

Welcome!

Thank you for joining us. We have a great many participants in today's call. Your phone is currently muted so that the noise level can be kept to a minimum. If you have any questions, you can send them to the host using the Chat feature in the bottom right corner during the webinar.

The webinar will start momentarily.

What You Need to Know Now About the ARRA COBRA Subsidy

New Requirements for California Employers

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Background

- Recession and healthcare reform debate
- Mounting unemployment
- American Recovery and Reinvestment Act of 2009 (“ARRA”)
- Immediate effect

Assistance Eligible Individuals (AEIs)

- Employees involuntarily terminated between 9/1/08 and 12/31/09 and their dependents
- Must be eligible for COBRA
- Dates are crucial

AEIs– Involuntarily Terminated

- No definition– awaiting clarification
- NOT:
 - Voluntary terminations– retirements, resignations, death
 - Other non-termination COBRA qualifying events

Compliance Checklist

1. Prepare a list of all qualifying events since 9/1/08. Identify AEIs.

AEIs– Eligible for Other Group Health Plan or Medicare?

- “Group Health Plan”
 - Includes: family member’s group health plan or FSA, treatment at employer’s on-site medical facility
 - Does not include dental, vision, counseling or referral services only or any combination
- Employer must notify of requirement; employee must report to employer

AEI Entitlement

- 65% subsidy of COBRA premium for maximum of nine months
 - Most COBRA-applicable group health plans
 - Enrolled the day before COBRA-qualifying event

Optional AEI Step-down

- Employer may allow AEIs to elect less expensive coverage
 - Coverage must be offered to actives
 - Not dental, vision, counseling or referral services only, FSA or treatment at employer's on-site medical facility
 - 90 day election period

Compliance Checklist

1. Prepare a list of all qualifying events since 9/1/08. Identify AEIs.
2. **Decide whether to offer optional step-down.**

Election Notices

Model notices:

- General Notice– Full version
 - All QBs who experience any QE from 9/1/08- 12/31/09 (both AEIs and non-AEIs) who either
 - Haven't' received any COBRA election notice (unlikely) or,
 - Were provided an election notice after 2/17 that didn't include ARRA
- General Notice– Abbreviated version
 - May be sent in lieu of full version to individuals described above, who currently have COBRA
- Notice in Connection with Extended Election Period
 - To AEIs subject to extended election period
 - By April 18

Compliance Checklist

1. Prepare a list of all terminations since 9/1/08. Identify AEIs.
2. Decide whether to offer optional step-down.
3. **Prepare and send out notices for post-9/1 qualifying events by 4/18.**

Extended Election Period

- 2nd chance at COBRA with subsidy for
 - AEIs who didn't elect COBRA
 - AEIs who elected COBRA but failed to pay premium
- Coverage effective 3/1/09
 - Gap in coverage doesn't count for pre-existing conditions
 - 9 months of subsidy, less than 18 months of COBRA

Extended Election Period– Example

Alice was involuntarily terminated on 9/5/08. Her benefits coverage ran until the end of September. She was eligible for COBRA on 10/1/08, but she did not elect COBRA.

On 4/18/09, Alice's employer sends her a new COBRA notice, with subsidy information. She elects subsidized COBRA on 5/1/09.

Question	Date	Reason
What's the deadline for Alice to elect subsidized COBRA?	6/17/09	AEI has 60 days from date of notice of COBRA subsidy to elect subsidized COBRA.
When did Alice's subsidized COBRA coverage begin?	3/1/09	Even though Alice elected subsidized COBRA on 5/1/09, subsidy begins at beginning of first COBRA period after passage of statute. For most plans, 3/1/09.
When does Alice's subsidized COBRA coverage end?	11/30/09	Maximum nine months of subsidy from beginning of subsidy period.
Assuming 18 months of COBRA, what's the last day of Alice's COBRA coverage?	3/31/10	Maximum 18 months of COBRA coverage, from date COBRA coverage would have started if elected when initially eligible. Alice eligible for COBRA on 10/1/08.

Compliance Checklist

1. Prepare a list of all qualifying events since 9/1/08. Identify AEIs.
2. Decide whether to offer optional step-down.
3. Prepare and send out notices for post- 9/1 qualifying events by 4/18.
4. **Track AEI subsidy & COBRA eligibility periods.**

Subsidy Waivers

- Same year income exceeds \$125,000 (single)
\$250,000 (family)
 - All or part of premium assistance may be recaptured by IRS
- Notify of potential recapture
 - Model forms
 - Waiver permanent
 - How waiver accomplished still unclear

Dealing with AEI Disputes

- Send prompt denial
 - Form in model notices
 - No prescribed time period (14 days for COBRA denials)
- Inform of expedited appeal
 - Model notice
 - 15 day process
 - No forms/regulations yet

Compliance Checklist

1. Prepare a list of all qualifying events since 9/1/08. Identify AEIs.
2. Choose whether to offer step-down option.
3. Prepare and send out notices for pre-2/17 qualifying events by 4/18.
4. Track AEI subsidy period and COBRA eligibility periods.
5. **Develop procedure for dealing with AEI disputes.**

Early End of Premium Assistance

- Date AEI eligible for coverage under Medicare or any other group health plan
- AEI must notify plan in writing
- 110% penalty for failure to notify

March and April Overpayments

Employer can either:

- Reimburse AEI 65% or
- Credit against future premium payments
 - HOWEVER, unless reasonably expect credit used within 180 days, must refund within 60 days

Compliance Checklist

2. Choose whether to offer step-down option.
3. Prepare and send out notices for pre-2/17 qualifying events by 4/18.
4. Track AEI subsidy period and COBRA eligibility periods.
5. Develop procedure for dealing with AEI disputes.
6. **Track overpayments of premium & credit or reimburse as necessary.**

Who Pays the COBRA Premium?

1. AEI pays 35%
2. Employer pays 65%
3. Employer reimbursed by federal government by offsetting payroll taxes

Employer Who Already Subsidizes

- AEI pays 35% of what they are charged by employer.
- Example: Total COBRA premium is \$1000. Employer, as part of severance agreement, pays \$500. Under ARRA, AEI entitled to 65% subsidy on \$500. AEI only pays \$175 and employer pays extra \$325 subsidy. Only \$325 is reimbursed by IRS.

Subsidy Reimbursement

- Quarterly payroll tax filing– Form 941
 - Amount of credit claimed– line 12a
 - Number of individuals subsidized– line 12b
- Report other information required by IRS
 - Attestation of involuntary termination for each former employee
 - Report of amount of taxes offset and estimate for next period
 - Report of SSNs of all covered employees, subsidy amounts for each & whether subsidy for 1 or more AEIs

Compliance Checklist

4. Track AEI subsidy period and COBRA eligibility periods.
5. Develop procedure for dealing with AEI disputes.
6. Track overpayments of premium & credit or reimburse as necessary.
7. **Collect information needed to report to get reimbursed for subsidy.**
8. **File form 941 on time.**

Recordkeeping Requirements

- Information on the receipt, including dates and amounts, of AEI's 35% share of premium payments
- For fully-insured plans, copy of invoice or other supporting statement from carrier and proof of timely payment of full premium amount
- For self-insured plans, proof of premium amount and proof of coverage provided to AEIs
- Attestations of involuntary termination (including termination date) for each covered employee whose involuntary termination is the basis for an AEI's eligibility
- Proof of each AEI's eligibility for COBRA and election of COBRA
- SSNs of all covered employees, the amount of subsidy reimbursed for each, and whether subsidy was for one individual or more
- Other documents needed to verify the correct amount of reimbursement
- *Plus same records would keep for regular COBRA administration*

Upcoming Deadlines

4/18/09	Notices of extended election period must be sent to all employees with qualifying events between 9/1/08 and 2/17/09
4/30/09	Dates IRS Form 941 due.
7/31/09	
10/31/09	
1/31/10	
9/30/10	Last day subsidized coverage available.

Self-Funded Plans

- Calculate COBRA premium as normally would
- Charge and receive from AEIs 35% of normal COBRA premium
- (Adjust employer share of plan funding to include 65% subsidy)
- Apply for 65% subsidy reimbursement as fully-insured plan would

Multi-employer Plans

- Plan is responsible for subsidy & reimbursement
- Problem with multi-employer plans that don't have payroll

Awaiting Guidance

- Definition of involuntary termination
- Timeframe for plans to deny AEI status
- Details on AEI appeal process
- How 110% penalty works
- How subsidy/reimbursement works for multi-employer plans
- How information not on Form 941 gets reported to IRS

Keenan Assistance

- Continued tracking of regulations and forms
- *Briefings*, webinar, COBRA Subsidy web page
- TPA for self-funded plans—plan document amendments
- COBRA administration— notices, elections, tracking

Plan Document Changes

- Work with entity that writes your plan documents
- Subsidy basics
- Optional step-down provision

Compliance Checklist

6. Track overpayments of premium & credit or reimburse as necessary.
7. Collect information needed to report to get reimbursed for subsidy.
8. File form 941 on time.
9. **Amend plan documents as necessary.**
10. **Divide responsibilities with outside COBRA administrator.**

AEI's Responsibilities

- Return election forms on time
- Pay 35% during subsidy period
- Promptly notify employer of eligibility for other coverage
 - 110% penalty for non-compliance
- If income above certain amount, repay IRS

Information Resources

- COBRAsubsidy@keenan.com
- www.keenan.com
- <http://www.dol.gov/ebsa/cobra.html>
- www.irs.gov

Questions?

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Thank you for your participation!

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