

**Department of Personnel Administration
Memorandum**

TO: Personnel Management Liaisons (PML)

SUBJECT: American Recovery & Reinvestment Act (ARRA) of 2009, COBRA Dental and Vision Premium Assistance (subsidy)	REFERENCE NUMBER: 2009-023
DATE ISSUED: 05/13/09	SUPERSEDES:

This memorandum should be forwarded to:

Personnel Transactions Supervisors
Personnel Transaction Staff
Employee Benefits Officers
Personnel Officers

FROM: Department of Personnel Administration
Benefits Division

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DPA recently received clarification from the Internal Revenue Service that the American Recovery and Reinvestment Act of 2009 (ARRA) would also apply to dental and vision COBRA coverage. This PML is specific to dental and vision COBRA coverage under ARRA. Please see CalPERS' circular letter 600-020-09 for information on COBRA Health under ARRA.

ARRA was signed into law on February 17, 2009, and provides COBRA premium assistance (subsidy) to pay for group health coverage for an **Assistance Eligible Individual (AEI)**. On March 31, 2009, the Internal Revenue Services (IRS) issued Notice 2009-27 <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>, which provided ARRA information and clarification that the definition of health coverage includes dental and vision programs. This PML will provide departments with information and notice instructions on the impact of ARRA to state dental and vision COBRA coverage.

Who is eligible?

An AEI is a COBRA qualified beneficiary whose employment is involuntarily terminated (no gross misconduct) between September 1, 2008 and December 31, 2009. An AEI is eligible for a new special 60-day election period, if the individual previously declined COBRA continuation coverage beginning September 1, 2008. This includes eligible dependents that elected or did not previously elect COBRA continuation coverage.

What is the COBRA Premium Assistance?

ARRA requires that employers pay 65 percent of the monthly COBRA health, dental, and vision premiums and AEIs pay 35 percent of the monthly COBRA premiums for a maximum of 9 months.

What is required?

Departments will identify qualified COBRA beneficiaries and send them the attached notice. Once a beneficiary returns the election, the department will verify that eligibility is based on an involuntary termination. A copy of the valid, eligible election shall be forwarded to the Dental/Vision Plan and the beneficiary will be enrolled once the plan receives the 35 percent portion of the premium from the beneficiary.

DETAILED INFORMATION

Involuntary Terminations

ARRA is applicable to any involuntary terminations that were not classified as termination due to "gross misconduct" that occur between September 1, 2008 and December 31, 2009. For the purposes of further information in determining a valid involuntary termination under ARRA, please refer to Questions and Answers 1-9 of IRS Notice 2009-27 at <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.

COBRA Premium Assistance Individual Eligibility Criteria

A qualified beneficiary **is** eligible for the COBRA premium assistance under the following criteria:

- Eligible former employees, spouses, or dependent children who elected or did not elect COBRA based on qualifying event of an involuntary termination of employment that occurs on or after September 1, 2008 through December 31, 2009.

The following individuals are **not** eligible for the COBRA premium assistance:

- Individuals who are or who subsequently become Medicare eligible, either due to age and/or disability;
- Individuals who are or who subsequently become covered under another group health plan, not including dental only and vision only coverage, health reimbursement arrangement (HRA), or health flexible spending account (FSA), or on-site clinic that primarily offers first-aid, wellness or prevention benefits. Actual enrollment in another group health plan is not required to be disqualified from COBRA Premium Reduction as long as the individual meets eligibility for another health plan;
- Individuals that have reached the end of the COBRA eligibility period;
- Individuals that have received a total of nine (9) months of COBRA premium reduction assistance;
- Registered domestic partners or same-sex spouses; and

- Individuals who become eligible for COBRA as the result of a qualifying event that is not attributable to an involuntary termination.

If the qualified beneficiary becomes ineligible for COBRA subsidy, while receiving the subsidy, then the subsidy ends on the first day of the month following the event date that made them ineligible. The Act requires that the qualified beneficiary notify the Plan when he or she is no longer qualified for COBRA premium assistance. The penalty for failure to provide this notification to the Plan is 110 percent of the subsidy that was improperly received.

Under California state law, departments are required to extend COBRA continuation coverage to registered domestic partners and to qualified same-sex married couples (limited to same-sex marriages that occurred between June 16, 2008 and November 4, 2008). Since federal COBRA law does not recognize registered domestic partners and same-sex married couples for the purpose of the premium assistance, the COBRA premium assistance will apply only to the former eligible employee and eligible dependent children, and not the registered domestic partner or same-sex spouse. Therefore, the registered domestic partner or the spouse of a same-sex married couple must enroll in COBRA individually and pay the full 102 percent of the monthly premium, unless the cost of covering a non-assistance eligible individual does not add to the cost of covering the assistance for the eligible individual and otherwise qualified dependents. Employees with questions regarding this should consult their tax or legal counsel.

New 60-Day Second Election Period

The special 60-day election period applies to individuals who experienced an involuntary termination and:

- Are already enrolled in COBRA on or after September 1, 2008, where their qualifying event was on or after September 1, 2008,
- Had a qualifying event and were eligible for COBRA from September 1, 2008 forward, but declined it or,
- Were enrolled in COBRA on or after September 1, 2008, but cancelled it before March 1, 2009 and are still in their COBRA election period as of March 1, 2009.

Involuntarily terminated employees are entitled to up to 18-months of COBRA eligibility from the date of the qualifying event. The effective date of COBRA continuation coverage will vary for qualified beneficiaries who elect under the new 60-day election period. ARRA requires that the COBRA continuation coverage is retroactive to the original loss of coverage date. For these individuals who elect COBRA under the second election period, the COBRA premium assistance effective date is March 1, 2009.

High Income Individuals

High income individuals who take the subsidy will be subject to increased tax liability for any subsidy taken in the tax year that they receive the subsidy. The tax liability is increased, to achieve repayment of a portion of the subsidy, for those taxpayers whose modified adjusted

gross income is between \$125,000 and \$145,000, or \$250,000 and \$290,000 for those filing joint returns.

If a taxpayer's modified adjusted gross income exceeds \$145,000, \$290,000 for those filing joint returns, the full amount of the subsidy must be repaid as an additional tax. There is no additional tax for individuals with modified adjusted gross income less than these income levels.

Individuals who fall in these income brackets should seek the advice of a tax professional to determine what tax liability implications may apply, and if waiving COBRA subsidy is a viable option. Please note, the joint filer income thresholds are not applicable to registered domestic partners and same-sex married couples due to federal limitations.

Payroll Tax Recovery for COBRA Premium Assistance Payment

Recovery for the employer's 65 percent share of the COBRA premium assistance payments are provided through a payroll tax credit applied by the Internal Revenue Service. More information will be provided soon regarding the payroll tax recovery process.

COBRA Assistance Premiums

Eligible qualified beneficiaries who are determined to be AEs pay the remaining 35 percent of the monthly COBRA premium. The COBRA subsidy is effective no earlier than March 1, 2009. The COBRA subsidy payments cannot exceed the nine (9) month maximum. After the department confirms the eligibility for the subsidy and sends the election form to the plan, then the plan will send the qualified AE an adjusted billing to reflect the 35 percent share of the monthly premium. Instructions regarding the COBRA Premium Assistance Notice and Election Form are provided on page 5. We have provided you a chart that reflects the 65 percent employer and the 35 percent AE share of the monthly COBRA premiums (Attachment I).

Retroactive COBRA Premium Assistance Payments

The COBRA premium assistance payment is effective no earlier than March 1, 2009. Because of delays in obtaining information from federal agencies regarding dental and vision subsidy provisions, there will be retroactive subsidy payments paid based on new elections.

Note: In order to ensure that there is not a lapse in their current COBRA coverage, enrolled individuals should be advised to continue paying the full COBRA premium timely until the subsidy determination is made.

What do departments have to do?

Because of delays in obtaining information from federal agencies regarding dental and vision subsidy provisions, there will be retroactive subsidy payments paid based on new elections. Departments are urged to expeditiously identify and provide the attached notices to qualified beneficiaries. ARRA requires distribution of a revised COBRA Notice with information on the new COBRA continuation rights under ARRA and new 60-day election period to all qualified

beneficiaries entitled to elect COBRA coverage between September 1, 2008 through December 31, 2009.

Only employees who experience a COBRA qualifying event of "Involuntary Termination of Employment" (no gross misconduct) are eligible for the maximum 9-month premium assistance.

Note: The eligibility for the COBRA premium subsidy does not extend or shorten the COBRA eligibility period for qualified beneficiaries.

Departments may modify the current COBRA Election Notice located on DPA's website. You may want to reference the COBRA Premium Assistance Notice and Election Form in the COBRA premium area of the COBRA Election Notice to provide ARRA premium assistance information. Send the modified COBRA Election Notice and the COBRA Premium Assistance Notice and Election Form to the qualified beneficiary. Departments should reflect the 35 percent AEI share in the COBRA election notice.

COBRA Premium Assistance Notice and Election Form

The COBRA qualified beneficiary may be eligible to receive the premium assistance to pay monthly dental and vision COBRA premiums, if they meet the eligibility requirements listed in this notice under "Requirements for Premium Assistance." The purpose of this notice and election form is to allow a qualified AEI the opportunity to elect the premium assistance for dental and vision coverage. We have provided you with a copy of the [COBRA Premium Assistance Notice and Election Form \(http://www.dpa.ca.gov/forms/cobra/general/arra-of-2009.pdf\)](http://www.dpa.ca.gov/forms/cobra/general/arra-of-2009.pdf). This notice is located on DPA's Web site.

After the department has verified that the qualified beneficiary is eligible for the subsidy, then a copy of the form should be sent to the plan(s). The Personnel Office should refer to the Benefits Administration Manual COBRA Section 500 for dental and vision plan addresses. If the department determines that the qualified beneficiary is not eligible for the subsidy, then the form should be returned and indicate the reason for non-eligibility. It is suggested that the department send a copy of the form to the qualified beneficiary whether the qualified beneficiary qualifies or does not qualify for the subsidy, and mark the form accordingly.

Note: More information will be provided soon regarding the process to pay the 65 percent share of the monthly premiums.

Waive Rights to Elect Premium Subsidy

While it is mandatory for departments to offer the temporary COBRA assistance, qualified beneficiaries have the right to waive acceptance of the COBRA premium reduction.

Checking "I do not elect" on the form or if the form is not received or postmarked within 60 days from the date reflected on page 3 "Date Notice Sent," will be considered a waiver of the premium subsidy and is irrevocable. All election rights will end. No late elections will be accepted.

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Personnel Offices

Please help your employees who have questions regarding ARRA, COBRA Premium Assistance (subsidy). If you need assistance to answer your employees' questions, please call Bryan Bruno, Staff Personnel Program Analyst, at (916) 445-9841.

/s/Greg Beatty

Greg Beatty, Chief
Benefits Division

COBRA Premiums Table

Carrier	Plans	Premiums/Premium Shares		
		35%	65%	Full Premium
Delta Dental of California Plans	Premier Basic Employee			
	1 Party	\$17.90	\$33.25	\$51.15
	2 Party	\$31.74	\$58.95	\$90.69
	3 Party	\$46.17	\$85.75	\$131.92
	Dependent Plan			
	1 Party	\$15.28	\$28.38	\$43.66
	2 Party	\$23.16	\$43.00	\$66.16
	3 Party	\$30.45	\$56.55	\$87.00
	Premier Enhanced			
	1 Party	\$18.64	\$34.63	\$53.27
	2 Party	\$37.33	\$69.33	\$106.66
	3 Party	\$52.70	\$97.87	\$150.57
	PPO			
	1 Party	\$15.21	\$28.25	\$43.46
	2 Party	\$30.07	\$55.85	\$85.92
	3 Party	\$45.51	\$84.52	\$130.03
DeltaCare USA	1 Party	\$6.20	\$11.50	\$17.70
	2 Party	\$10.16	\$18.88	\$29.04
	3 Party	\$14.06	\$26.11	\$40.17
SafeGuard	Standard			
	1 Party	\$5.67	\$10.52	\$16.19
	2 Party	\$9.17	\$17.04	\$26.21
	3 Party	\$12.85	\$23.87	\$36.72
	Enhanced			
	1 Party	\$5.54	\$10.29	\$15.83
	2 Party	\$9.38	\$17.42	\$26.80
3 Party	\$11.55	\$21.46	\$33.01	
VSP	1 Party	\$3.28	\$6.09	\$9.37
	2 Party	\$3.28	\$6.09	\$9.37
	3 Party	\$3.28	\$6.09	\$9.37