

## COBRA ARRA – New Guidance

The U.S. Department of Labor (DOL) released new guidance March 19, 2009, on the changes regarding COBRA continuation coverage under the American Recovery and Reinvestment Act of 2009 (ARRA). Below are some of the key points:

### Notices

The DOL issued guidance for employers and employees on four model notices.

The guidance released by the DOL affirms that qualifying event notices that include information about ARRA **must be provided to all qualified beneficiaries for all qualifying events** that occurred on or after September 1, 2008, through December 31, 2009. The notice cannot go to only those who were involuntarily terminated.

The DOL took this position to remain consistent with the letter of the law, even though a joint congressional committee issued the following statement: *“As under the House bill, a notice must be provided to all individuals who terminated employment during the applicable time period, and not just to individuals who were involuntarily terminated.”* The congressional committee further added that *“a violation of the new notice requirements is also a violation of the notice requirements of the underlying COBRA provision.”*

**Unless that law is amended through a technical correction, Ceridian must follow the DOL guidance and the law as it currently exists.**

### ‘Involuntarily Termination’

Although no new clarification was issued regarding the definition of “involuntary termination,” the DOL did provide the House Ways and Means Committee’s definition on a document dated Feb. 27, 2009.

It states:

“Involuntary termination is a termination that is at the direction of the employer.”

*Note:* Generally speaking, gross misconduct disqualifies an employee from COBRA coverage, and therefore the subsidy. Also, individuals who resign from their jobs are not eligible for the subsidy.

### Qualified Beneficiary

As a reminder, under COBRA a qualified beneficiary generally is an individual (an employee, the employee’s spouse or an employee’s dependent child) covered by a group health plan on the day before a qualifying event. In certain cases, a retired employee, the retired employee’s spouse, and the retired employee’s dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary.

In its guidance, the DOL did not specifically define non-qualified beneficiaries.

### **Eligibility**

The DOL reaffirmed that ARRA makes the premium reduction available for “*assistance eligible individuals*” (AEIs) who meet the following requirements:

- is eligible for COBRA continuation coverage at any time during the period from September 1, 2008, through December 31, 2009;
- elects COBRA coverage (when first offered or during the additional election period provided by ARRA); and
- the COBRA election opportunity relates to an involuntary termination of employment that occurred from September 1, 2008 through December 31, 2009.
- Is not eligible for other group health coverage (such as through a spouse’s plan or a new employer’s plan) or for Medicare

Also, it is clear from the guidance that the subsidy may apply to any second COBRA qualifying event (aka “stacking” event) that follows an involuntary termination of employment within the listed dates. An example of this situation is when a former employee on COBRA dies after an involuntary termination.

### **Appeals Process**

Ceridian will use certification information obtained from your former employees, as well as information from your company’s Involuntary Confirmation Report, to determine whether an individual is eligible for the subsidy.

If an individual is deemed ineligible for the premium reduction, he or she can request an expedited review of the denial through the federal government.

- The Department of Labor will handle appeals related to private sector employer plans subject to ERISA’s COBRA provisions.
- The Department of Health and Human Services will handle appeals for federal, state, and local governmental employees, as well as appeals related to group health insurance coverage provided pursuant to state continuation coverage laws.

The departments mentioned above are required to make a determination regarding the appeal within 15 business days of receiving the completed application.

*Note:* The departments are currently developing a process and an official application form that will be required to be completed for appeals. Ceridian will provide the required appeal form to individuals when we notify them that they are not eligible for the subsidy.

### **Subsidy Responsibility: 2% Administration Fee**

The DOL’s guidance clarified that an assistance eligible individual would be responsible for paying 35% of the COBRA premium with the 2% administration fee. For example, he or she would pay 35% of 102% of the full COBRA premium. Employers would be responsible for 65% of the cost of coverage (100%) without the 2%. For example, they would fund 65% of 100% of the cost.