those who are benefit eligible), how to count part-time employees, and how to address situations involving related and successor employers. Please see the following for additional information:

- [View Treasury Regulation.](#)
- [View “An Employer’s Guide to Group Health Continuation Coverage under COBRA.”](#)

Additionally, please consult your attorney or tax advisor if you have questions as you make the determination concerning COBRA’s application to your plan.

### **Why is it important to determine whether an employer is subject to federal COBRA or only to state continuation coverage requirements?**

The ARRA sets forth whether the employer or the insurer is responsible for providing the subsidy and related notices to individuals. It also delineates which entity is able to claim reimbursement for the subsidy as a credit on its payroll tax return. The obligation to provide the subsidy, and the right to claim reimbursement on tax returns, lie with the employer when the employer is subject to federal COBRA (generally employers with 20 or more employees). However, for employers that are not subject to federal COBRA (employers with fewer than 20 employees), that are only subject to state continuation provisions, it is the insurer that will provide the subsidy, claim reimbursement for the subsidy, and issue individual notices concerning the subsidy as required under the ARRA.

### **How much is the premium subsidy?**

Under the ARRA, assistance eligible individuals (as further described below) will have 65% of their COBRA or state continuation premiums subsidized, for a period no longer than 15 months. As a result, while the subsidy applies, such an individual is only required to pay 35% of the amount the employer generally charges him for continuation coverage. It is important to note that if the employer pays part of the continuation coverage premium for the individual, the subsidy will not apply to those amounts (see example 2). The subsidy only applies to the individual’s portion of the premium. Additionally, the 35% must be paid by either the individual or someone else on the individual’s behalf, but cannot be paid by the employer.

*Example 1:*

Scenario	Assistance Eligible Individual pays	Entity providing the Subsidy (Employer or Insurer) Responsibility
Employer requires the individual to pay 100% of the applicable premium (e.g.	\$350.00	\$650.00

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\$1,000 per month for continuation coverage).	(35% of \$1,000)	(later claimed as a payroll tax credit of \$650 (65% of \$1,000))
Employer Remits the following Amount to Insurer per month:		
<ul style="list-style-type: none"> <li>If Employer is the entity subsidizing the 65%</li> <li>If Insurer is the entity subsidizing the 65%</li> </ul>		<p style="text-align: right;">\$1,000.00</p> <p style="text-align: right;">\$ 350.00</p>

*Example 2:*

Scenario	Assistance Eligible Individual pays	Entity providing the Subsidy (Employer or Insurer) Responsibility	Employer Pays
Premium charge is \$1,000 per month for continuation coverage. Employer provides severance benefits that include allowing the individual to have continuation coverage for \$200 per month for the first six months after involuntary termination of employment and for \$1,000 per month for the remainder of the continuation coverage period.			
For each of the first 6 months	\$70.00  (35% of \$200)	\$130.00  (later claimed as a payroll tax credit of \$130 (65% of \$200))	\$800.00  (employer cannot claim a payroll tax credit related to the \$800 per month for the severance benefit)
Employer Remits the following Amount to Insurer per month:			
<ul style="list-style-type: none"> <li>If Employer is the entity subsidizing the 65%</li> <li>If Insurer is the entity subsidizing the 65%</li> </ul>			<p style="text-align: right;">\$1,000.00</p> <p style="text-align: right;">\$ 870.00</p>
For each of the next 3 months	\$350.00  (35% of \$1,000)	\$650.00  (later claimed as a payroll tax credit of \$650 (65% of \$1,000))	

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Employer Remits the following Amount to Insurer per month:	
• If Employer is the entity subsidizing the 65%	\$1,000.00
• If Insurer is the entity subsidizing the 65%	\$ 350.00



[View additional examples issued by the Internal Revenue Service in Notice 2009-27 \(see in particular Q & A's 20 – 26\).](#)

**“Assistance eligible individuals” are eligible for the continuation coverage premium subsidy. Who qualifies as an assistance eligible individual (“AEI”)?**

An “assistance eligible individual” is any qualified beneficiary who is eligible for and elects COBRA or state continuation coverage and who satisfies all of the following:

- The covered employee must have lost group health plan coverage as a result of involuntary termination of employment (excluding termination for gross misconduct)
- The involuntary termination of employment must occur during the period beginning September 1, 2008 and ending February 28, 2010.
- The individual is not eligible for coverage under Medicare or another group health plan (other than coverage consisting of only: dental services; vision services; counseling or referral services; first aid, prevention and wellness care at an employer’s on-site medical facility; a medical FSA; or certain Health Reimbursement Accounts (HRA)).
- The individual has not waived his right to the premium subsidy.

Only the covered employee and the employee’s spouse and dependent children can be considered qualified beneficiaries for purposes of the premium subsidy. **Individuals such as the employee’s domestic partner or grandchild may be eligible for continuation coverage, but they are not eligible for the premium subsidy.**

Additionally, an AEI receiving the subsidy will lose eligibility for the subsidy if he or she becomes eligible for coverage under Medicare or another group health plan (as described above). If that individual chooses to forego the opportunity to enroll in Medicare or the other group plan, he or she may remain enrolled in the continuation coverage, but will need to pay 100% of his or her premiums, as the individual will no longer be eligible for the subsidy.

In [Notice 2009-27](#), the IRS has included an extensive list of FAQs, many of which address the definition of “assistance eligible individual” (see in particular Q & A’s 10-19).

**Does an employer need to monitor an individual’s income to determine if he is or remains an AEI?**

No. The ARRA does not require repayment of subsidy amounts provided to assistance eligible individuals who have modified adjusted gross incomes as follows:

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- Taxpayers with modified adjusted gross incomes exceeding \$145,000 (\$290,000 for joint returns) will be required to repay the entire amount of the subsidy as an additional tax.
- Taxpayers with modified adjusted gross incomes between \$125,000 and \$145,000 (\$250,000 - \$290,000 for joint returns) will need to make a partial repayment.

However, the employer plays no role in this determination—it is between the individual taxpayer and the federal government.

### **How is “involuntary termination of employment” defined?**

The IRS has included very helpful guidance on this definition in the FAQs included in their [Notice 2009-27](#). It is important that you reference this guidance when determining whether an individual experienced an involuntary termination of employment for purposes of determining eligibility for the premium subsidy (see in particular Q & A’s 1 – 9).

### **Who determines which former employees are assistance eligible individuals?**

It is the employer’s responsibility to make this determination. Employers who are subject only to state continuation coverage requirements (generally fully insured employers with fewer than 20 employees) will need to communicate that determination (along with other necessary information) to Medica, in order for Medica to assist with administration of the premium subsidy.

### **What if an employer denies an individual’s request to be considered an assistance eligible individual?**

ARRA requires certain federal agencies to provide an expedited review of any employer’s refusal to classify an individual as an assistance eligible individual.

### **How long does the premium subsidy last?**

The premium subsidy is available to an assistance eligible individual for up to a maximum period of 15 months. However, the subsidy will end earlier if (a) the individual becomes eligible for coverage under Medicare or another group health plan (other than coverage consisting of only: dental services; vision services; counseling or referral services; first aid, prevention and wellness care at an employer’s on-site medical facility; an FSA; or certain HRAs); or (b) the individual’s maximum period of continuation coverage expires. The maximum period of continuation coverage available (generally 18 months in the case of termination of employment, but sometimes another length of time) does not change, and is measured from the date of employment termination.

Assistance eligible individuals are required to notify the employer providing continuation coverage if they become eligible for other coverage of the type that would make them ineligible for further subsidization of their continuation premiums. The employer must then contact Medica

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with that information, so the premium subsidy can be terminated as required by the ARRA. Additionally, Medica will track the length of time an assistance eligible individual receives the premium subsidy, and will notify both the individual and the employer in advance of the termination of the maximum 15 month subsidy period.

**What if an AEI exhausted his nine months of subsidy before the ARRA was amended and paid 100% of his premium, rather than 35%?**

An AEI in this situation is entitled to reimbursement of his overpayment or a credit for future months of continuation coverage. Under ARRA, an employer must provide a refund within 60 days of the date the full premium payment was made. Alternatively, an employer can provide the individual with a credit to offset future premiums, but only if it is reasonable to believe that the credit will be used within 180 days after the overpayment was received. If, at any time during the 180 day period, it is no longer reasonable to believe that the credit will be used during that period, then direct payment of the remainder of the outstanding credit must be paid to the individual within 60 days.

**What if an AEI exhausted her nine months of subsidy and, as a result, dropped continuation coverage?**

AEIs who have reached the end of their original nine month subsidy period will have additional time to pay the 35% amount they owe for premiums for subsequent months of continuation coverage. In general, AEIs in this situation must make retroactive payment of the premium amounts due by the later of February 17, 2010 or 30 days from the date notice of the ARRA amendments is provided to the AEI.

**Will an individual be given the opportunity to change her coverage option upon becoming an assistance eligible individual?**

No, changes in coverage options will only be allowed as set forth currently in the applicable Certificate of Coverage.

**How will Medica handle invoicing premium amounts due for assistance eligible individuals?**

Invoices for groups with 20 or more employees will not change. Invoices for groups with fewer than 20 employees will show both a charge for 100% of the continuation coverage premium and a downward adjustment reflecting the amount of the subsidy for assistance eligible individuals.

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**Sample Invoice:**

Invoice Detail					
Name	Plan	ID	Coverage	Volume(000's)	Charge Amount
EDEL, ERIC M	MEDICAL	XXXXX4042-00			\$241.18
NELSON, AUDREY K	MEDICAL	XXXXX1766-00			\$845.67
BROWN, KRISTINA N	MEDICAL	XXXXX7046-00			\$500.22
COBRA Stimulus Credit - EDEL, ERI XXXXX0000-00					
		COBRA Stimulus Credit - EDEL, ERIC M	Sum Adj		\$ -100.00
		COBRA Stimulus Credit - NELSON, AUDREY K	Sum Adj		\$ -200.00

**What are the consequences of employer noncompliance with the ARRA?**

Employers could face large monetary penalties and find themselves subject to lawsuits for failure to comply with ARRA.

**Will Medica now be administering all aspects of my continuation coverage?**

No. Medica will provide ARRA notices concerning the availability of premium assistance and administer the premium subsidy for employers with fewer than 20 employees, but all other aspects of continuation coverage administration remain unchanged, and the responsibility of the employer. This includes determining eligibility for continuation coverage according to the terms of the Certificate of Coverage, providing required notices, collecting premium and remitting it to Medica, and determining when an individual has exhausted her right to continuation coverage.

**Some states require that an insurer provide continuation coverage when an employer ceases operations. Will this type of continuation coverage be eligible for the ARRA subsidy?**

Yes, according to guidance provided by the IRS, if state law requires an insurer to provide continuation coverage that is substantially similar to the previously provided group coverage at a cost that is based on a specified percentage of the cost of providing such coverage it will be eligible for the subsidy.

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## Where can employers go for more information?

- The Internal Revenue Service Web site contains general information, payroll tax return instructions, and Notice 2009-27, containing several FAQs.  
<http://www.irs.gov/newsroom/article/0,,id=204505,00.html>
- The Department of Labor provides model notice language, as well as fact sheets, FAQs and posters to help employers understand and implement the premium subsidy.  
<http://www.dol.gov/ebsa/COBRA.html>

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## Treasury Regulation §54.4980-B-2, Question 5 (as referenced in the FAQ)

### Q-5: What is a small-employer plan?

A-5: (a) Except in the case of a multiemployer plan, a small-employer plan is a group health plan maintained by an employer (within the meaning of Q&A-2 of this section) that normally employed fewer than 20 employees (within the meaning of paragraph (c) of this Q&A-5) during the preceding calendar year. In the case of a multi-employer plan, a small-employer plan is a group health plan under which each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. The rules of this paragraph (a) are illustrated in the following example:

**Example.** (i) Corporation S employs 12 employees, all of whom work and reside in the United States. S maintains a group health plan for its employees and their families. S is a wholly-owned subsidiary of P. In the previous calendar year, the controlled group of corporations including P and S employed more than 19 employees, although the only employees in the United States of the controlled group that includes P and S are the 12 employees of S.

(ii) Under Sec. 1.414(b)-1 of this chapter, foreign corporations are not excluded from membership in a controlled group of corporations. Consequently, the group health plan maintained by S is not a small-employer plan during the current calendar year because the controlled group including S normally employed at least 20 employees in the preceding calendar year.

(b) An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if, and only if, it had fewer than 20 employees on at least 50 percent of its typical business days during that year. (c) All full-time and part-time common law employees of an employer are taken into account in determining whether an employer had fewer than 20 employees; however, an individual who is not a common law employee of the employer is not taken into account. Thus, the following individuals are not counted as employees for purposes of this Q&A-5 even though they are referred to as employees for all other purposes of Secs.

54.4980B-1 through 54.4980B-8--

- (1) Self-employed individuals (within the meaning of section 401(c)(1));
- (2) Independent contractors (and their employees and independent contractors); and

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(3) Directors (in the case of a corporation). (d)-(f) [Reserved]

(g) A small-employer plan is generally excepted from COBRA. If, however, a plan that has been subject to COBRA (that is, was not a small-employer plan) becomes a small-employer plan, the plan remains subject to COBRA for qualifying events that occurred during the period when the plan was subject to COBRA. The rules of this paragraph (g) are illustrated by the following examples:

**Example 1.** *An employer maintains a group health plan. The employer employed 20 employees on more than 50 percent of its working days during 2001, and consequently the plan is not excepted from COBRA during 2002. Employee E resigns and does not work for the employer after January 31, 2002. Under the terms of the plan, E is no longer eligible for coverage upon the effective date of the resignation, that is, February 1, 2002. The employer does not hire a replacement for E. E timely elects and pays for COBRA continuation coverage. The employer employs 19 employees for the remainder of 2002, and consequently the plan is not subject to COBRA in 2003. The plan must nevertheless continue to make COBRA continuation coverage available to E during 2003 until the obligation to make COBRA continuation coverage available ceases under the rules of Sec. 54.4980B-7. The obligation could continue until August 1, 2003, the date that is 18 months after the date of E's qualifying event, or longer if E is eligible for a disability extension.*

**Example 2.** *The facts are the same as in Example 1. The employer continues to employ 19 employees throughout 2003 and 2004 and consequently the plan continues to be excepted from COBRA during 2004 and 2005. Spouse S is covered under the plan because S is married to one of the employer's employees. On April 1, 2002, S is divorced from that employee and ceases to be eligible for coverage under the plan. The plan is subject to COBRA during 2002 because X normally employed 20 employees during 2001. S timely notifies the plan administrator of the divorce and timely elects and pays for COBRA continuation coverage. Even though the plan is generally excepted from COBRA during 2003, 2004, and 2005, it must nevertheless continue to make COBRA continuation coverage available to S during those years until the obligation to make COBRA continuation coverage available ceases under the rules of Sec. 54.4980B-7. The obligation could continue until April 1, 2005, the date that is 36 months after the date of S's qualifying event.*

**Example 3.** *The facts are the same as in Example 2. C is a dependent child of one of the employer's employees and is covered under the plan. A dependent child is no longer eligible for coverage under the plan upon the attainment of age 23. C attains age 23 on November 16, 2005. The plan is excepted from COBRA with respect to C during 2005 because the employer normally employed fewer than 20 employees during 2004. Consequently, the plan is not obligated to make COBRA continuation coverage available to C (and would not be obligated to make COBRA continuation coverage available to C even if the plan later became subject to COBRA again).*

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