

## FAQS FOR THE COBRA PREMIUM REDUCTION PROVISIONS OF ARRA

### INVOLUNTARY TERMINATION

**Q&A-1 through Q&A-8 apply solely for purposes of determining whether there is an involuntary termination under ARRA.**

**Q-1.** What circumstances constitute an involuntary termination for purposes of the definition of an assistance eligible individual?

**A-1.** An involuntary termination means a severance from employment due to the independent action of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer's failure to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services. In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee.

Involuntary termination is the involuntary termination of employment, not the involuntary termination of health coverage. Thus, qualifying events other than an involuntary termination, such as divorce or a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan (such as loss of dependent status due to aging out of eligibility), are not involuntary terminations qualifying an individual for the premium reduction. In addition, involuntary termination does not include the death of an employee or absence from work due to illness or disability.

**Q-2.** Does an involuntary termination include a lay-off period with a right of recall or a temporary furlough period?

**A-2.** Yes. An involuntary reduction to zero hours, such as a lay-off, furlough, or other suspension of employment, resulting in a loss of health coverage is an involuntary termination for purposes of the premium reduction.

**Q-3.** Does an involuntary termination include a reduction in hours?

**A-3.** Generally no. If the reduction in hours is not a reduction to zero, the mere reduction in hours is not an involuntary termination. However, an employee's voluntary termination in response to an employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

**Q-4.** Does involuntary termination include an employer's action to end an individual's employment while the individual is absent from work due to illness or disability?

**A-4.** Yes. Involuntary termination occurs when the employer takes action to end the individual's employment status (but mere absence from work due to illness or disability before the employer has taken action to end the individual's employment status is not an involuntary termination).

**Q-5.** Does an involuntary termination include retirement?

**A-5.** If the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated, the retirement is an involuntary termination.

**Q-6.** Does involuntary termination include involuntary termination for cause?

**A-6.** Yes. However, for purposes of Federal COBRA, if the termination of employment is due to gross misconduct of the employee, the termination is not a qualifying event and the employee and other family members losing health coverage by reason of the employee's termination of employment are not eligible for COBRA continuation coverage.

**Q-7.** Does an involuntary termination include a work stoppage as the result of a strike initiated by employees or their representatives?

**A-7.** No. However, a lockout initiated by the employer is an involuntary termination.

**Q-8.** Does an involuntary termination include a termination elected by the employee in return for a severance package where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee's group will be terminated?

**A-8.** Yes.

## **ASSISTANCE ELIGIBLE INDIVIDUAL**

**Q-9.** Who qualifies as an assistance eligible individual?

**A-9.** An individual must be an assistance eligible individual to be eligible for the premium reduction. Under ARRA, an assistance eligible individual is a qualified beneficiary as the result of an involuntary termination that occurred during the period from September 1, 2008, through December 31, 2009, is eligible for COBRA continuation coverage at any time during that period, and elects the COBRA continuation coverage. In order to be a qualified beneficiary, the individual must be covered under the SHBP/SEHBP 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). For purposes of Federal 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.

**Q-10.** If the involuntary termination and loss of coverage resulting in eligibility for COBRA continuation coverage occurred before September 1, 2008, can the individual become an assistance eligible individual?

**A-10.** No. The involuntary termination resulting in COBRA continuation coverage must occur during the period from September 1, 2008, through December 31, 2009.

**Q-11.** If the involuntary termination occurred before September 1, 2008, but the loss of coverage resulting in eligibility for COBRA continuation coverage occurred after September 1, 2008 (but no later than December 31, 2009), can the individual become an assistance eligible individual?

**A-11.** No. The involuntary termination resulting in COBRA continuation coverage must occur during the period from September 1, 2008, through December 31, 2009.

**Q-12.** If an individual's involuntary termination occurs no later than December 31, 2009, but the loss of coverage resulting in eligibility for COBRA continuation coverage occurs after December 31, 2009, is the individual an assistance eligible individual?

**A-12.** No. Both the involuntary termination and eligibility for COBRA continuation coverage must occur during the period from September 1, 2008, through December 31, 2009. If the loss of coverage is after

December 31, 2009, the individual cannot become an assistance eligible individual.

**Q-13.** Does an involuntary termination of an employee following another qualifying event, such as a divorce, satisfy the requirements for the qualified beneficiary from the first qualifying event to be an assistance eligible individual?

**A-13.** No. Generally, if COBRA continuation coverage is based on a qualifying event before the involuntary termination, the later involuntary termination does not cause the qualified beneficiary to become an assistance eligible individual. However, if, in anticipation of an involuntary termination that would otherwise qualify an individual as an assistance eligible individual, the employer takes action other than the involuntary termination of the individual that results in a loss of coverage for the individual (for example, a reduction in hours for the employee in anticipation of involuntarily terminating the employee), the action causing the loss of coverage prior to the involuntary termination is disregarded in determining whether involuntary termination is the qualifying event that results in the COBRA continuation coverage for the individual.

Example 1. An employee is divorced after September 1, 2008, and before December 31, 2009. The divorce results in a loss of health coverage for the spouse of the employee. The spouse is eligible for and timely elects COBRA continuation coverage. After the divorce, and before December 31, 2009, the employee is involuntarily terminated and loses health coverage. The employee elects COBRA continuation coverage that begins before December 31, 2009. The spouse is not an assistance eligible individual because the qualifying event with respect to the spouse's COBRA continuation coverage is not an involuntary termination. The employee is an assistance eligible individual.

Example 2. An employee experiences a reduction in hours in March 2009 that does not constitute (and is not in anticipation of) an involuntary termination. The reduction in hours results in a loss of coverage for the employee. The employee is eligible for and timely elects COBRA continuation coverage that begins as of April 1, 2009. In November 2009, the employee is involuntarily terminated from employment.

The employee cannot become an assistance eligible individual in connection with the November 2009 involuntary termination because the qualifying event with respect to the COBRA continuation coverage is not involuntary termination.

**Q-14.** Can an individual become an assistance eligible individual more than once?

**A-14.** Yes. An individual who becomes a qualified beneficiary as the result of an involuntary termination and who otherwise meets the requirements to be an assistance eligible individual is treated as an assistance eligible individual even if previously treated as an assistance eligible individual.

**Q-15.** If an individual has a loss of coverage and becomes a qualified beneficiary eligible for COBRA continuation coverage as the result of an involuntary termination no later than December 31, 2009, and timely elects COBRA continuation coverage after December 31, 2009 (with the COBRA continuation coverage beginning retroactively back to the loss of coverage), is the individual an assistance eligible individual eligible for the premium reduction?

**A-15.** Yes. The election of COBRA continuation coverage is not required to occur during the period from September 1, 2008, through December 31, 2009, as long as the resulting COBRA continuation coverage begins during that period.

**Q-16.** Is the death of an employee an involuntary termination of employment that would make qualified beneficiaries such as the spouse and dependent children of the employee assistance eligible individuals?

**A-16.** No. The death of an employee is not an involuntary termination of employment.

## **CALCULATION OF PREMIUM REDUCTION**

**Q-17.** What premium amount is used to determine the 35 percent share that must be paid by an assistance eligible individual?

**A-17.** The premium used to determine the 35 percent share that must be paid by 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 percent of the “applicable premium” for continuation coverage, i.e., generally the maximum permitted under the Federal COBRA rules, the assistance eligible individual is required to pay only 35 percent of the 102 percent 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, the amount actually charged the assistance eligible individual is used to determine the assistance eligible individual’s 35 percent share.

For all examples, 102 percent of the applicable premium for the COBRA continuation coverage is \$1,000 per month.

Example 1. The employer reimburses individuals electing COBRA continuation coverage \$400 per month. An assistance eligible individual is entitled to COBRA continuation coverage upon the timely payment of \$210 (35 percent of the remaining unreimbursed \$600).

**Q-18.** If an employer that previously reimbursed individuals part of the COBRA premium, increases the premium to a higher amount, does the ARRA premium reduction apply to the increased premium amount?

**A-18.** Yes.

**Q-19.** Does the premium reduction apply to portions of the premium attributable to COBRA continuation coverage for individuals who are not qualified beneficiaries?

**A-19.** No. The premium reduction is limited to premiums attributable to COBRA continuation coverage for assistance eligible individuals, defined as qualified beneficiaries who elect COBRA continuation coverage and whose qualifying event with respect to the coverage is the involuntary termination of employment of a covered employee during the period from September 1, 2008, through December 31, 2009. A qualified beneficiary with respect to a covered employee under a group health plan is the spouse of the employee under Federal law or a dependent child of the employee under Federal law if, generally, the spouse or dependent child was a beneficiary under the plan on the day before the qualifying event. Qualified beneficiary also includes a child who is born to or adopted by the covered employee during the period of COBRA continuation coverage. Subject to the preceding sentence, qualified beneficiary does not include a spouse or dependent child not covered before the qualifying event and added to the coverage during a later enrollment period. In addition, if an individual does not meet the definition of a qualified beneficiary under Federal COBRA, the individual's coverage is not eligible for the premium reduction under ARRA, even though such an individual may be covered under a plan by its terms, or as required by State law.

**Q-20.** If the COBRA continuation coverage of one or more assistance eligible individuals also covers one or more individuals who are not assistance eligible individuals, how is the premium paid by the assistance eligible individual for COBRA continuation coverage allocated between the assistance eligible individuals and the other individuals?

**A-20.** Amounts paid by an assistance eligible individual for COBRA continuation coverage covering one or more individuals who are assistance eligible individuals and one or more individuals who are not assistance eligible individuals are allocated first to the cost of covering assistance eligible individuals and then to the cost of covering non-assistance eligible individuals. Thus, if the cost of covering a non-assistance eligible individual does not add to the cost of covering the assistance eligible individuals, then the cost of covering the non-assistance eligible individual is zero, and the premium reduction applies to the full amount paid for the COBRA continuation coverage. If the cost of covering a non-assistance eligible individual adds to the cost of covering the assistance eligible individuals, it is the incremental cost that is ineligible for the premium reduction.

Example 1. An individual is an assistance eligible individual and has COBRA continuation coverage. The COBRA continuation coverage also covers the individual's civil union partner under Member and Spouse/Partner coverage. The civil union partner is not an assistance eligible individual. The member would pay 35 percent of Single coverage and 100 percent of the difference between the cost of Single coverage and the cost of Member and Spouse/Partner coverage.

Example 2. An individual is an assistance eligible individual and has COBRA continuation coverage. The individual has Single coverage and pays 35 percent of the cost of that coverage. During the premium reduction period, the SHBP/SEHBP has an open enrollment period during which it allows active employees and qualified beneficiaries to add spouses and dependents to the health coverage. The individual adds the individual's spouse and dependent child, who were not covered prior to the involuntary termination, to the COBRA continuation coverage.

The spouse and the dependent child are not assistance eligible individuals because they were not covered by the plan on the day before the involuntary termination. . The member would pay 35 percent of Single coverage and 100 percent of the difference between the cost of Single coverage and the cost of Family coverage.

**Q-21.** Does the premium reduction apply to the increased premium if the plan, in compliance with section 54.4980B-8, Q&A-2(c), allows the assistance eligible individual to change coverage from the benefit package that covered the individual prior to termination to a different benefit package with a higher applicable premium that allows an increase in the amount charged the assistance eligible individual?

**A-21.** Yes.

## **END OF PREMIUM REDUCTION PERIOD**

**Q-22.** For how long does the premium reduction apply to an assistance eligible individual?

**A-22.** 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 premium reduction provisions apply to the individual, or (3) the date the individual ceases to be eligible for COBRA continuation coverage.

**Q-23.** If an assistance eligible individual is eligible for other group health plan coverage but does not enroll in the other group health plan coverage, is the premium reduction available for the individual's COBRA continuation coverage after the date the individual is first eligible for the other coverage?

**A-23.** No.

Example 1. An assistance eligible individual begins employment with a new employer and is eligible to enroll in the employer's group health plan, with coverage effective the first day of the next month. The assistance eligible individual declines the coverage and continues COBRA continuation coverage. Although eligibility for other group health coverage does not end the individual's eligibility for COBRA, the premium reduction is no longer available as of the first day of the next month.

Example 2.. Same facts as Example 1, except that the new employer's group health plan imposes a 2-month waiting period. The premium reduction stops being available as of the first day after the end of the waiting period, even though the employee declined coverage under the plan. It is the same result if the employee had enrolled for coverage; the premium reduction would apply until the first day after the end of the waiting period.

Example 3. The spouse of an assistance eligible individual (who is also an assistance eligible individual) begins employment with a new employer and is eligible to enroll in the employer's group health plan with self-only or family coverage, with coverage effective the first day of the next month. The spouse enrolls in self-only coverage, and the assistance eligible individual continues COBRA continuation coverage. Although the individual is allowed to continue COBRA, the premium reduction is no longer available for the COBRA continuation coverage as of the first day of the next month because the assistance eligible individual is eligible for coverage under the group health plan of the spouse's employer.

**Q-24.** Is an assistance eligible individual who otherwise meets the eligibility requirements for coverage under a group health plan, but who cannot enroll and have coverage take effect immediately, considered eligible for coverage under the group health plan for purposes of ending the period of premium reduction?

**A-24.** No. An individual who is eligible to enroll for coverage under a group health plan is considered to be eligible for coverage under the group health plan for purposes of ending the period of premium reduction only from the first date that coverage can take effect. For example, if, as of March 1, 2009, an assistance eligible individual meets the eligibility requirements for coverage under a group health plan maintained by the individual's spouse, but cannot enroll and have coverage take effect immediately, the individual may receive the premium reduction for periods of coverage until the first date that coverage can take effect under the plan maintained by the spouse's employer.

**Q-25.** Is the premium reduction available after December 31, 2009?

**A-25.** Yes, the premium reduction may be available after December 31, 2009, for individuals who qualify as assistance eligible individuals on or before December 31, 2009. For example, an assistance eligible individual with respect to whom the period of COBRA continuation coverage for which the premium reduction first applies begins on December 1, 2009, could receive the premium reduction until August 31, 2010, assuming the individual does not become eligible for other group health plan coverage or Medicare or lose eligibility for COBRA continuation coverage before that date.

**Q-26.** Does the death of an involuntarily terminated employee end the eligibility of the qualified beneficiary spouse and dependent children for the premium reduction?

**A-26.** No.

**Q-27.** Does a failure to timely pay the required premium for COBRA continuation coverage end the premium reduction?

**A-27.** Yes. Failure to timely pay the required premium for COBRA continuation coverage ends the period of COBRA continuation coverage, at which time the individual no longer qualifies for the premium reduction. For this purpose, payment is considered timely if it is made by the end of any applicable grace period for making the payment.

**Q-28.** Is an individual currently enrolled in Medicare who is a qualified beneficiary as the result of an involuntary termination of employment that occurred during the

period from September 1, 2008, through December 31, 2009, able to elect COBRA continuation coverage and receive the premium reduction?

**A-28.** No. An individual currently enrolled in Medicare who becomes a qualified beneficiary as the result of an involuntary termination that occurred during the period from September 1, 2008, through December 31, 2009, may be eligible to elect COBRA continuation coverage but is not eligible for the premium reduction.

**Q-29.** What happens if an assistance eligible individual receiving a premium reduction fails to provide notice of the individual's eligibility for coverage under any other group health plan or Medicare and continues receiving the premium reduction?

**A-29.** The assistance eligible individual who failed to provide notice may be subject to a Federal tax penalty of 110 percent of the premium reduction improperly received. The penalty will not apply if it is shown that the individual's failure to provide notice was due to reasonable cause and not to willful neglect.

**Q-30.** How long is the period of premium reduction for an individual who becomes an assistance eligible individual a second time?

**A-30.** An assistance eligible individual is eligible for up to nine months of premium reduction for each involuntary termination.

Example. An individual is involuntarily terminated and loses coverage as of April 1, 2009. The individual otherwise meets the requirements for an assistance eligible individual and is allowed the premium reduction for COBRA continuation coverage beginning April 1, 2009. On July 1, 2009, the individual ceases to be an assistance eligible individual because of coverage under a group health plan provided by the employer of the individual's spouse. Subsequently, the individual's spouse is involuntarily terminated, the individual loses coverage as of November 1, 2009, and, at that time, otherwise meets the requirements for being an assistance eligible individual.

The individual is allowed up to nine months of premium reduction with respect to the involuntary termination of the individual's spouse.

**Q-31.** Is the period for which premium assistance is available extended by a second qualifying event, such as a divorce, following an involuntary termination based on which a qualified beneficiary is an assistance eligible individual?

**A-31.** No.

**Q-32.** How does an assistance eligible individual make a permanent election to waive the right to the premium reduction?

**A-32.** An assistance eligible individual who wants to make a permanent election to waive the right to the premium reduction makes the election by providing a signed and dated notification (including a reference to “permanent waiver”) to the Division of Pensions and Benefits. There is no separate additional notification to any government agency. If an assistance eligible individual makes the permanent election to waive the right to the premium reduction, the individual may not later reverse the election and may not receive the premium reduction for any future period of COBRA continuation coverage in 2009 or 2010, regardless of modified adjusted gross income in those years.

### **EXTENDED ELECTION PERIOD**

**Q-33.** If an employee was involuntarily terminated during the period from September 1, 2008, through March 1, 2009, and elected self-only COBRA continuation coverage, are a spouse and dependent children who are qualified beneficiaries in connection with the involuntary termination allowed to elect COBRA continuation coverage and receive the premium reduction under the extended election period?

**A-33.** Yes. An individual who does not have an election of COBRA continuation coverage in effect on March 1, 2009, but who would have been an assistance eligible individual if the election were in effect is allowed a second opportunity to elect COBRA continuation coverage under the extension of election period. The resulting coverage is effective on March 1, 2009. A spouse or dependent child who is a beneficiary under a group health plan that covers an employee on the day before the involuntary termination of the employee (whose termination was on or after September 1, 2008) would have been an assistance eligible individual if the spouse or dependent child timely elected COBRA continuation coverage and thus qualifies for the second election.

**Q-34.** When does COBRA continuation coverage begin for individuals making the election during the extended election period provided under ARRA?

**A-34.** COBRA continuation coverage elected during the extended election period begins on March 1, 2009. Thus, expenses incurred after the loss of coverage and before March 1, 2009, are not covered under the resulting COBRA continuation coverage.

**Q-35.** If an assistance eligible individual was eligible for other group health plan coverage prior to March 1, 2009, but has been unable to enroll in the other group

health plan coverage on and after March 1, 2009, is the premium reduction available to the individual's COBRA continuation coverage?

**A-35.** Yes, the assistance eligible individual is allowed the premium reduction until the individual is eligible to enroll in coverage under any other group health plan.

Example 1. An assistance eligible individual was involuntarily terminated and lost health coverage on or after September 1, 2008, and before March 1, 2009. At the time of, and because of, the loss of coverage, the assistance eligible individual was eligible for a special enrollment period in the group health plan provided by the employer of the individual's spouse. The special enrollment period ended before March 1, 2009. The assistance eligible individual elected COBRA continuation coverage and has not been eligible to enroll in coverage under the spouse's group health plan at any time on or after March 1, 2009. Under these facts, the assistance eligible individual is not considered eligible for coverage under the plan of the spouse's employer until the effective date of coverage for the first enrollment opportunity that occurs on or after March 1, 2009. Therefore, the assistance eligible individual may receive the premium reduction beginning on March 1, 2009, and until becoming eligible for coverage under the plan of the spouse's employer.

Example 2. Same facts as Example 1, except that the spouse's group health plan has an open enrollment period from June 1, 2009, to June 21, 2009, with coverage elected during the open enrollment period beginning July 1, 2009. The individual's spouse may elect coverage for the individual under the group health plan at that time. The spouse does not elect coverage for the individual, who continues COBRA continuation coverage. The premium reduction is no longer available for the individual's COBRA continuation coverage for periods beginning on or after July 1, 2009.

## **APPEALS**

**Q-36.** If an individual is denied eligibility as an assistance eligible individual, what can the individual do?

**A-36.** ARRA provides an individual who requests and is denied treatment as an assistance eligible individual with the right to a review of the denial, within 15 business days after the receipt of the application for review, by the U.S. Department of Health and Human Services. Details are available at the Department's website, [www.hhs.gov](http://www.hhs.gov).