



COBRA

Cyndi Luciani

MANLEY **SERVICES**
A PacificSource Company

What is COBRA?

- ❖ Provides continuation of group health coverage that might otherwise be terminated
- ❖ Title X of the Consolidated Omnibus Reconciliation Act of 1985
- ❖ Regulated by the IRS and DOL

Employers subject to COBRA

- ❖ Health plans maintained by private-sector employers, employee organizations, and state and local governments.
- ❖ Excludes:
 - Small employer plans
 - Federal government
 - Church plans

Examples of Group Health Plans

- ❖ Medical insurance, self-insured medical
- ❖ Dental insurance, self-insured dental
- ❖ Vision
- ❖ FSA's
- ❖ HRA's
- ❖ Most employee assistance plans (EAP)

COBRA Eligible Groups

- ❖ Group must have 20 or more employees on 50% of the typical business days in the prior calendar year
 - Full time employees
 - Part time employees are counted as fractions: Hours worked/hours required to be a full time employee
 - Count ALL employees, not just those covered under the plan

Qualified Beneficiaries

- ❖ Individual(s) covered by a group health plan on the day prior to the qualifying event



- Employee
- Spouse
- Employee's dependent child
- Newborns and adopted children
- Qualified medical support order

COBRA Triggers



- ❖ Triggering events for covered employees, spouses, and children:
 - *Voluntary or involuntary termination* of the covered employee's employment
 - *Reduction of hours* of the covered employee's employment

COBRA Triggers

- ❖ Triggering events for covered spouses and children:
 - **Divorce or legal separation** of the covered employee from the employee's spouse
 - **Death** of the covered employee
 - Covered employee becomes **entitled to Medicare**
 - **Dependent child ceases to be a dependent** under the terms of the plan

Duration of COBRA Coverage

- ❖ 18 months
 - Termination
 - Reduction in hours
- ❖ 29 months
 - Social Security Administration approved disability
- ❖ 36 months
 - Death
 - Divorce
 - Loss of Dependent child status
 - Medicare entitlement

Gross misconduct

Gross misconduct exception

- ❖ If covered employee is terminated for “gross misconduct”, COBRA is not required.
- ❖ Who is denied COBRA coverage when there is gross misconduct?
- ❖ There is no definition of gross misconduct.

COBRA's Initial Notice



- ❖ Summary of the member's rights and duties
- ❖ Must be provided within **90 days** of enrollment

Qualifying Event Notice



- ❖ 44 days from Qualifying Event to send notice
- ❖ Mailed election notice is considered furnished as of date of mailing
- ❖ Election notice must be furnished to each qualified beneficiary

COBRA Enrollment Period



- ❖ Qualified Beneficiaries must elect COBRA within **60** days of:
 - The date group health coverage is lost, or
 - The date the employer provides the Notice

COBRA Elections

- ❖ Who elects?
 - Election by covered employee or spouse
 - Elections by other representatives of qualified beneficiary
 - Each qualified beneficiary has an independent election right
- ❖ Waiver of COBRA coverage
 - No effective waiver during election period

Election Options



- ❖ The qualified beneficiary may continue the same coverage they had while employed.
- ❖ Qualified beneficiary may modify continuation coverage later.
 - Open enrollment rights

Coverage during enrollment period



- ❖ Until payment is received the qualified beneficiary has no coverage.
- ❖ After coverage termination, retroactive reinstatement may be made upon election and payment.

COBRA payments

Premium payment deadlines

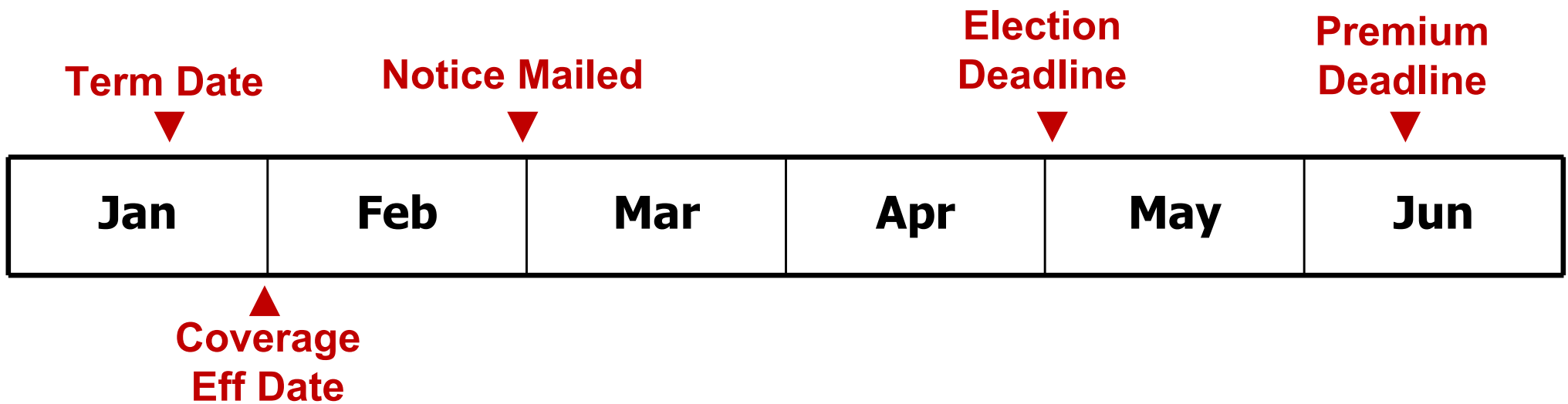
- ❖ Initial payment is due within **45 days** of the election
- ❖ **30 day** grace period for subsequent payments
 - Payment is due on the 1st of the month, but participant has until the last day of the month to mail payment. Payment is “made” when mailed – date of postmark.

COBRA payments

What is the applicable premium?

- ❖ Monthly plan premium
- ❖ Can charge 102 percent of applicable premium
 - 150 percent for disability extension (only months 19 to 29)
- ❖ 12-month determination period

COBRA Timeline



Employers...



- ❖ COBRA is employer law
- ❖ \$110 per day penalties

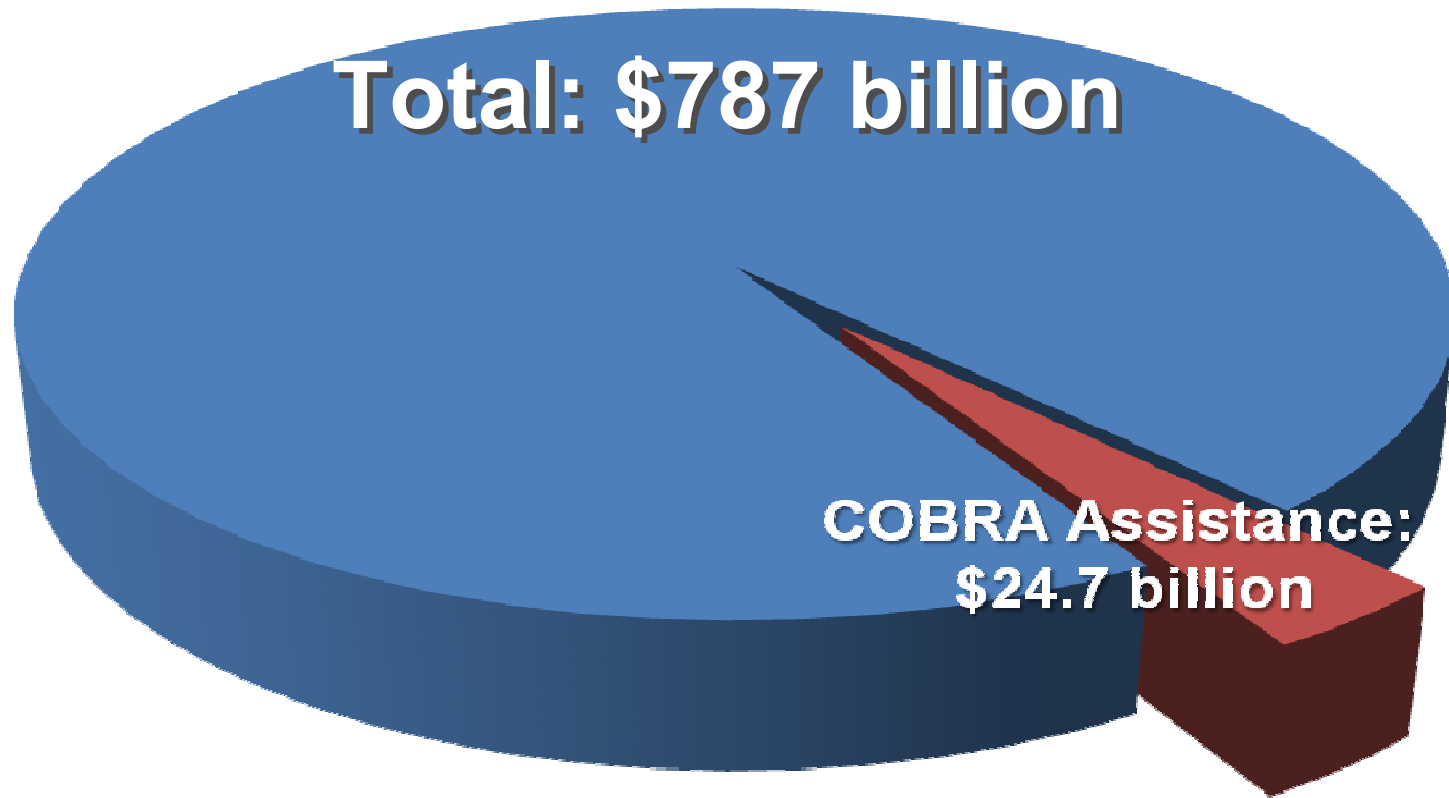
American Recovery and Reinvestment Act: COBRA Subsidy



What is ARRA

- ❖ American Recovery & Reinvestment Act of 2009
- ❖ AKA: “Economic Stimulus Package”
- ❖ Signed into law on February 17, 2009
- ❖ Extended December 21, 2009 and March 2, 2010
- ❖ Includes COBRA Premium Assistance

ARRA Overview



What Does It Impact?



❖ Applies to:

- COBRA Benefits
- Federal Employees Health Benefits Program (FEHBP)
- State continuation programs)

What Plans are included?

- ❖ Covered Benefits:
 - Medical
 - Dental
 - Vision
 - HRA
 - EAP

- ❖ FSAs are not eligible

Amount of the Subsidy



- ❖ The subsidy is 65% of the COBRA premium generally charged to the individual for continuation coverage. This can include the 2% administrative fee allowed under COBRA.

Assistance Eligible Individual (AEI)

- ❖ Qualified Beneficiaries between:
 - ❑ Originally: 9/1/2008 and 12/31/2009
 - ❑ 1st Extension: to 2/28/2010
 - ❑ 2nd Extension: to 3/31/2010
- Eligible as a result of involuntary termination during same period
- Elects continuation coverage



Domestic Partners are not COBRA Qualified Beneficiaries according to IRS Code

Involuntary Termination

- ❖ Employer initiated termination
- ❖ Employee was willing and able to continue performing services
- ❖ Employer's failure to renew a contract

Involuntary Termination

- ❖ Type of termination will be determined based on “all the facts and circumstances”



Employee resigns, but the employer was planning to terminate the employee’s services anyway – and the employee had knowledge of it. This would be determined as involuntary termination.

Involuntary Termination

- ❖ Termination “for cause” considered involuntary termination. **Qualifies for premium reduction.**



Termination for “Gross Misconduct” is not a COBRA qualifying event.

Eligibility ends

- ❖ The earlier of:
 - Date of eligibility of another group health plan or Medicare
 - End of maximum COBRA coverage period
 - Originally, **9 months**, now **15 months** after first day the first month premium reduction is received
 - The date on which the AEI no longer pays the 35% portion of the premium.

High-income Individuals

- ❖ The subsidy has a modified adjusted gross income cap of \$145,000 (or \$290,000 for a joint return)
- ❖ Subsidy recapture begins to phase in for individuals whose modified adjusted gross income exceeds \$125,000 (or \$250,000 for a joint return)
- ❖ Employer cannot refuse premium assistance to an individual based on income
- ❖ Waiver is irrevocable...

Severance and ARRA



- ❖ Premiums included in a severance package, are not eligible for a payroll tax credit on Form 941.

Federal Reimbursement

- ❖ The federal government will reimburse the entity the remaining 65% of the COBRA premium by allowing the entity to take a credit against its payroll taxes.
- ❖ Form 941, Line 12a and 12b will be completed for reimbursement of the 65% employer paid subsidy.
- ❖ The entity cannot claim the subsidy credit until the AEI's payment is received.

Federal Reimbursement

- ❖ If Employer is not notified by an AEI of eligibility for other coverage, and takes a credit for 65% premium assistance, the employer is not required to refund the excess premium to the IRS
- ❖ The subsidy is recouped to the Treasury via the 110% penalty on the individual



MANLEY **SERVICES**
A PacificSource Company

Required Documentation

- ❖ Employer's supporting documentation for credits claimed:
 - Documentation regarding the AEI's payment
 - Copies of carrier invoices
 - Proof of the involuntary termination
 - Proof the individual is eligible for COBRA
 - SSN for the AEI
 - Amount of subsidy reimbursed for each covered employee and qualified beneficiary
 - Whether the coverage is for one individual or two or more individuals

Required Notice - Employee



- ❖ An AEI who becomes eligible for coverage under another group health plan is required to provide **timely written notice** to the plan providing COBRA coverage.

Required Notice - Employee



- ❖ An AEI who fails to provide the required written notice is subject to a **repayment penalty** of 110% of the subsidy the AEI received, which he or she was not entitled to receive.

Appeal Rights

- ❖ Individuals who are denied the subsidy, can appeal to the Department of Labor. The Department of Labor must review appeals within 15 days.



ARRA Extension #1

- ❖ Became law on December 21, 2009
- ❖ Extended subsidy from 9 to 15 months.
- ❖ Extended eligibility period from December 31, 2009 to February 28, 2010.
- ❖ Second chance to restore coverage if termed
 - 60 days of the date of enactment to pay, or
 - 30 days after the notice is received
- ❖ Refund or a credit for overpayment if not termed
- ❖ New notice must be provided

ARRA Extension #2

- ❖ Temporary Extension Act of 2010
- ❖ Became law on March 2, 2010
- ❖ Extended eligibility period February 28, 2010 to March 31, 2010
- ❖ Reduction in Hours
- ❖ Gap in Coverage
- ❖ New Record Keeping Requirements
- ❖ New Penalties

More Information

❖ U.S. Department of Labor

- <http://www.dol.gov/ebsa/cobra.html>

❖ Internal Revenue Service

- <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>