



## February 25, 2009 - COBRA Premium Assistance

The American Economic Recovery and Reinvestment Act of 2009 (ARRA) that was signed into law on February 17, 2009 includes a number of provisions which impacts several areas related to your employee benefit programs, particularly the administration of COBRA.

### COBRA PREMIUM SUBSIDY – OVERVIEW

ARRA provides for a 65% reduction in COBRA premiums for certain employees (and their covered dependents) who are "Assistance Eligible Individuals". If the COBRA participant is eligible for the premium subsidy, they will only have to pay 35% of their applicable COBRA premiums. The remaining 65% of the premium will be paid by the employer who will in turn reduce their payroll tax deposits (see EMPLOYERS on next page).

### INDIVIDUALS

- To be considered an Assistance Eligible Individual (**AEI**), the employee or dependents must have lost their group health plan coverage due to involuntary termination of employment that occurred during the period from September 1, 2008 to December 31, 2009.
- The subsidy will last a maximum of 9 months and will end earlier if the individual ceases to be considered an AEI.
- Individuals who are **eligible** for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium subsidy.
- There is no premium subsidy for periods of coverage that began prior to February 17, 2009. If your health plan uses a calendar month coverage period (coverage ends at the end of the month, rather than the actual date of termination of employment), then the subsidy will become effective on **March 1, 2009**.
- Only Qualified Beneficiaries are eligible for the premium subsidy; domestic partners and others who cannot independently elect COBRA coverage are not eligible for the subsidy.
- The subsidy phases out for qualified beneficiaries who have modified adjusted gross income of \$125,000 if single, or \$250,000, if married filing jointly and is not available if their adjusted gross income is greater than \$145,000, if single, or \$290,000, if married filing jointly.
- The subsidy is available to all group health plan coverage connected with the COBRA qualifying event, except Medical Flexible Spending Accounts (Med-FSAs).
- The qualified beneficiary must elect COBRA or applicable state continuation coverage (both small employer and post-COBRA coverage).
- Individuals who believe that they are Assistance Eligible Individuals and are not identified as such by their group health plan will have the right to appeal to the Department of Labor.
- An AEI is generally eligible for the Subsidy, even if someone else pays the COBRA premiums. Therefore, if the parent of an AEI pays the COBRA premium on the individual's behalf, their cost is only 35% of the applicable COBRA premium.

## COBRA PREMIUM SUBSIDY (Continued)

### EMPLOYERS

- The employer will pay the remaining 65% of the COBRA premiums for the AEIs and then recapture the premiums from the government. Essentially, the 65% of the premiums paid by the employer are considered to be a payroll tax deposit.
- There is no subsidy unless and until the employee (or a third party) pays their 35% of the premiums.
- The reporting of the subsidized premiums will be with IRS form 941 and will reduce payroll tax deposits. If the cost of the subsidy is greater than your payroll tax deposits, then the employer will be able to get a refund as an overpayment of payroll tax deposits.
- The IRS has redesigned Form 941 to accommodate the reporting of the subsidized premiums. Employers will need to attest that the AEIs were involuntarily terminated, report the number of beneficiaries who received assistance and the subsidy amount. The employer may also need to report the tax identification numbers (SSN) of the COBRA participants receiving the subsidy.
- If an employer pays for all, or a portion of, the COBRA premium, the Subsidy to which an individual would be entitled would be based on the amount that is actually charged to the individual. If an employer chose to pay for an AEI's COBRA coverage as part of a severance package, the individual would not be entitled to a subsidy for that month. For example, if the total applicable COBRA premium was \$500.00 (including the 2% fee) and the employer chose to pay \$250.00, rather than 35% of (\$175.00), the AEI would have to pay \$87.50 or 35% of the remaining \$250.00. The premium subsidy in this case would be \$162.50 (the applicable COBRA premium \$250.00 less the \$87.50 paid by the employee.)

### SECOND CHANCE ELECTIONS

Any individual who lost health plan coverage because of involuntary termination between September 1, 2008 and February 17, 2009 and is not currently enrolled in COBRA can elect (or re-elect) COBRA during a special 60-day election period. The special 60-day election period begins once the notice of the special election notice is sent and that notice must be sent no later than April 18, 2009. AEIs who elect COBRA during the Second Chance Election period will be eligible for the subsidy.

Individuals electing COBRA coverage during the Second Chance election period will receive coverage effective March 1, 2009 (if your plan uses a calendar month coverage period), not retroactive to the date they lost coverage. The period of time between the qualifying event date and February 17 does not count toward the HIPAA 63-day gap in coverage rules for determining creditable coverage.

The second chance election does not extend the overall COBRA period as the 18 month period will count back to the date they lost coverage, not the date that they elected coverage during the second chance period.

### PLAN ENROLLMENT OPTION

As a general rule, COBRA only allows people to extend their coverage in the benefits they were enrolled in as of the date of the COBRA qualifying event. ARRA would allow employers the option to allow all AEIs to change their coverage to other less costly programs that may be available under the employer's group plans to active employees. The "other plan options" exclude dental, vision, counseling/referral, Health FSAs, most HRAs and on-site medical clinics.

The Plan Enrollment Option period is 90 days and starts when a notice describing the option is sent. This Option must be offered to all assistance eligible individuals, including those with second chance election rights and those with qualifying events that occur later in 2009.

Keep in mind – the Plan Enrollment Option is optional – the employer does not have to choose this option.

## NOTICE REQUIREMENTS

COBRA election notices must be provided to all individuals who became or will become eligible to elect COBRA coverage between September 1, 2008 and December 31, 2009 including the following additional information:

- The possible availability of the Premium Subsidy;
- A description of the extended election opportunity for AEIs who became eligible to elect COBRA on or after September 1, 2008 and before February 17, 2009;
- The individual's obligation to submit notification when the individual is no longer eligible for the Subsidy due to their eligibility to enroll or actual enrollment in another group health plan or Medicare, and;
- The option to enroll in a different coverage (if the Plan Enrollment Option is chosen by the employer).

All individuals who were eligible to elect COBRA coverage during this period must receive another notice with this additional information by April 18, 2009, even if they are not eligible for the Subsidy. This means that even if the person voluntarily terminated employment or they lost coverage due to a divorce or because they lost dependent status, they must also receive a second COBRA notice that includes the additional notice requirements.

The deadline to send the new notices is April 18, 2009. The Department of Labor has been charged with creating a model notice for this purpose within 30 days of the Act's enactment, March 19, 2009.

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### What to do next:

#### CURRENT AEIs

Identify all current Assistance Eligible Individuals (AEIs) who are currently participating in COBRA. They will need to be informed of the change in their premium costs effective 3/1/2009.

#### POTENTIAL AEIs

Identify all potential AEIs, individuals who were qualified beneficiaries who lost coverage on or after September 1, 2008 due to involuntary termination of employment but were not currently participating in COBRA as of February 17, 2009.

#### EXTENDED ELECTION PERIOD AND PREMIUM SUBSIDY NOTICE

Send notice of extended election period to all potential AEIs by April 18, 2009.

#### PREMIUM SUBSIDY NOTICES

Send premium subsidy notices to all individuals who are or were qualified beneficiaries for any type of qualifying event situation, other than potential AEIs.

Going forward, all new COBRA offer letters must include information about the premium subsidy.

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**The American Economic Recovery and Reinvestment Act of 2009** is meant to be a fast-acting solution to the situation our economy is facing. Thus this law is being implemented with unheard of speed and we must all act quickly to comply with these regulations. Our clients can expect additional information on their plan specific issues by email shortly.