



American Recovery and Reinvestment Act (ARRA) COBRA Federal Subsidy SEGIP's Administration Information

COBRA federal subsidy provision summary

- Subsidy is available to covered employees involuntarily terminated from their jobs between September 1, 2008 and December 31, 2009 and otherwise eligible for COBRA during this period
- Covers qualified beneficiaries including covered employees and their eligible spouse and children
- Subsidy is 65 percent of the COBRA premium, employee pays 35 percent
- Subsidy is for nine months (employer contributions run concurrently)
- Eligibility for the subsidy ends if the individual is eligible for other group health coverage or Medicare or is no longer eligible for COBRA
- MMB must give notice to certain former employees by April 18, 2009 and those individuals have 60 days from the date of the notice to respond
- A special 60 day election period is required for employees involuntarily terminated between September 1, 2008 and February 17, 2009 (regardless if they elected COBRA at termination or not) and those individuals have 60 days from the date of the notice to respond
- Subsidy begins March 1 for employees involuntarily terminated between September 1, 2008 and February 17, 2009
- COBRA subsidy applies to health and dental coverage and the MnSCU HRA (but not life insurance or the state's 2009 HRA)
- Subsidy is tax free to the individual, if income requirements are met. (See high earners income).
- MMB will administer the program for all SEGIP members so state agencies and IBUs will not need to issue notices to employees or pay the employer's 65 percent or apply for the employment tax credit

Who is eligible for the premium subsidy

- To be eligible for the premium subsidy an individual must be an "assistance eligible individual"
- An assistance eligible individual 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)

- COBRA election opportunity relates to an involuntary termination of employment that occurred at some time from September 1, 2008 through December 31, 2009
- Includes a spouse or dependent child who is a qualified beneficiary (a qualified beneficiary is an employee, and the employee's covered spouse or dependent child, who were covered immediately before the involuntary termination)
- An ex-spouse is eligible for subsidized COBRA coverage provided the ex-spouse was covered on the employee's family policy immediately before the employee's termination and if the subsidized COBRA family coverage includes the employee, the ex-spouse and at least one other tax qualified dependent
- An ex-spouse who was on an employee's family coverage immediately before an involuntary termination is eligible for COBRA coverage. However, an ex-spouse will not be eligible for the subsidy if the involuntarily terminated employee does not choose COBRA coverage or is otherwise ineligible for subsidized COBRA.

How the subsidy works

- The employee pays 35 percent of the premium and the employer pays 65 percent of the premium
- The employer is reimbursed by the federal government through an employment tax withholding
- MMB will administer the tax credit so state agencies and IBUs who participate in SEGIP will not pay the employer's 65 percent share of the premium nor will they need to take any action to obtain the premium reimbursement credit
- Employers who improperly take an employment tax credit will be assessed a penalty by the IRS

Agencies and IBUs must attest as to the voluntary or involuntary termination of each employee

- The distinction between voluntary and involuntary termination is critical because the federal government reimburses the employer's 65 percent of the premium through a credit to employment taxes paid. Entities taking an ineligible employment tax credit will be assessed a penalty by the IRS
- Agencies and IBUs must determine whether an employee's separation was a voluntary termination or an involuntary termination
- Agencies and IBUs must attest to the termination status for each of its separated employees. By entering the Action/Reason code in SEMA4 the agency/IBU is considered to have attested to the voluntary or involuntary nature of the termination. ***IRS imposed fines for improperly withholding an employment tax credit. Fines will be assessed to the agency/IBU when that agency/IBU misidentified an employee as involuntarily terminated.***

If there are extenuating circumstances regarding the termination status of your employee you must contact SEGIP in order for us to make the correct determination on your employee's subsidy status.

What is an involuntary termination

- The IRS describes an involuntary termination with a broad brush. The definition is more expansive than one might generally assume. When in doubt please call MMB.
- According to the IRS an involuntary termination is defined as “...a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment ... where the employee was willing and able to continue performing services.”
- It will not always be clear if a termination was voluntary or involuntary and a case-by-case determination will be required. Generally:
 - **Involuntary termination:** Examples are:
 - Layoff, seasonal layoff, dismissal, non-certification
 - Call to active military duty
 - Employer initiated reduction of hours to zero
 - Furlough, lockout or other suspension of employment, resulting in a loss of insurance benefits coverage
 - Employer ends an employee’s employment status while the employee is absent from work due to illness or disability
 - Retirement if the employer would have terminated the employee’s employment status and the employee had the knowledge that the employee would be terminated
 - Termination for cause or failure to meet probation for reasons other than gross misconduct
 - Accepting a “buy-out” package where the employer indicates that after the offer period for the severance package, a certain number of remaining employees will be terminated
 - **Voluntary termination:** Examples are:
 - Quitting, resigning, retiring
 - Loss of insurance coverage due to death, divorce, dependent aging off the plan
 - Absence of work due to illness or disability
 - Work stoppage as the result of a strike initiated by employees or their representatives
 - **Case-by-case review:** The determination of what is an involuntary termination is based on all the facts and circumstances. Terminations will often involve a case-by-case analysis. For example:
 - Quitting is involuntary when an employee volunteers to quit so that another employee is not laid off
 - Quitting is involuntary when it is a response to a significant reduction in hours

Notice

- MMB will notify qualified individuals terminated between September 1, 2008 and April 14, 2009 of the COBRA subsidy option through a letter mailed to their homes on April 15, 2009
- MMB will include COBRA subsidy election information with the standard COBRA notification sent to qualified beneficiaries between April 15, 2009 and December 31, 2009

Appeal process

- Individuals denied the subsidy have the right to appeal to the Department of Health and Human Services
- HHS has an expedited appeal process and will conduct reviews within 15 business day after the receipt of the application for review
- MMB will have a limited time to respond to information requests from HHS
- MMB will contact the employing agency/IBU when clarification to the involuntary status of an employee's termination is required

Individuals have notice responsibility

- An individual receiving the subsidy who becomes eligible for other group coverage must notify SEIGP in writing of that status
- The subsidy is not available to individuals who qualify for other group coverage
- An individual eligible for other group coverage but who continues to receive the subsidy will be fined 110% of the monthly premium for each month of ineligible subsidization
 - Eligible individuals may choose to continue the COBRA coverage without the subsidy
 - An individual is not eligible for other group coverage until that individual may actually enroll in the group plan
 - Employee accepts a new position offering group insurance with a waiting period, that employee will be eligible for the subsidized COBRA until the waiting period is over even if the employee is actively working for the new employer
 - Other group coverage includes Medicare but does not include TriCare or an individual plan purchased from an insurance company
- The penalty is waived if the individual can show that the failure to notify was due to reasonable cause and not to willful neglect

Premium payments under the subsidy

- The employee pays 35 percent. The employer pays 65 percent and is reimbursed for the 65 percent by the federal government through a reduction in employment tax payments
- No federal subsidy is permitted until the individual has made the premium payment
- The subsidy is tax free except for high income earners (see high-income earners)
- Employer reports to the federal government the amount withheld by taxpayer ID of subsidized individuals
- Members will be reimbursed for premiums paid in excess of the subsidy between March 1 and when the subsidy rate is in place
- MMB will administer the credit for all SEIGP members so state agencies and IBUs do not need to pay the employer's 65 percent or apply for the employment tax credit

High-income earners

- Individuals with annual income exceeding \$145,000 and couples making \$250,000 are not eligible for the subsidy
- Individual's whose income exceeds the subsidy limit may enroll in COBRA and may take the subsidy but will be required to repay the subsidy through their income taxes without a fine
- Individuals may waive the subsidy but may not re-enroll for the subsidy at a later date
- Employers do not need to determine income eligibility nor are they responsible for monitoring a subsidized individual's income (the employer will report for tax purposes)

What coverage is eligible for the COBRA subsidy

- Medical and dental coverage is available for the subsidy
- MnSCU HRA is available for the subsidy
- MDEA is specifically not eligible for the subsidy
- SEGIP's 2009 HRA is not subject to COBRA because there is no loss of coverage arising out of a separation from state employment (terminated employees and their eligible dependents will still have access to the account)

Length of the subsidy

- The federal subsidy runs for nine months
- The federal subsidy period runs concurrently with state employment subsidies the employee may be owed through union agreement or plan
- Subsidized COBRA ends at the earliest of:
 - The expiration of the nine months of subsidy payments
 - The date the participant's eligibility for COBRA ends (the COBRA period ends according to when the individual was first eligible for COBRA coverage regardless of when the subsidy began)
 - The date the participant fails to make COBRA payments
 - The date the participant is eligible for other group coverage