

# American Recovery and Reinvestment Act

## COBRA Information and Questions and Answers

### FREQUENTLY-ASKED QUESTIONS ON THE ARRA COBRA PROVISIONS

We are pleased to share information on the American Recovery and Reinvestment Act (ARRA) changes to COBRA to support our employers' compliance with the recent changes.

As you are aware, ARRA, which was signed February 17, 2009 was effective the first billing period on or after that effective date. ARRA provides 65% subsidy for COBRA continuation premiums for up to 9 months for workers and their eligible family members who are affected by involuntary termination from September 1, 2008 through December 31, 2009.

In general, group health plans maintained by employers with 20 or more employees are required by federal law to provide covered employees and covered dependents with the right to continue their health coverage after the occurrence of certain "qualifying events". These qualifying events include, but are not limited to, termination of employment, divorce, or death of the covered employee. For employees who are involuntarily terminated from their jobs, ARRA provides premium subsidies to help pay for the cost of continuing their health coverage.

We have attached answers to many of your questions that have come up since ARRA went into effect. Please understand that we will continue to provide additional information, guidance and support as more details are forthcoming from the Department of Labor (DOL) and the Internal Revenue Service.

### EFFECTIVE DATE

#### What is the effective date of the new law?

ARRA is effective February 17, 2009, the day that President Obama signed the bill. All of the COBRA

provisions that have a time frame will date from that day. For example, notices are required to be sent to subsidy-eligible persons who became qualified beneficiaries before the date of enactment (2/17) within 60 days of enactment. As for calendar monthly billed programs, the effective date is March 1, 2009.

#### What happens if an employer has not been able to establish the subsidy program by March 1?

Due to the close effective date, many employers have not been able to transition to the subsidy process by March 1 and subsidy-eligible persons have continued paying the full COBRA premium. The Act contemplates that subsidy amounts that are applicable may not be implemented in the first two months of the program. In that case, the subsequent premiums for the subsidy-eligible persons may be provided with a refund of the overpayment or receive a credit on one or more subsequent premium statements equal to the accumulated overpayment. The method of refund is at the discretion of the entity to whom such payment is payable as long as the credit can be paid out over less than a 180 day period. The Act does not contemplate that employers will go more than two months in not applying the subsidy.

### PLANS TO WHICH THE ARRA SUBSIDY PROVISIONS APPLY

#### What plans does ARRA apply to?

ARRA covers all plans, both insured and self-funded, that are subject to COBRA and state and municipal plans that are subject to the Public Health Service Act which provides provisions parallel to that of COBRA. In addition, the subsidy applies to non-COBRA plans that are subject to state continuation laws that are comparable to COBRA.

The subsidy applies to COBRA premiums for medical coverage, including dental, vision and prescription. The subsidy does not apply to Flexible Spending Accounts.

### **Does this Apply to Employers with Fewer than 20 Employees?**

Federal COBRA law does not apply to employers with fewer than 20 employees. Some states require employers with fewer than 20 employees to provide “COBRA-like” continuation of coverage plans. If these plans meet certain structural requirements for comparable continuation coverage, employees who are involuntarily terminated and are covered by these “COBRA-like” plans will also be eligible for Recovery Act premium subsidies.

### **Does ARRA affect State Continuation?**

ARRA impacts continuation coverage offered under state continuation to the extent such requirements are “comparable” to the federal COBRA standards.

### **How will we determine which state continuation laws are “comparable” to COBRA?**

The Conference Committee report states that state continuation laws will be comparable to COBRA and eligible for the subsidy if the law requires continuation of substantially similar coverage as was provided under the group health plan and at a monthly cost that is based on a specified percentage of the group health plan's cost of providing such coverage.

## **WHO IS ELIGIBLE**

### **Who is an eligible individual?**

An eligible individual is someone who is involuntarily terminated from employment during the period of September 1, 2008 through December 31, 2009 and is eligible to elect COBRA during that time.

Employees with modified adjusted gross income (MAGI) that exceeds \$250,000 (for joint returns) or \$125,000 (for all other filers) will not be eligible for the full premium subsidy. The premium subsidy will be fully phased out for those individuals with MAGI of \$145,000/\$290,000.

Individuals who exceed these income limits must repay any subsidy he/she realized. These repayments are reported on the individual's income tax return.

Individuals may make a permanent election to waive the subsidy.

### **What does “involuntarily terminated” mean?**

Persons who are involuntarily terminated from employment are eligible for the subsidy. This is not a term that is defined either in ARRA or in COBRA generally. We may assume that the COBRA ban on persons who were terminated for “gross negligence” would continue to operate and those persons would not have COBRA at all. However, anyone who is laid off, fired or otherwise dismissed from a job involuntarily during the applicable periods would likely be eligible. A reduction in hours, even if resulting in loss of coverage, would not trigger eligibility for the subsidy since it does not involve termination of employment.

### **Will UnitedHealthcare make any determinations about “involuntary termination”?**

No. This is a determination that only the employer can make. If UnitedHealthcare is acting as COBRA administrator, it will not engage the subsidy for any COBRA participant unless the employer has certified, in a form acceptable to UnitedHealthcare, that the individual has been involuntarily terminated and therefore eligible for the subsidy.

### **Who isn't eligible for the subsidy?**

- Employees who were terminated for gross negligence are not eligible
- Employees who terminated voluntarily are not eligible
- Employees who were eligible for COBRA prior to 9/01/08 are not eligible

### **What about domestic partners?**

Domestic partners are generally not recognized under COBRA. However, in some circumstances where the employer allows domestic partners to continue with the eligible employee, the presence of the domestic partner may have an impact on the cost of the coverage and the subsequent subsidy amount. For example, if the domestic couple has family coverage, it is clear that the intent of ARRA is to provide subsidy only for the employee, not the domestic partner. It is not clear how the premiums are to be bifurcated. This is an area where we hope to have further clarification from DOL or IRS.

### **What about dependents?**

Dependents will be eligible for a subsidy of their own if they experience a second qualifying event during the subsidy period. For example, if a subsidy-eligible former employee divorces his or her spouse during the subsidy period, the divorced spouse will be independently eligible for the subsidy. The subsidy period in this case will date from the earliest subsidy trigger event, i.e., the employee's involuntary termination.

### **How about dependent children who are no longer eligible based on their not being in school? Are they eligible for the subsidy?**

No. Existing COBRA rules would apply. If the dependent ages out or is no longer eligible based upon school participation, he or she would not be eligible for the subsidy.

### **What does it mean to those individuals who are already on COBRA?**

Individuals who elected COBRA due to an involuntary termination on or after September 1, 2008 but prior to the date of enactment (2/17/09) are eligible to receive the 65% subsidy on a prospective basis; it is not retroactive to when they first elected COBRA.

### **What does it mean to those individuals who might have elected COBRA, but didn't?**

Individuals who were eligible to elect COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination but did not elect COBRA will be given the opportunity to elect COBRA on a prospective basis. The maximum coverage period will still be measured from the earliest date that COBRA coverage could have been elected, but coverage will not be retroactive. The coverage would generally date from March 1, 2009.

### **What does it mean to those individuals who elected COBRA on or after September 1, 2008, but dropped it prior to enactment?**

These individuals are entitled to elect COBRA during the period beginning on the date of enactment (2/17/09) and ending sixty (60) days after the date on which they are notified of the additional election period.

### **What is the true definition of involuntary? What about individuals on sick leave who ran out of sick leave and the employer let them go because their FMLA is over? Will the government reimburse the employer?**

The Department of Labor will be providing additional guidance. Ultimately the employer will need to make the decision. The key is that the employment relationship must end in order for the person to meet the standard set forth in ARRA. Therefore any situation where an employment relationship continues to exist will not qualify for the subsidy.

### **What rights are available to individuals who do not receive a subsidy, but believe they should have?**

An individual who does not receive a subsidy that he/she believes appropriate may appeal the plan's determination to the Department of Labor for private plans or to the Department of Health and Human Services for public plans covered under the Public Health Services Act. The relevant agency must rule on the appeal within 15 business days. Individuals whose appeal is denied may sue under ERISA.

### **How will UnitedHealthcare know who is eligible for the subsidy?**

Eligibility is in virtually all cases determined by the plan sponsor. We will require the plan sponsor or employer to let us know which of its terminated members is subsidy-eligible. This will mainly be through designating that person as "involuntarily terminated." We will not attempt to determine this status on our own. If a person is not designated as such by the employer, we will not apply the subsidy when we are doing the COBRA billing.

### **How will the employer know if the beneficiary becomes eligible for other coverage?**

The beneficiary must notify the employer in writing if they become eligible for coverage under a major medical group health plan or Medicare and is subject to significant penalties (110% of the subsidy amount) for failing to do so. The employer is not responsible for this notification.

## **Does an Employer have to determine the income of the subsidy recipient?**

The subsidy is only available to otherwise eligible persons who meet certain income thresholds. However, that is not a concern of either the employer or the COBRA administrator; the eligible person is responsible for determining the taxable effect of the subsidy. If a person's modified adjusted gross income (MAGI) makes him ineligible for the subsidy, the subsidy must be added to his tax liability. This would occur in the next year after the subsidy has been received. For example a person may be close the income threshold in 2009 but, being laid off, will not know exactly how much he will make in 2009. If, when doing his taxes in 2010, he finds out that his MAGI excludes him from eligibility, he will add the subsidy amount to his tax due. A person who knows that his MAGI will be too high to qualify for the subsidy may inform the subsidy payer of that fact and the payer will not include that person as subsidy eligible.

## **THE SUBSIDY**

### **What is the ARRA COBRA subsidy?**

It allows eligible individuals to receive a premium subsidy from the federal government in the amount of 65% of a COBRA qualified plan. Eligible individuals will only have to pay 35% of the COBRA premium to continue coverage.

### **How does the ARRA COBRA subsidy work?**

The entity that pays the 65% subsidy (the multi employer group health plan, employer or insurance carrier) is permitted to take the amount of any subsidy payments as an offset against their payroll tax payments to the federal government. The subsidy may be offset from employee income tax withholding, employee FICA tax withholding or employer FICA tax obligations.

The Internal Revenue Service (IRS) has released a revised Form 941 and Instructions for reporting the amount of the premium subsidy that is taken as a payroll tax credit.

### **What amount is the subsidy based on? What is the beneficiary charged?**

The subsidy is based on the actual amount that the employer is charging the eligible person for COBRA. This could be the full 102% of the plan cost allowed

under COBRA in which case the subsidy would be 65% of that amount. For employers who subsidize COBRA coverage, the amount subject to the subsidy is the actual amount charged to the eligible person. For example, if the gross plan cost is \$1000 per month but the employer is only charging the eligible person \$500 per month, the subsidy is based on the \$500 (that is, the eligible person pays \$175 and the subsidy amount is \$325).

### **When does the subsidy end?**

The subsidy is effective for 9 months for COBRA beneficiaries who become eligible March 1, 2009 or through December 31, 2009 (including late-enrollers from September 1, 2008 on who will initially become eligible on March 1, 2009). Therefore the maximum extent of the subsidy for a person becoming eligible on December 1, 2009 would be through August 31, 2010.

The subsidy will otherwise end if the assistance-eligible person becomes eligible for coverage under a group health plan or becomes eligible for benefits under Medicare.

If the COBRA coverage ends for any reason listed under the COBRA statutory provisions (e.g., continuation period ends by duration, coverage ends due to failure on the part of the assistance-eligible person to pay her share of the premium) the subsidy will also end.

## **FUNDING THE SUBSIDY**

### **Does the subsidy apply to multi employer group health plans or to the insurer providing coverage under an insured plan?**

The responsibility to pay the 65% subsidy depends on the type of continuation coverage:

- In the case of a multi employer group health plan the subsidy is paid by the plan.
- In the case of a group health plan subject to the federal COBRA requirements, the subsidy is paid by the employer.
- In the case of continuation coverage offered pursuant to state requirements (where the coverage is comparable to COBRA), the subsidy is paid by the insurance carrier.

### **For those employers for whom UnitedHealthcare will file for the subsidy credit, what will UnitedHealthcare need from employers in order to file for the credit?**

UnitedHealthcare will be responsible for filing for the subsidy credit for non-COBRA small employers under certain state continuation laws. The IRS has published questions and answers that detail what supporting documentation UnitedHealthcare will need to obtain from a non-COBRA employer in order to confirm that a particular individual was eligible for the credit. Regardless of who is administering the continuation plan (the employer, a third party or a UnitedHealthcare entity) we will need the following information:

- Information on the receipt, including dates and amounts, of each assistance eligible individual's 35% share of the premium;
- In the case of an insured plan, a copy of the invoice or other supporting statement from the continuation administrator (if not UnitedHealthcare) or the employer.
- In the case of a self-funded plan proof of the continuation premium amount and proof of the coverage provided to assistance eligible individuals;
- Attestation of the involuntary termination of the employee, including the date of the termination;
- Proof of each assistance eligible individual's eligibility for continuation coverage during the relevant time period and election of continuation coverage;
- Social security numbers of the covered employees, the amount of subsidy reimbursed with respect to each covered employee and, with respect to each covered employee, a designation as to whether the subsidy reimbursement is for coverage of one person or two or more people.
- Other documents necessary to verify the correct amount of reimbursement.

### **What information will UnitedHealthcare provide to insured and self-funded employers when UnitedHealthcare is providing COBRA administration?**

The IRS has published questions and answers that detail what supporting documentation that UnitedHealthcare will need to provide to a COBRA

employer in order to confirm that a particular individual was eligible for the credit. Regardless of who is administering the continuation plan (the employer, a third party or a UnitedHealthcare entity) the following information is required:

#### **UnitedHealthcare will provide:**

- Information on the receipt, including dates and amounts, of each assistance eligible individual's 35% share of the premium;
- In the case of an insured plan, a copy of the invoice or other supporting statement.
- In the case of a self-funded plan proof of the continuation premium amount and proof of the coverage provided to assistance eligible individuals;
- Social security numbers of the covered employees, the amount of subsidy reimbursed with respect to each covered employee and, with respect to each covered employee, a designation as to whether the subsidy reimbursement is for coverage of one person or two or more people.
- Other documents necessary to verify the correct amount of reimbursement.

#### **Employer will provide:**

- Attestation of the involuntary termination of the employee, including the date of the termination;
- Proof of each assistance eligible individual's eligibility for continuation coverage during the relevant time period and election of continuation coverage;

### **How does a multi-employer plan recover the subsidy?**

Under ARRA the plan itself has the responsibility for the subsidy in COBRA-covered multi-employer plan. This could be a Taft-Hartley plan or any other plan that involves multiple employer participants but which represents a single ERISA plan. The plan would provide the subsidy and then file for the rebate of the subsidy on its own payroll tax liability..

### **What if the plan does not have any employees and therefore no payroll tax liability?**

The IRS has not provided guidance on this point. IRS has revised the Form 941, the quarterly payroll tax return, to add the COBRA subsidy information on

lines 12a and 12b. Absent further guidance, the plan would fill out the Form 941 and include the subsidy payment on line 12a. This would presumably show an overpayment if the plan had no other employment taxes, and this would be recorded on line 16. The plan representative would then check the "Send a Refund" box on line 16. The IRS would then provide a refund to the plan in the amount of the subsidy for that quarter.

### **Is a plan entity that has no employees and no assets required to front the subsidy?**

Yes, the subsidy must be paid by the multi employer plan when the eligible participants make their 35% payment. The reimbursement from the federal government is retroactive, so the plan must come up with the funds somehow.

## **NOTICE REQUIREMENTS**

### **How will eligible individuals be notified of their right to the subsidy?**

Under ARRA employers or their COBRA Administrator must provide modified election notices or provide separate supplemental notices to all persons who became entitled to elect COBRA continuation coverage during the period beginning on September 1, 2008 and ending on December 31, 2009.

### **When must the notices be provided?**

Notices are required to be sent to persons who became qualified beneficiaries before the date of enactment (but on or after September 1, 2008) within 60 days of enactment (April 18, 2009). The election period for those beneficiaries who became eligible before the date of enactment will begin on the date of enactment and end 60 days after the date the plan administrator provides the required notice.

ARRA does not affect the timing of notices sent to individuals who become qualified beneficiaries on or after the date of enactment.

### **The information that I have is the COBRA subsidy would apply to those who involuntarily terminated but as far as the notice requirement, I've read some information that seems to indicate that we would be required to send notices to anyone who left?**

ARRA requires communication to all individuals who had a qualifying event between 9/1/08 and 12/31/09

- whether assistance eligible or not. For those clients for whom UnitedHealthcare administrates COBRA, we will issue these notices for both assistance eligible and for those not assistance eligible who had a qualifying event per the requirements of the Act.

### **Does UnitedHealthcare have a form that we send out to our employees that says "for the subsidy"? Are employers required to let former employees know that these options are available again?**

For those for whom we administer COBRA, we will handle the notifications of the Act on behalf of the employers - including those prior qualifying events and including current and future individuals with qualifying events.

The specifics of the communication are pending DOL guidance, which is due out on March 18. This guidance will explain the act and the eligibility for subsidy assistance.

### **Are the options available for terminated and laid off individuals?**

Yes. ARRA applies to those individuals who were involuntarily terminated from employment. However, persons who still have an employment relationship, such as those on furlough, are not eligible.

### **Under what circumstances will UnitedHealthcare send out the new required COBRA notices?**

This is primarily an employer responsibility under ARRA. However, if UnitedHealthcare is the COBRA administrator for the plan, UnitedHealthcare will send out the notice once we receive the model notice from the federal agencies charged with developing that notice by mid-March.

### **Will UnitedHealthcare make any changes in our COCs or SPDs to reflect the subsidy arrangement?**

Since the subsidy is presumably a limited-time event, we are not recommending any changes to COCs or SPDs. Instead, we will encourage plan sponsors to do a one-time mailing of the new prescribed notice to all of their employees as required by ARRA. That notice will cover the particulars of the subsidy program. If the subsidy program is re-authorized for years after 2009, we will consider the appropriateness of specific changes to our plan documents. For special enrollment

option plans, the notice will need to cover the options available to the eligible COBRA participants.

**Will UnitedHealthcare provide an interim notice to persons who become eligible for COBRA between March 1 and the date that the model notice is published?**

UnitedHealthcare will be providing additional information in conjunction with current qualifying event notices as an interim step between the time of the Act becoming law and the execution of the model notice from the DOL. Upon execution of the model notice, assistance eligible individuals who had a prior qualifying event will be re-notified with the updated information to make their plan selection.

**STATE CONTINUATION**

**Do the ARRA provisions require plans subject to state continuation to offer enrollment/the subsidy to those individuals who were eligible for state continuation prior to the 2/17/09 enactment date (but on or after September 1, 2008)?**

Although certain state continuation plans are eligible for the subsidy, the COBRA changes that allow assistance eligible individuals who did not previously elect (from September 1, 2008 through February 17, 2009) to elect coverage prospectively do not apply to comparable state continuation plans. ARRA does not require state plans to offer such an election. Some states have already proposed legislation that would allow their continuation laws to mimic the federal COBRA enrollment options. Further, some state insurance departments have provided guidance that they expect carriers to offer the special election regardless of what ARRA says. However, absent any state by state guidance, the subsidy will be available only to persons who are either covered as of March 1, 2009 by the state plan or who become eligible March 1, 2009 and after.

**Do the ARRA provisions that allow employers to offer the special enrollment option impact plans that are subject to state continuation laws?**

No. The COBRA changes that allow assistance eligible individuals access to the optional special enrollment provision (where a member may elect a lower-cost plan) do not apply to comparable state continuation plans.

**For small groups with fewer than 20 individuals, which are not subject to COBRA (only state continuation rules apply) Have you determined how it is going to be handled (the subsidy for the groups with less than 20) that are not subject to COBRA that would only be subject to in state continuation rules.**

We are reviewing all state continuation laws to determine which are comparable to COBRA. Further, there is a lot of activity at the state level to bring non-comparable state plans into line with COBRA so that the subsidy is available for that state's non-COBRA beneficiaries. For those that are determined to be included within ARRA, UnitedHealthcare will handle the support for the subsidy including the collection of the 65% subsidy via reduction of the UnitedHealthcare payroll taxes as outlined in the act.

**IMPACT OF PRE-EXISTING CONDITION PROVISIONS**

**Will late-electing persons be subject to pre-existing condition exclusions?**

ARRA protects late-electing persons (those who were previously eligible for COBRA under the terms of ARRA on or after September 1, 2008 but did not elect COBRA) by not counting any period of non-coverage between September 1, 2008 and February 29, 2009 as a lapse in coverage for determining the HIPAA 63-day gap in coverage rule (which would allow the imposition of a pre-existing condition exclusion).

**Will UnitedHealthcare amend the HIPAA-required Certificate of Creditable Coverage to reflect ARRA's changes to the "gap in coverage" rule?**

No. The HIPAA –required Certificate of Creditable coverage will remain in place to reflect the actual coverage. For those individuals who elect coverage as an assistance eligible individual under the Act, an updated Certificate of Creditable Coverage would be issued where appropriate based upon the updated coverage term.

## **SPECIAL OPTIONAL BENEFIT ENROLLMENT OPTION**

### **What is the special enrollment option?**

ARRA allows (but does not require) an employer to make available to subsidy-eligible individuals a lower cost plan option within 90 days of the date of the notice of the plan enrollment option. In order to qualify, the other plan must have a premium that does not exceed the premium in the plan in which the individual is enrolled at the time the qualifying event occurred and that plan must be offered to active employees of the employer at the time at which the election is made. The eligible individual would pay 35% of the premium charge for the newly elected plan.

### **Do the ARRA provisions that allow employers to offer the special enrollment option impact plans that are subject to state continuation laws?**

No. The COBRA changes that allow assistance eligible individuals access to the optional special enrollment provision (where a member may elect a lower-cost plan) do not apply to comparable state continuation plans.

### **How will UnitedHealthcare administer the special enrollment option?**

Since the special enrollment option is selected by the employer, UnitedHealthcare will not administer a special enrollment provision unless the employer specifically requests in writing that it desires a special enrollment option and spells out the details of the option (plans covered, cost of plans for COBRA purposes, etc). The details of the special enrollment option should be included in the required ARRA notice to eligible persons.

## **MISCELLANEOUS**

### **How will UnitedHealthcare handle fully insured programs where it is not the COBRA administrator?**

UnitedHealthcare will look to the COBRA administrator to perform the functions required by ARRA, including providing the required information to the employer concerning the subsidy amounts and recipients. On insured cases UnitedHealthcare will continue to bill

100% of the contract premium regardless of the subsidy. The employer will be responsible for pursuing the subsidy through the payroll tax mechanism set out in ARRA.

### **Does UnitedHealthcare contemplate making rate adjustments based on the fact that both retroactive enrollments and future COBRA enrollments may increase significantly under the subsidy provisions?**

UnitedHealthcare is presently reviewing this question. There are many types of programs that ARRA affects, and if the contract under which the program operates allows a rate increase based on these circumstances, that would be an underwriting decision to be determined on a case-by-case basis.

### **What if an employer is struggling and is not able to make the whole premium payment including the subsidy?**

For an insured case, the failure of the employer to make the full premium payment due to UnitedHealthcare would cause a shortfall in premium under the policy that could lead to lapse. If the employer refuses to engage the subsidy and instead continues to collect 100% of the premium from the subsidy-eligible COBRA participant, the employer is violating the terms of the Act and the new provisions of COBRA and would be potentially subject to enforcement actions from the Internal Revenue Service or the Department of Labor. Further, the assistance eligible individuals who are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The Department is currently developing a process and an official application form that will be required to be completed for appeals.

### **For non-COBRA small employers who are covered by a “comparable” continuation law will UnitedHealthcare accept the reduced premium that includes the subsidy amount?**

If UnitedHealthcare bills the eligible individual directly, we will include in the bill the reduced premium based

on the subsidy. If UnitedHealthcare does not bill the eligible individual directly, we will accept a reduced premium assuming we have accurate information on the subsidy amount and other information required by the Internal Revenue Service.

### **What effect does this have on stop loss coverage?**

We are presently exploring the potential impact of the retroactive eligibility provisions for non-electors on our stop loss coverage. Whether this can be considered a “change in plan” that would allow us to adjust the premium is presently under review.

## **EMPLOYER OBLIGATION**

### **What do employers need to do?**

- 1. Seek Legal Counsel** – COBRA is a law that is addressed to employers, and employers have the primary responsibility for compliance. The ARRA changes are similar in that employers need to understand them and comply with them on their own. Employers should seek the advice of their own legal counsel as to how the ARRA changes will affect their own plans. While UnitedHealthcare and other administrators may provide helpful structural and operational support for the new changes, the burden of compliance remains with the employer.
- 2. Identify and notify individuals** – In general, an employer will need to identify individuals eligible for COBRA on or after September 1, 2008 and provide notification to these individuals of their potential new election period and of the availability of the premium subsidy, and any other COBRA coverage options, if any.
- 3. File for subsidy through payroll taxes** – Employers will need to understand the mechanics of the subsidy and how they can file for the subsidy refund through their payroll taxes. This may involve the employer's tax and other consultants in addition to their legal counsel.

## **EMPLOYEE/MEMBER QUESTIONS**

### **How do I know if I am eligible for the subsidy?**

You may be eligible if you were involuntarily terminated on or after Sept. 1, 2008 and are not eligible for

other health care coverage including Medicare. UnitedHealthcare will be sending a listing to each of our COBRA customers the week of March 20th to identify all eligible individuals. You will receive a notification from UnitedHealthcare no later than April 18th.

### **What's my new rate going to be? When will I start paying the lower amount?**

Your new rate will be determined by your current COBRA premium. Until we have identified you as an Assistance Eligible Individual you must continue to pay 100% of the premium. You will be notified of your new rate prior to your May premium.

### **Will the lower rate be retroactive and will I receive a refund?:**

The new rate is retroactive to March 1, 2009, the effective date of the legislation. Any amounts paid above the 35% will be credited to future payments. If you discontinue your COBRA coverage and have a credit remaining you will receive a refund.

### **Will I be receiving something telling me what my new rate is? If so, when?**

Yes, You will be receiving a notification prior to April 18th indicating your eligibility. Upon confirmation of your eligibility for the subsidy you will be notified of your new rates.

### **Does ARRA make any other changes to COBRA or health benefit provisions?**

Yes. ARRA extends COBRA continuation eligibility for certain persons covered under the Trade Adjustment Act (TAA). ARRA adds new special length of COBRA continuation rules for certain individuals who are either TAA eligible or who have a nonforfeitable right to a benefit from the Pension Benefit Guaranty Corporation (but the rules do not apply after December 31, 2010).

- For TAA-eligible persons, the COBRA time period will extend beyond the normal COBRA termination dates until earlier of the date the person ceases to be TAA-eligible or the end of 2010. Thus, for example, if a TAA-eligible person was at the 18 month limit, the Act would provide additional coverage through

the end of 2010 or the person's ceasing to be TAA-eligible, whichever first occurs.

- For the PBGC-eligible persons, the date is extended to the date of death of the individual or, if earlier, December 31, 2010. In the event of death of the covered individual, coverage is extended 24 months from the date of death for the individual's dependent children and/or surviving spouse—but in no event beyond December 31, 2010.

### **Does ARRA make subsidy changes under the Trade Adjustment Act?**

Yes. ARRA raises the TAA health care credit under Code Section 35 for persons who meet the requirements of the TAA (someone whose job has been eliminated by virtue of some documented aspect of foreign competition) from 65% to 80% for coverage months beginning before January 1, 2011. In addition, TAA-eligible persons will continue to receive the credit even if they are not enrolled in a re-training program during the same period (this was a requirement of the prior law). The health coverage involved may be COBRA or a variety of other state and federal programs.

ARRA also allows beneficiaries of deceased TAA-eligible persons and divorced spouses of such persons to have extended coverage for eligible coverage months beginning before January 1, 2011. For divorce, the spouse is eligible to up to 24 months of continued coverage; in the case of the death of the TAA-eligible person, the coverage is continued for dependents (who were dependents on the date of death) for up to 24 months from the date of death.

Finally, ARRA adds a new class of group health plan under the TAA for persons who have an employment-related terminating event prior to January 1, 2011. Those persons are ones covered under a VEBA established pursuant to an order of a bankruptcy court.



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