

Corporate Synergies COBRA/ARRA Webinar

Questions & Answers

1. Has the Department of Labor published more specific guidelines for employers concerning the Tax Credit yet?

Due by April 1st

2. I am an Infinisource client. Are we required to notify all current employees about this new COBRA regulation?

Infinisource General Notice has been updated for those who first become covered under the health insurance. Other than that, there has been no requirement to notify active employees.

3. Will Infinisource send me a list to approve of any active COBRA participants or any termed employees from 9/1/08 forward? Will I be able to add any employee's to that, since prior to 11/1/08, we were not with Infinisource?

You can report events prior to 11/1/08. Those are considered Prior Activity and will have an additional charge. No problem though, Infinisource can handle those for you.

4. Do these new regulations apply to lay off employees? We have union workers that are seasonal employees that get laid off for a few months every year. Would they be eligible for this subsidy?

This is the time to verify the reason that you offered someone COBRA. If the event is Involuntary Termination, they are potentially eligible for the subsidy.

5. Is there somewhere to get samples of the new notices since I am not an Infinisource client?

Infinisource does not provide any of our proprietary notices to anyone but our current clients. We are responsible for the verbiage in our own notices. You can use the DOL's sample notices that are due by March 19th. You will still need to have them reviewed by legal and modified for your plan needs.

6. Can you define the term involuntarily in regards to employment? We have had no layoffs or reduction in workforce here so I'm assuming that we wouldn't have to send out revised notices to anyone.

The latest word from the DOL (to be clarified in the pending Regulations) is that all Qualifying Events will have to be notified.

7. We do all of our own printing and mailing of general notices. Has the general notice changed and if so, do we have to distribute a new one to all employees?

The General Notice should have ARRA language added to it. There is no mass mailing requirement for re-notification.

8. During the 2/27/09 webinar, Karen stated that employers can claim reimbursement for the 65 % once the employer receives a partial premium payment from the QB. Our medical carrier bills the qualified beneficiary directly for their COBRA premiums, so as an employer, we never see the money. When would we be able to claim reimbursement?

Employers can claim the credit when the 35% is in hand. You'll have to work with the carrier to get up-to-the-minute updates on who has paid what.

9. We have several companies with different tax ID numbers under common ownership and under one health plan. We have involuntary separated employee under several of the companies in difference states, is it possible to lump all COBRA subsidy under one company on our 941?

Each 941 requires an EIN employer identification number.

10. Where can I obtain the necessary notices that need to be distributed to Assistance Eligible Individuals?

Infinisource does not provide any of our proprietary notices to anyone but our current clients. We are responsible for the verbiage in our own notices. You can use the DOL's sample notices that are due by March 19th. You will still need to have them reviewed by legal and modified for your plan needs.

11. We have been asked how the subsidy will work if a person eligible for the subsidy accepts part time employment that offers no benefits. Does the subsidy continue?

Yes, the subsidy would continue. An individual ceases to be eligible for the subsidy when they become eligible for another group health plan or Medicare.

12. How does the calculation of COBRA premium work allowing for the 2% admin fee that we as employers are allowed to charge? Is the subsidy based on the plan cost? Is the subsidy based on the plan cost plus the 2%?

The subsidy is based upon the total allowed premium-102% for Federal COBRA.

13. Does "involuntarily lost their job" include terminations for poor performance. I believe the act says except for "gross misconduct" which in my mind doesn't include poor performance. Do you have any further information?

Gross misconduct has never been defined by the government. So, with no federal definition, we generally see employers go to court to defend their definition.

14. Did I understand correctly that the firm has to pay the 65% subsidy for not only medical, but dental and vision, too, if eligible participant elects it?

The subsidy is for all coverages.

15. When sending in new cobra information to Infinisource, will employers have to specify whether it's voluntary or involuntary termination so Infinisource knows whether the person would get subsidy?

Subsidy Application and Special Election Notice: Infinisource will mail a combined "Subsidy Application and Special Election Notice" to COBRA Qualified Beneficiaries who may be eligible for the 65 percent COBRA subsidy. Participants will be required to submit this application to Infinisource. You will be notified of these applications through your Daily Status Change Report (carriers receiving the report will not be notified). You will have five business days to report any individual as ineligible. Unless reported as ineligible, Infinisource will then begin billing for the subsidized COBRA premiums for a nine-month period.

New Qualifying Events reported on or after February 20, 2009: For new Qualifying Events reported on or after February 20, 2009, Infinisource will offer two separate event codes:

(F) Termination of Employment (the letter code is if you send in paper reporting to us)

(G) Involuntary Termination of Employment (the letter code is if you send in paper reporting to us)

16. When will first time be that employer can deduct subsidy payments from payroll taxes? What payroll taxes are involved?

It could be as early as receiving the 35% payment from an individual for their March premium. You cannot claim the payroll tax credit until you have money in hand from the participant.

17. If a staff person has their hours reduced beyond their control because of lack of available workand they enter into an ineligible class for benefits, are they eligible for the COBRA assistance?

The subsidy is only for those individuals who have experienced an Involuntary Termination of Employment.

18. What is the process of notifying Infinisource of a termination/resignation and reason (because the reason will determine if they are eligible for the 35% for the first 9 months).

From 4/17 forward, clients using the Website to reports events to us have a choice between voluntary and involuntary termination for events caused by termination of employment. For clients using forms to report to us, they have received communication to use the code "G" which represents an involuntary termination of employment.

19. Does each dependent that is covered under insurance get a letter?

No, the notice is mailed to the employee (by name), Spouse and/or Dependent. If a Spouse or Dependent is living at a separate address and the Employer is aware of this address, they have the ability to send additional notices to the separate address from a single submission.

20. We are an Infinisource client. Do we get a copy of the Cobra letter for the employee's file?

No, but there is a copy available from the client online site under the Qualifying Events tab, "Find Employee/QB". Here you can search by name and it will take you into the participant website. The second tab is titled "Beneficiaries". Copies of the notices sent to this individual are stored here.

21. How does Infinisource know what benefits the employee has?

This information is submitted to us via the online site when entered by the client. All of the clients' plans and rates are stored on the website and when entering the Event, the appropriate plans are assigned at this time.

22. Who gets the Cobra payment and how do we get it for receivables?

Infinisource collects the premiums and remits them back to the Employer. All premiums received in one month are remitted back to the client by the 15th business day of the following month. A detailed report showing who paid and for what coverage and period is included.

23. Who files the reimbursement form and when is it filed?

I'm assuming you are asking about the payroll tax credit under ARRA. This is filed by the employer on your quarterly 941 filing. Infinisource will provide a report that tracks the ARRA subsidy for AEI's.

24. Who gets the check of reimbursement?

In most cases it's not a check but a reduction of payroll taxes. If the amount of subsidy exceeds the payroll tax, the Employer would be eligible for an additional tax refund. This would be sent to the Employer.

25. EE has been working at the same location for 20 years, ER moves the job location 50 miles from where EE lives but offers them the option to keep employment. EE does not take the position due to new commute. Voluntary or involuntary?

It depends upon the context of the separation. If the position was eliminated at the original location, it would be involuntary. If the employee decided not to take the position and quit, it would be voluntary. The subsidy is for those who experience an Involuntary Termination of Employment.

26. What is the employer's obligation for sending the notices to previously termed employees who have not provided us with proper/updated address information?

Last known address.

27. I have a question regarding the 2% administrative fee and how it affects the 65/35 split. Is the 2% fee based off the 100% and then added to the 35%; or is it 2% of 35%; or is the 65/35 split of the 102% of the premium (65% of 102% and 35% of 102%); or something else entirely?

The subsidy is 65/35% of the total allowed premium (102%).

28. Our medical group plan is with Aetna. If a terminated employee decides on taking Cobra, they send in their enrollment form to Aetna and Aetna home bills them. We have no involvement in the procurement of premiums. What is our obligation?

Federal COBRA is an employer law. The employer is the plan administrator responsible (by law) for mailing all COBRA notices and collecting premiums. This responsibility can be shared with a COBRA Administrator via contract.

29. Some of our former employees that are otherwise eligible for the ARRA COBRA subsidy have found new jobs. Are we allowed to request proof from the new employer that the employee is not eligible for coverage under their health plan?

Not at this point. It is generally looked at as the employee's responsibility to let the employer know this.

30. For individual's eligible for the ARRA subsidy, are we still permitted to charge the additional 2% of the premium for administrative purposes? If so, how does that extra 2% fit into the member's premium?

The subsidy is 65/35% of the total allowed premium (102%).

31. Does the subsidy apply to EAP's?

All coverage except FSA is eligible for the subsidy.

32. Will we receive a monthly report which details the COBRA subsidy enrollments that we can turn over to our payroll/tax department for the PR tax credit?

Yes.

33. Regarding the payment of the 941 tax deposit-- if the original tax liability is over \$100,000 (which means the deposit is due the next day), and by deducting the 65% tax subsidy, the liability is under \$100,000, is the tax deposit still due the next day?

The Subsidy offset does not change your filing rules or deadlines.

34. How can we get a copy of a notice to mail to our employees who were involuntarily terminated during the period of September 1, 2008 – February 17, 2009?

Infinisource does not provide any of our proprietary notices to anyone but our current clients. We are responsible for the verbiage in our own notices. If you are not an Infinisource client, you can reference the Department of Labor sample notices. However, it is suggested that you still have them reviewed by legal and modified for your plan needs.

35. If we have a payroll service who files our payroll taxes will they be the one responsible for getting the reimbursement of the subsidy for us? We are not currently signed up with our payroll services to do the COBRA for us.

Any administrative responsibilities and delegation will have to be determined contractually with either your COBRA or payroll vendor.

36. Do we need to send all notices of the new COBRA regulations to all dependents of the former employee as we did before?

Recommendation is that you mail notices to Name of the employee, spouse, and dependents (if any).

37. If the employer is paying 100% of the Cobra, can the employer deduct the 65%?

Unless the Regulations (expected on Wednesday, March 18th) state something different, the employer would not be able to claim the 100% they are paying for the participant.

38. There is one employee who was terminated due to Long Term Disability. Would she be eligible for the subsidy.

The subsidy is only for those who experienced an Involuntary Termination of Employment.

39. Payroll Tax Offset - ADP does our payroll so are they suppose to complete the Form 941 or does it falls under the Accounting Dept.

Payroll companies such as ADP will have to advise their clients what the process will be.

40. Can notices be sent out regular mail?

Infinisource is mailing out its Subsidy/Special Election Notices by First Class Mail with Certificate of Mailing. This is our standard practice for Qualifying Event Notices as evidenced by its success in court.

41. As part of a severance package, a former employee's entire COBRA payment is being paid by the Company. Can the Company still receive the tax credit for 65% of the premium?

Unless the Regulations (expected on Wednesday, March 18th) state something different, the employer would not be able to claim the 100% they are paying for the participant.

42. If a dependent exceeded the age limit allowed by our medical plan and lost coverage - then offered COBRA - do they fall under the new subsidy under the ARRA?

The subsidy is for Involuntary Terminations only, not Dependent Ceasing to be a Dependent.

43. Our leave of absence policy terminates employees after six months. Would this be considered an involuntary termination?

Involuntary Termination is usually defined as beyond the individual's control. We might see some more guidance in the pending Regulations.

44. Are the new templates out from the DOL for the notifications?

Expected March 19th.

45. Is surviving spouse qualified for the reduction?

As long as an Involuntary Termination of employment occurred on/after September 1, 2008.

46. If we are providing severance to an associate and we are only requiring them to pay the employee rate which is less than the 35%. The severance could run 9-12 months. Technically they will not be eligible for the subsidy beyond those 9 months, correct?

The subsidy is for a maximum of 9 months.

47. In the example of a QB who pays less than 35%, it was indicated that there is no subsidy to the QB, but the employer still gets credit on 65% of the otherwise COBRA cost of 35%. So if the plan cost \$1,000 and the employee pays \$200, then the credit is \$371 ($\$200/35\% \times 65\%$). If this is the case, then what amount must we receive before we can get the 65% credit? I keep on hearing 35% must be paid but if the employee only pays 20%, then how does this work?

If the DOL comes through on their due date for Regulations, we are anticipating seeing guidance for severance in there. Look for an update here after that point.

48. Can an individual choose the subsidy even if they did not have health coverage before the termination?

The subsidy would not be available for someone who is not a Qualified Beneficiary (covered the day before the Qualifying Event).

49. If our company pays the entire premium for a severed employee are we entitled to the 65% subsidy?

Unless the Regulations (expected on Wednesday, March 18th) state something different, the employer would not be able to claim the 100% they are paying for the participant.

50. If an employee's termination date is June 2008, but his insurance was continued until the end of September 2008 as part of a severance agreement, is he eligible for the subsidy?

If the COBRA start date was not until September for an Involuntary Termination of Employment, then yes, they would be eligible for the subsidy. If their event date is June 2008, then no, they are not eligible.

51. What are they considering “Involuntary” termination? If it is truly for involuntary terminations, then I am assuming we do not have to go back to offer those who left voluntarily the second chance to enroll for COBRA with the subsidy, correct?

Involuntary Termination is loosely defined as “not the employee’s choice”. Please make sure you have identified all Qualifying Events properly.

52. We are a client of TALX – Will they be the ones contacting former eligible terminated employees and sending out all of the necessary notifications/election forms?

Your COBRA administrator should be communicating with you as to their course of action. Infinisource has been actively providing updates to our clients since talks of a subsidy began.

53. If an employee’s termination date is June 2008, but his insurance was continued until the end of September 2008 as part of a severance agreement, is he eligible for the subsidy?

If the COBRA start date was not until September for an Involuntary Termination of Employment, then yes, they would be eligible for the subsidy. If their event date is June 2008, then no, they are not eligible.

54. What is the exact process for companies that outsource to Infinisource – what is required? Also, since my company does a file feed over to Infinisource from HRB does something need to change on this (i.e. right now we do not send if termination was voluntary or not).

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For events reported with the (G) Involuntary Termination of Employment, Infinisource will include information about the 65 percent COBRA Subsidy in the COBRA Election Notice. Please understand that you still do not need to report any involuntary terminations of employment that are due to gross misconduct. Because you will be identifying the type of termination at the start of the process, you will not need to verify eligible Qualified Beneficiaries for new events reported. PLEASE ENSURE THAT ALL INVOLUNTARY TERMINATIONS OF EMPLOYMENT - INCLUDING LAYOFFS - ARE REPORTED AS (G-Involuntary Termination). Code G is used if you report via paper to us.

Please contact your EDT specialist at Infinisource at edtinfinisource.net to get direction on file feeds.

55. What were the exact restrictions that make a person not eligible for the 35% payment? It’s unclear who is paying the 2% admin fee (term employee pays 35%, company pays 65%).

An AEI (assistance eligible individual) had to have an Involuntary Termination on/after September 1, 2008 thru December 31, 2009. The AEI cannot be eligible for any other group health plan or Medicare. The individual's MAGI (modified adjusted gross income) must not be any higher than \$145,000 (sgl) or \$290,000 (married/filing jointly). If it falls between \$125,000 (sgl) and \$145,000 or \$250,000 (married/filing jointly) and \$290,000, the subsidy will be based upon a sliding scale.

PLEASE NOTE: We’re still receiving and answering questions and will continue to get back to you with answers.

IRS Notice 2009-27

The IRS has issued their recent guidance relating to both ARRA and Public Law 111-5. I know you'll be busy leaving Cap Conference, but your clients might still be calling you with questions.

Included is clarification on the definition of Involuntary Termination for COBRA purposes; however, it does extend rights to individuals you would have thought otherwise ineligible.

An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority 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.

Involuntary Termination includes an employee-initiated termination from employment 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.

This list is not exhaustive, just informative:

- Involuntary termination (IT) is not for the involuntary termination of coverage. If someone drops their coverage, that does not constitute an IT
- IT does include a lay-off or temporary furlough period, meaning a
 - Reduction of Hours to zero
- Reduction of Hours could be seen as an IT if; for example, the Reduction of Hours is imposed by the employer and the individual Voluntarily Terminates their employment as a result. The IRS refers to this as a "material negative change" in the employment relationship for the employee
- IT does include an employer's action to terminate employment while the employee is absent due to illness or disability
- IT includes retirement if, absent retirement, the employer would have terminated employment
- Gross misconduct exceptions have the same fog over the definition as before. Is it worth it?
- An IT could include a resignation due to a material change in the geographic location for the employer
- A strike would not qualify as IT; however, a lockout initiated by the employer would
- If an employee elects a "buy-out" for a severance agreement (knowing that after the offer period, a number of employees would be terminated), than this would qualify as an IT