



Benefits Administration Letter

Number: 09- 202

Date: March 19, 2009

Subject: Assistance for certain employees who are eligible for Temporary Continuation of Coverage (TCC) based on Public Law 111-5

Public Law 111-5, the *American Recovery and Reinvestment Act (ARRA) of 2009*, was signed into law by President Barack Obama on February 17, 2009. This Benefits Administration Letter (BAL) provides information regarding the law's impact with respect to Federal Employees Health Benefits (FEHB) Program administration and a model notice and application/certification form for you to provide to your affected former employees and terminating employees.

Certain former employees eligible for premium assistance: Title III of Division B of ARRA provides that employees who are involuntarily terminated between September 1, 2008, and December 31, 2009, may receive premium assistance from their past employer for their temporary continuation of coverage (TCC). The term "involuntary termination," as used in ARRA, includes an employee who is involuntarily separated from service, except if the termination is for "gross misconduct," as defined by the TCC statute, 5 U.S.C. 8905a(b)(1)(a), and implementing regulations.

The premium assistance, which represents 65 percent of their health insurance premiums for up to nine months, terminates if they become eligible for other group health coverage or Medicare or they reach the end of their 18-month coverage under TCC. Note that "group health coverage" in this instance does not include limited coverage such as that consisting of only dental, vision, counseling, or referral services; coverage under a health care flexible spending arrangement; coverage of treatment that is furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care; or a combination of any of the above.

Notification to former employees: Agencies must identify former employees who qualify for TCC based on an involuntary termination that occurred on or after September 1, 2008, even if they did not elect to enroll in TCC, and provide notice regarding their potential eligibility for premium assistance within 60 days of the signing of the Act. Three model notices are attached for your use (Attachment A). Use the notice meeting the specific situation of the employee. We strongly suggest you do not change the notice, since it is based on the ARRA requirements.

Individuals who already have experienced an involuntary termination that occurred on or after September 1, 2008, which entitled them to elect TCC coverage, fall into two groups: 1) those who elected TCC when they separated from service; and 2) those who did not. In addition to requesting premium assistance, the first group also may elect to change plans. The newly elected plan must have the same or lower premiums than the plan in which they were enrolled at the time of involuntary termination and must be available to non-TCC active employees at the time of election. Premium assistance is retroactive to the first period of coverage on or after February 17, 2009, except for individuals who must change to a plan with a lower premium in order to qualify for the premium assistance, in which case the assistance shall be prospective only. Premium assistance for the first group will end at the earlier of 9 months, the remaining time of their TCC eligibility, or until the individual becomes eligible for other group health coverage or Medicare.

The second group must be given a new opportunity to elect TCC. The extended election period begins on the date of enactment and ends 60 days after the date the agency provides the required notice. TCC will be effective retroactive to the first period of coverage beginning on or after February 17, 2009, and shall not extend beyond the period of TCC that would have been allowed under applicable TCC provisions if coverage had been elected during the former employee's initial opportunity to enroll in TCC. Premium assistance for the second group will end at the earlier of 9 months of payment of the assistance, the remaining time of their TCC eligibility based on their employment termination date, or until they become eligible for other group health coverage or Medicare.

Newly terminating employees, whose separation dates are on or before December 31, 2009, should receive the notice and be given an opportunity to elect TCC and request premium assistance.

Please note that ARRA does not extend TCC coverage beyond the normal 18-month limitation stated at 5 CFR 890.1107.

A request for premium assistance must be received within 60 days of the agency's notice to the individual. A request to enroll in a different plan must be received within 90 days of the agency's notice to the individual.

Individuals who request premium assistance must certify they are eligible for the assistance. A sample request/certification is attached (Attachment B). You should send it along with your notice and a Standard Form 2809 (SF 2809) to potentially eligible individuals. It must be returned with the SF 2809 to the agency. Agencies should use the Remarks section of the SF 2809 to state 1) the effective date of the former employee's TCC and 2) the effective date of the former employee's premium assistance.

Former employees must notify their health plan and their former employing agency if they become eligible for other coverage which would disqualify them from continuing to receive premium assistance as described above. Failure to make this notification may subject the individual to a penalty of 110 percent of the premium reduction provided. Eligible individuals may also decline to request premium assistance.

Cost of Premium Reduction: Assistance-eligible individuals who elect TCC will pay 35

percent of the TCC premium for their FEHB plan. The TCC premium is the sum of the FEHB plan premium and the two percent administrative charge. Former employing agencies will pay the remaining 65 percent balance. Attachment C provides a rate chart reflecting these amounts for your use. Agencies may use Internal Revenue Service (IRS) Form 941 to receive a credit on their payroll taxes for the premium assistance paid on behalf of former employees. The IRS has provided guidance with respect to this credit at the following: www.irs.gov/newsroom/article/0,,id=204709,00.html.

Agency Reporting Requirements: Agencies also will be responsible for periodically reporting the following information: 1) the number of individuals provided premium assistance; 2) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; 3) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction; and, 4) additional reporting requirements as defined by the IRS.

For questions regarding this BAL, please contact Ed DeHarde, Senior Policy Analyst, Insurance Policy Group, Strategic Human Resources Policy, at Edward.DeHarde@opm.gov or at 202.606.0004. Thank you for your assistance.

Sincerely,

Kathleen M. McGettigan
Deputy Associate Director
Center for Retirement and Insurance Services

Attachments