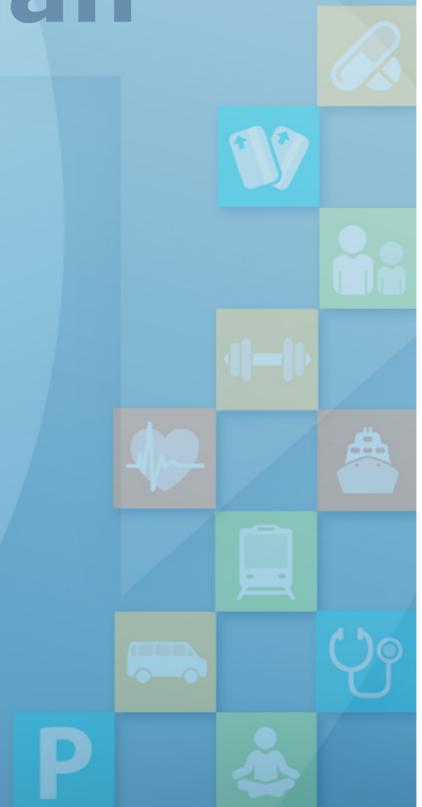


# The Top 11 COBRA Changes for Which You Should Plan



## The Top 11 COBRA Changes for Which You Should Plan

### 1. Identify AElS.

**Identify all individuals that are eligible for the premium subsidy or the extended COBRA election period (Assistance Eligible Individuals) and thus, should receive a special notice or an election notice.**

**WAGeworks ROADMAP:** We will prepare a report for our clients of all Qualifying Events since September 1, 2008 for clients to review. Clients will have two options: have the Notice of Premium Subsidy provided to all individuals with Qualifying Events or to direct us to whom the Notices should be sent.

Fees will apply to this, as outlined in your services Agreement.

**Considerations:**

Make sure you can identify all those qualified beneficiaries who are or were eligible for COBRA by virtue of a qualifying event that was an involuntary termination of employment occurring between September 1, 2008 and February 16, 2009 who have not elected COBRA as of February 17, 2009 or who elected but did not continue the coverage. This includes spouses and children who were covered at the time of the qualifying event but are not covered now. Note that an involuntary termination includes circumstances other than reduction in force. These individuals will be entitled to a special election period.

**Please note:**

This also includes those whose election period has not yet ended as of February 17, 2009. Such qualified beneficiaries whose election period has yet to expire may choose to take advantage of the special election period but they will receive adjusted coverage dates if they do not make their election within their initial election period.

**Key Term:**

Get to know the term Assistance Eligible Individuals (AEI), which refers to those terminated employees that qualify to receive assistance under the new legislation.

### 2. Determine if a different coverage option will be offered as allowable under ARRA.

**WAGeworks ROADMAP:** WageWorks' Client Services staff is prepared to discuss the impact of offering different coverage options for those clients that wish to explore this provision.

**Considerations:**

Under the American Economic Recovery and Reinvestment Plan, employers can choose to make other medical options available to Qualified Beneficiaries at the time of their Qualifying Event, as long as the cost of the other option to the Qualified Beneficiary is no greater than the option the Qualified Beneficiary has at the time of the event. When there's a different option offered, the Qualified Beneficiary also is allowed an additional 30 days to make the election for the medical option under their COBRA election. Due to ambiguities in the application of this otherwise voluntary provision, make sure you carefully consider the pros and cons of adopting such an option. For example, information might be required following a qualifying event that might not typically be sent regarding other benefit options available under the plan, and that information will differ for each Qualifying Beneficiary.

Complexity surrounding the different election periods available when additional medical options are available, data collection and communication of the options available may strongly influence whether the different coverage offerings will be made available.

### 3. Determine if you wish to wait on model notices or draft notices independently.

**WAGEWORKS ROADMAP:** WageWorks has created draft Notices based on the information in ARRA. However, because model Notices will be released within 30 days of the legislation's enactment, we believe that waiting for the model notices may be the preferred approach. More important, focus should be on culling through all Qualifying Events since September 1, 2008 to be sure that compliance with ARRA's non-voluntary requirements is achieved. It's important to recognize that if Notices are sent before the Model Notices are available, there's a chance that yet another Notice will be required later. However, employers should consider the following: it may be beneficial to at least send notice of the premium reduction as soon as possible to those who have elected or who may soon be electing COBRA in order to avoid receiving overpayments. Refunding and/or crediting overpayments may be burdensome for some employers. A more formal notice that complies with any guidance issued in the interim could be sent at a later date.

**Considerations:**

The Notice content specified in ARRA includes:

- Forms establishing eligibility for the premium reduction (e.g., attestation that the qualifying event was an involuntary termination; that the individual is a bona fide "qualified beneficiary");
- The name, address, and phone number of the plan administrator, as well as any other person "maintaining relevant information in connection with such premium reduction";
- A description of the special election period, which commenced February 17<sup>th</sup> and ends 60 days after the election notice is provided to the qualified beneficiary;
- A description of the qualified beneficiary's obligation to notify the plan if the individual becomes *eligible* for subsequent coverage under another group health plan or under title XVIII of the Social Security Act (i.e., Medicare), and a description of the penalty for failing to notify the plan;
- A description "displayed in a prominent manner" of the qualified beneficiary's right to a reduced premium due to the premium subsidy and any conditions on entitlement to the reduced premium; and
- A description of the option of the qualified beneficiary to enroll in "different coverage" (if the employer chooses to allow such enrollment), which would require a 90-day election period.

### 4. Identify and assess the information needed to send notices.

**WAGEWORKS ROADMAP:** WageWorks is prepared to send supplemental Notices to those AEs identified and will incorporate required language into existing Notices.

**Considerations:**

Make sure you identify and assess the information needed to send notices to those entitled to a special election and the decisions you made in items two and three. In doing so, employers must determine whether or not they wish to simply revise their current election notices or prepare a supplement to be used with their current notices. Some plan administrators may also choose to revise initial notices and SPDs even though the new COBRA provisions do not make this a requirement.

### 5. Draft additional forms.

**WAGEWORKS ROADMAP:** The additional forms are available in place and ready to include with the Notice.

**Considerations:**

Additional forms are needed in order to comply with the new regulations:

- A subsidy waiver form for highly compensated employees
- An "attestation of eligibility" form for all individuals who will be entitled to the premium assistance

## 6. Revise HIPAA certificates.

**WAGEWORKS ROADMAP:** For those clients for whom we provide HIPAA certificates, the certificates will be updated to reflect the proper treatment of the gap in coverage under ARRA.

**Considerations:**

HIPAA certificates of creditable coverage need to be revised for those who take advantage of the special election period. This revision should reflect the fact that any gap between the date of the qualifying event and the date coverage begins (which is the first period of coverage following February 17, 2009 — most likely March 1, 2009 for most plans) is not considered a “gap” in coverage for purposes of HIPAA’s pre-existing condition rules.

## 7. Implement a procedure for handling overpayments.

**WAGEWORKS ROADMAP:** We have a process in place to track the credits and, if necessary, refunds. As noted in #3 above, an employer may want to consider sending out a premium reduction notice immediately to individuals on COBRA or those who may elect COBRA in order to reduce the number of overpayments — and resulting refunds and credits — it will have to process.

**Considerations:**

Make sure to implement within the first few months of Notices being sent a credit procedure for those Assistance Eligible Individuals (AEIs) who pay more than 35 percent. The easiest likely procedure will be issuing a credit against future required payments. ARRA, however, requires a 60-day refund process if the credit will not be used within 180 days.

## 8. Calculate new premium structure.

**WAGEWORKS ROADMAP:** We will work with clients to be sure we have the applicable rate structures and subsidy amounts. Additionally, we will capture the information required by ARRA to provide a report to Clients for their use in recapturing the subsidy.

**Considerations:**

A new premium structure that identifies the required premiums for those eligible for COBRA will be required. Careful consideration of severance arrangements and the structure of continuing benefits under a severance arrangement can impact the amount of subsidy available. Potentially, there will be several different COBRA “rates” for those covered under COBRA, depending on whether they are eligible for the premium subsidy, where they fall in their subsidy period, and how the terms of their severance arrangements or other subsidy arrangements in place at the employer are defined. Once those rates are set, tracking the subsidy and required information to recapture the subsidy from the government is critical. This recapture process will happen through the Employer’s Quarterly Federal Tax Return on Form 941. Guidance was released on Tuesday, February 24, 2009 and is available at <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>

## 9. Update all applicable employee communications.

Make sure plan documents, SPDs, and related communication materials are reviewed to determine what (if any) changes are necessary.

## 10. Maintain proper records for reporting requirement.

**WAGEWORKS ROADMAP:** We will keep you informed as additional guidance is released.

**Considerations:**

A critical piece of the recapture process is the ability to track and maintain the payroll information necessary to fulfill the reporting obligations (amount of payroll taxes offset by the subsidy, etc.). There will also likely be a W-2 reporting requirement for anyone receiving the subsidy, so careful attention to required data retention will be required.

## 11. Implement a procedure for sending out notices that the premium assistance is about to be exhausted.

**WAGEWORKS ROADMAP:** We have draft Notices prepared for this requirement and will incorporate it into the process for AEIs.

**Considerations:**

It would be prudent to notify Assistance Eligible Individuals (AEIs) in advance of the expiration of the COBRA premium assistance period. For example, such a notice would be provided upon exhaustion of the maximum nine month premium assistance period or if the AEI becomes eligible for other coverage under a group health plan or Medicare.

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The Department of Labor has also created a special website page with additional information.

The DOL link is:

<http://www.dol.gov/ebsa/COBRA.html>

Additional questions about ARRA's impact on COBRA can be directed to your Client Services Team or [compliance@wageworks.com](mailto:compliance@wageworks.com)

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### About WageWorks

WageWorks is the nation's largest independent provider of consumer-directed benefits solutions for employers. Our forward thinking solutions combine technology and service to bring out the best in tax-advantaged benefits and incentive programs. The result is health care and dependent care, commuter, retiree benefits and wellness plans that are as easy for benefits professionals to administer as they are for employees to use. More than 100 of America's Fortune 500 employers and millions of their benefits-eligible employees use WageWorks' programs.

### About WageWorks Dedicated COBRA Solutions

WageWorks' platform provides employers with one comprehensive solution for all aspects of COBRA operation, from implementation and ongoing account management to financial reporting. WageWorks effectively manages all aspects of COBRA administration, from the day-to-day processing of notices and payments to managing participant inquiries and ensuring 100% compliance with complex regulatory and legislative requirements and changes as they occur. WageWorks assumes the burden for all COBRA administration and non-compliance risk, leaving your clients with the freedom to focus on their organizations' critical requirements.

### Want more information about the new COBRA regulations or WageWorks' administrative solutions?

Contact your WageWorks Account Manager.