



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Health Care Plan Subsidy for Involuntarily Separated Employees

References:

Report to the Secretary, Displaced Workers Health Benefits and Monitoring, August 1992
Federal Acquisition Regulation 31.205-6, Compensation for Personal Services
DEAR 970.3102-05-06, Compensation for Personal Services
Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985
Technical Corrections to the Consolidated Omnibus Budget Reconciliation Act
National Defense Authorization Act of 1993, Section 3161
Department of Treasury, Internal Revenue Service Non-Cost Regulation of June 1987
American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Title III, Section 6432

When is this Acquisition Letter (AL) Effective?

This AL is effective upon issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Whom do you Contact for More Information?

Contact Ellen I. Leyba at ellen.leyba@hq.doe.gov or (202) 287-1633 in the office of Contract and Resource Management for questions pertaining to medical health plan subsidy. NNSA inquiries should be address to Frank Sanchez at fpsanchez@doeal.gov or (505) 845-4788 in the Service Center, Office of Business Services, Contractor Human Resources Division.

What is the Purpose of this AL?

The purpose of this AL is to ensure that Contracting Officers provide contractors, who offer benefits under the Department of Energy's (DOE) Displaced Workers Medical Benefit Program (DWMBP), with (1): information regarding a health care premium subsidy available to eligible involuntarily separated contractor employees under the American Recovery and Reinvestment Act of 2009 (Recovery Act) amendments to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and (2) clarify that employers may not provide either dual coverage under

the DWMBP and the Recovery Act, or a subsidy to the displaced workers' DWMBP premium payments through the Recovery Act.

What is the Background Information You Need to Know?

COBRA allows certain employees and qualified beneficiaries to continue temporarily group health coverage they received while employed. Under COBRA, employees separating both voluntarily and involuntarily (in most cases), and upon the occurrence of other specified events, and any qualified beneficiaries are eligible to continue existing coverage. Moreover, under COBRA, these employees are generally required to pay the full premium amounts plus an administrative fee.

The DOE allows management, operating, and certain other cost type prime contractor employees separating in an involuntary or voluntary separation program, conducted pursuant to a preapproved 3161 workforce restructuring action, to continue their existing health care coverage under either COBRA or the DWMBP. The DWMBP provides qualified individuals with subsidies of premiums paid for health care coverage as follows: (1) 100% of the current active employee premium contribution for the first year following separation, (2) one-half of the rate the employee would have paid had the employee chosen COBRA coverage, during the second year, and (3) the full rate the employee would pay for standard COBRA coverage (employee pays entire premium) in the third year and beyond, until the employee becomes eligible for other qualified group medical coverage such as Medicare.

The Recovery Act was enacted on February 17, 2009. It amended COBRA to require most employers to offer eligible employees who are involuntarily separated from employment between September 1, 2008 and December 31, 2009, and their qualified beneficiaries, a 65% subsidy on the employee portion of the premiums for any group health plan the employee was enrolled in at the time of involuntary separation. The subsidy lasts for a period of nine months from the date of involuntary termination, and employers must either pay the subsidy starting with the first premium payment period after the Recovery Act's enactment, which is typically March 1, 2009, or later reimburse or provide the employee with a credit toward future COBRA premiums. The employer paying the subsidy may claim a payroll tax credit for reimbursement by the federal government or the employer may claim the subsidy as a cost under the contract. However, pursuant to FAR 31.201-5, if the employer claims the subsidy as a cost under the contract and claims a payroll tax credit, he must apply that credit to the Government in the amount of the allowable cost of the subsidy. Finally, the subsidy is phased out for individual tax filers earning \$125,000 and above.

What is the Applicability of this AL?

This AL is applicable to all contracts under which the contractor provides displaced workers medical health benefits under the DWMBP.

What is the Guidance Contained in this AL?

Eligible employees interested in the federal COBRA subsidies under the Recovery Act should be notified that they will not be allowed to receive medical benefits under both the DWMBP and the COBRA program. They will have to choose between the two programs in order to receive continued medical benefit coverage.

However, because the DWMBP does not include coverage for dental and vision plans, the COBRA subsidy should be offered to employees seeking to continue participation in their existing dental and vision plans, providing there is no duplication of coverage.

Contractors are encouraged to contact their counsel for advice on the Recovery Act subsidy provisions.

What Should Contracting Officers do to Implement this Acquisition Letter?

Contracting Officers should furnish a notice such as that attached to their contractors who sponsor displaced workers medical benefits under the DWMBP.

Attachment

DISPLACED WORKER MEDICAL BENEFIT PROGRAM NOTICE

What is the Background Information You Need to Know?

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) allows certain former employees and qualified beneficiaries to temporarily continue group health coverage they received while employed. Under COBRA, employees separating both voluntarily and involuntarily (in most cases), and upon the occurrence of other specified events, and any qualified beneficiaries are eligible to continue existing coverage. Moreover, under COBRA, these employees are generally required to pay the full premium amounts plus an administrative fee.

The Department of Energy (DOE) allows management and operating and certain other cost type prime contractor employees separating in an involuntary or voluntary separation program, conducted pursuant to a preapproved 3161 workforce restructuring action, to continue their existing health care coverage under either COBRA or the DOE Program known as the Displaced Worker Medical Benefit Program (DWMBP). The DWMBP provides qualified individuals with subsidies of premiums paid for health care coverage as follows: (1) 100% of the current active employee premium contribution for the first year following separation, (2) one-half of the rate the employee would have paid had the employee chosen COBRA coverage, during the second year, and (3) the full rate the employee would pay for standard COBRA coverage (employee pays entire premium) in the third year and beyond, until the employee becomes eligible for other qualified group medical coverage such as Medicare.

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What is the Guidance Contained in this Notice?

Accordingly, the contractor must notify eligible employees interested in the federal COBRA subsidies under the Recovery Act that they will not be allowed to receive medical benefits under both DWMBP and the COBRA program. They will have to choose between the two programs in order to receive continued medical benefit coverage.

However, because DWMBP does not include coverage for dental and vision plans, the COBRA subsidy should be offered to employees seeking to continue participation in their existing dental and vision plans, providing there is no duplication of coverage.