



# Compliance Alert

**March 9, 2009**

## **IMPORTANT INFORMATION**

### **NEW RULES PROVIDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

#### **TOPIC: COBRA (CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT)**

##### ***General Description:***

The economic stimulus bill passed by Congress on February 17, 2009 known as the American Recovery and Reinvestment Act of 2009 (H.R.1) contains a significant modification of the COBRA continuation coverage rules, which is generally effective March 1, 2009. Under the bill, individuals who become eligible for COBRA benefits by reason of involuntary termination of employment during the period between September 1, 2008 and December 31, 2009, are only required to pay 35% of the COBRA premium. The remaining 65% of the COBRA premium is billed to and subsidized by the Employer (Employers subject to COBRA law), which is reimbursed through the Employers' payroll tax credit. This subsidy can last up to nine months. High-income individuals whose modified adjusted gross income exceeds \$145,000 for individuals or \$290,000 for joint filers must repay the subsidy through a recapture tax.

##### ***Brief Summary of ARRA relating to group health insurance premium subsidy:***

1. The Employer is required to pay 65% of the premium and the COBRA beneficiary must pay 35%.
2. The subsidy applies to premiums for terminated employees with individual coverage **or** dependent coverage. However, the subsidy does not apply to domestic partner coverage continued under a qualified beneficiary's COBRA coverage.
3. The subsidy applies to group health, dental, vision and HRA's (health reimbursement arrangements). It does not apply to HSA's (health savings accounts) or FSA's (flexible spending accounts).
4. The Employer will be refunded the 65% premium subsidy through a credit on their payroll taxes (see subsidy reimbursement section below for details).
5. The subsidy period will last **up to** nine months.
6. The subsidy period does not extend their COBRA eligibility period for benefits (i.e. 18 months for employees and 36 months for dependents). The nine month subsidy period runs concurrently with their COBRA extension period. Beyond the nine month subsidy period, the COBRA beneficiary would be responsible for 100% of the COBRA premium in order to continue their coverage (unless Congress extends the subsidy program).
7. The subsidy will apply to premiums paid for periods of coverage beginning after February 17, 2009, typically for coverage effective March 1, 2009 or after.

8. The subsidy is not available once the individual becomes eligible for coverage under another group health plan or Medicare or otherwise is no longer eligible for COBRA. If the individual fails to notify the Employer providing the subsidy, of eligibility for other coverage, a penalty of 110% of the premium reduction may be imposed (except for reasonable cause).
9. Individuals whose modified adjusted gross income exceeds \$145,000 or \$290,000 for joint filers, cannot retain the benefit of the COBRA subsidy, and the benefit is reduced proportionately for those with modified adjusted gross incomes between \$125,000 and \$145,000 (for individuals) or \$250,000 - \$295,000 (for joint filers). Adjustments for the subsidy will be added to the person's tax on their federal tax return.

### ***“Assistance Eligible Individuals” (AEIs) Definition:***

AEIs are qualified beneficiaries who elect extension coverage as a result of a covered employee's ***involuntary termination from their employment*** and became eligible for COBRA beginning September 1, 2008 through December 31, 2009. The premium subsidy would be effective upon receipt and approval of the COBRA Premium Subsidy Election Form (see attached sample).

### ***AEI Eligibility for Subsidy:***

#### In-force COBRA Coverage:

Individuals who were involuntarily terminated and elected COBRA coverage during their original COBRA election period (***effective September 1, 2008 or later***) and have continued to pay the full COBRA premium are eligible for premium subsidy.

***OR***

#### Special Election Period / Second Change Enrollment

1. Eligible persons who did not elect COBRA between September 1, 2008 and February 17, 2009 will have the opportunity to elect COBRA coverage effective March 1, 2009. However, their maximum COBRA duration period will date back from the date they could have first elected COBRA.
2. Eligible persons who previously elected COBRA (***effective September 1, 2008 or later***), paid the full COBRA premium for a period of time and then terminated their COBRA coverage will have the opportunity to elect COBRA coverage effective March 1, 2009.

Both types of second chance enrollment examples would have coverage effective March 1, 2009, however, their maximum COBRA duration period will date back to from the date they could have or did elect COBRA and does not extend their maximum coverage duration period.

### ***Employers Must:***

1. Identify ALL individuals and dependents that became eligible for COBRA ***regardless of reason*** on or after September 1, 2008.
2. Mail a Special Notice to these individuals notifying them of the new COBRA subsidy law and the eligibility requirements for the subsidy. The notice must include the following:
  - a. The forms necessary for establishing eligibility for premium reduction.
  - b. The name, address and phone number necessary to contact the plan administrator and any other person maintaining information in connection with the premium subsidy.
  - c. A description of the extended election period.

- d. A description of the obligation of the qualified beneficiary to notify the plan providing COBRA continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for Medicare and the penalty for failure to do so.
- e. A description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions of entitlement to the reduced premium.
- f. A description of the option to enroll in a different coverage offered by the plan if the plan sponsor (employer) agrees to this option. As the law allows for this option, GBS will assume that employers will allow such elections during the subsidy period and, if we are administering the COBRA plan, we will respond accordingly as to individual election options.

**Please note:** If GBS is administering your COBRA plan (including mailing of qualifying event notices), we will provide and mail these special notices to all COBRA eligible beneficiaries (since September 1, 2008) on or before April 1, 2009.

- 3. Review and determine if the person is eligible for the subsidy based on the cause of termination being the result of an involuntary termination. Approve or decline the COBRA Premium Subsidy Election Form and retain a copy for your documentation.

**Please note:** If GBS is administering your COBRA plan, please forward a copy of the election form to our COBRA department for our records so we may modify our eligibility and premium billing process (35% for this eligible COBRA participant).

- 4. Revise future COBRA communication materials to include premium subsidy guidelines. Create a notice for those terminated employees immediately entitled to a new COBRA enrollment period. This special notice must be mailed to all eligible COBRA beneficiaries.

The modified COBRA notifications must include information/instructions regarding:

- a. The availability of the 65% subsidy
  - b. The "second chance" special election
  - c. The information necessary to establish eligibility for the 65% subsidy
  - d. How to elect the subsidy
  - e. The obligation to notify the COBRA administrator of eligibility for any subsequent group healthcare coverage and the penalty associated with failure to notify.
- 5. Must provide notice to Assistance Eligible Individuals (AEIs) within 60 days after the enactment of the Act (no later than April 18, 2009).
    - a. The first notice must go to ALL AEIs who currently have COBRA continuation coverage to advise them of the availability of the subsidy and the requirements to qualify for the subsidy.
    - b. The second notice must go to any individual who is entitled to the **Special Enrollment Period**. This individual would be eligible for this special enrollment period if he/she qualified as an AEI except that the individual does not have COBRA coverage in effect as of February 17, 2009. Please see explanation below.

The Act requires the Department of Labor to provide model notices for plan administrators to use within 30 days after the enactment of the Act (by March 19, 2009). Once the model notices are available, GBS will make them available to our clients for their use.

**Please note:** If GBS administers your COBRA plan (including mailing of qualifying event notices), GBS will mail the notices to all required COBRA qualified beneficiaries.

### ***Special Enrollment Period:***

The individual would be eligible for this special enrollment period if he/she qualified as an AEI and does not have COBRA coverage in effect on the date of the enactment of the Act (February 17, 2009). This will include those who initially declined coverage and those who previously made a COBRA coverage election but their coverage ended before the enactment date because of non-payment of premiums.

The special election period begins on February 17, 2009 and ends 60 days after the plan administrator provides the required notice described above to the individual.

### ***Grace Period:***

The stimulus bill provides a grace period for Employers or COBRA Administrators (i.e. GBS) who are unable to modify March or April COBRA premium invoices for assistance-eligible individuals. The grace period permits charging the full COBRA premium for two billing periods, followed by a credit in subsequent billing periods to equal the missed 65% subsidy as a reimbursement to the individual.

### ***Employer Subsidy Reimbursements:***

The COBRA subsidy amount is reimbursed by being claimed as a credit on the Employers' (COBRA – 20+ employees) IRS Form 941. The Form 941 has been revised to allow for this credit (please see attached sample). The credit is claimed on Line 12a and the number of individuals provided COBRA premium assistance is to be reported on Line 12b.

No additional information relating to the COBRA subsidy is to be submitted with Form 941. However, those claiming the credit must maintain supporting documentation for the credit claimed. Such documentation includes, but is not limited to:

- a) Information on the receipt of the AEIs 35% share of the premium, including dates and amounts.
- b) Copy of invoice or other supporting statement as proof of timely payment of the full premium to the Employer or Third Party Administrator (i.e. GBS).
- c) Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008 to December 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- d) Proof of each AEIs election of COBRA coverage.
- e) A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals (i.e. Husband & Wife or Family coverage).
- f) Other documents necessary to verify the correct amount of reimbursement.

If the total COBRA subsidy on Line 12a exceeds your payroll tax liability on Line 10, resulting in an overpayment, you may apply your overpayment to your next return, or request a refund.

### ***Consequences of Noncompliance:***

It is very important to comply with all COBRA requirements. Failure to comply with COBRA followed by a Department of Labor complaint and investigation could result in a \$100 per day excise tax as well as "other relief" for COBRA notice failures.

## **Conclusion:**

We realize this is a great deal of information to absorb in a very short period of time. Here are a few of the important tasks that need to be completed within the next 60 days:

- 1) Determine who needs to get the Special Notice (employees terminated since September 1, 2008)
- 2) Mail the special notice (GBS will provide sample by April 1, 2009 to Employers) \*\*
- 3) Track the 60 day special enrollment period.
- 4) Receive and review COBRA Premium Subsidy Election Form and determine eligibility for subsidy.
- 5) Notify GBS of any qualified subsidy elections by returning a copy of the subsidy election form to GBS' COBRA department.

\*\* GBS will mail required notices for employers for whom we administer COBRA and are currently mailing qualifying event notices.

## **NEXT STEPS:**

GBS is actively working on the subsidy billing/collection requirements, premium payment reconciliations (stop loss and/or fully insured dental or vision plans), and election/termination notices. As soon as these procedures are finalized, GBS will send you a Compliance Alert with updated information and instructions.

We encourage you to read this important alert and contact your GBS Account Manager or the GBS COBRA Department at (443-589-1204) or (410-832-5164) with any questions you may have.

***This communication is not intended to be legal advice and should not be construed as legal advice. If you have any legal questions or concerns about your plan, GBS recommends seeking counsel from an ERISA attorney.***



Form **941 for 2009: Employer's QUARTERLY Federal Tax Return**

950109

(Rev. January 2009)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

(EIN) Employer identification number  -

Name (not your trade name)

Trade name (if any)

Address

Number Street Suite or room number

City State ZIP code

**Report for this Quarter of 2009**  
(Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

1 Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), Dec. 12 (Quarter 4) **1**

2 Wages, tips, and other compensation **2**

3 Income tax withheld from wages, tips, and other compensation **3**

4 If no wages, tips, and other compensation are subject to social security or Medicare tax  Check and go to line 6.

5 Taxable social security and Medicare wages and tips:

	Column 1		Column 2
5a Taxable social security wages	<input type="text"/>	× .124 =	<input type="text"/>
5b Taxable social security tips	<input type="text"/>	× .124 =	<input type="text"/>
5c Taxable Medicare wages & tips	<input type="text"/>	× .029 =	<input type="text"/>
5d Total social security and Medicare taxes (Column 2, lines 5a + 5b + 5c = line 5d)			<input type="text"/>

6 Total taxes before adjustments (lines 3 + 5d = line 6) **6**

7 CURRENT QUARTER'S ADJUSTMENTS, for example, a fractions of cents adjustment.  
See the instructions.

7a Current quarter's fractions of cents

7b Current quarter's sick pay

7c Current quarter's adjustments for tips and group-term life insurance

7d TOTAL ADJUSTMENTS. Combine all amounts on lines 7a through 7c **7d**

8 Total taxes after adjustments. Combine lines 6 and 7d **8**

9 Advance earned income credit (EIC) payments made to employees **9**

10 Total taxes after adjustment for advance EIC (line 8 - line 9 = line 10) **10**

11 Total deposits for this quarter, including overpayment applied from a prior quarter and overpayment applied from Form 941-X or Form 944-X

12a COBRA premium assistance payments (see instructions)

12b Number of individuals provided COBRA premium assistance reported on line 12a

13 Add lines 11 and 12a **13**

14 Balance due. If line 10 is more than line 13, write the difference here **14**

For information on how to pay, see the instructions.

15 Overpayment. If line 13 is more than line 10, write the difference here

Check one  Apply to next return.  Send a refund.



▶ You **MUST** complete both pages of Form 941 and **SIGN** it. **Next** →