



# e-newsletter

## **COBRA Health Care Continuation Subsidies Under the Stimulus Bill**

**February 24, 2009**

On February 17, 2009 (the “Enactment Date”), President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the “Stimulus Bill”). The Stimulus Bill contains significant, temporary provisions relating to COBRA health care continuation coverage (“COBRA Coverage”), including subsidy assistance for certain “assistance eligible individuals” (an “AEI”) who are involuntarily terminated by an employer whose group health plan is subject to COBRA. We are writing to inform you of the general scope of the subsidy assistance and the important notice and reporting provisions you may become subject to within the next few days.

### **Who is eligible for COBRA Coverage subsidy assistance?**

An AEI is an individual otherwise eligible for COBRA Coverage who is, or was, involuntarily terminated from employment between September 1, 2008 and December 31, 2009.

The subsidy (described below) is not available to “high-income individuals,” defined to be a single taxpayer with modified adjusted gross income (“MAGI”) in excess of \$145,000 or a married taxpayer filing jointly with MAGI in excess of \$290,000 (although the subsidy begins to phase out at \$125,000 and \$245,000 of MAGI respectively). An AEI who is a high-income individual, or the spouse or dependent of such high-income individual, will be required to repay the subsidy as an additional tax on the high-income individual’s federal income tax return (Form 1040) for the year in which the subsidy is provided, unless such individual elects out of receiving the subsidy.

If an AEI was involuntarily terminated between September 1, 2008 and the Enactment Date and did not previously elect COBRA Coverage, then the AEI must be provided a second opportunity to elect COBRA Coverage. The group health plan sponsor must send notice to the AEI advising such AEI of the special election period, after which point the AEI will have sixty (60) days to elect COBRA Coverage.

In addition to providing notice to AEIs who are entitled to the special, second enrollment period, the group health plan sponsor must provide notice to all AEIs who currently have, and are paying for, COBRA Coverage to advise them of the availability of the subsidy and the requirements to qualify for the subsidy. Finally, for those AEIs who first become eligible for COBRA Coverage on or after the Enactment Date, additional COBRA notices must be given to describe the subsidy program.

### **What is the subsidy?**

Effectively, the subsidy works by providing that a group health plan may only require the AEI to pay thirty-five percent (35%) of the COBRA Coverage premium which the AEI would otherwise be required to pay, and simultaneously allowing the employer to take a credit against its federal payroll and withholding tax liability for the remaining sixty-five percent (65%) of the premium. The AEI (or someone other than the employer) must pay the thirty-five (35%). If an employer reduces the amount the AEI must pay, that will reduce the sixty-five percent (65%) subsidy. If an employer's sixty-five percent (65%) premium exceeds its withholding tax obligations, the employer will be entitled to reimbursement from the federal government for the difference.

### **What period does the subsidy cover?**

The subsidy applies to periods of COBRA Coverage beginning after the Enactment Date. Because most group health plans use calendar months as the COBRA period of coverage, this generally means that employers will be required to offer the subsidy beginning March 1, 2009. The maximum period of coverage is the shorter of either (i) nine (9) months, or (ii) the period ending on the date that COBRA Coverage would otherwise expire. The subsidy also ends when the AEI is eligible for another group health plan.

### **Additional Provisions**

In addition to the subsidy, the Stimulus Bill contains other provisions which allow an employer the option to offer additional COBRA Coverage options to AEIs, and extend COBRA Coverage for certain employees receiving benefits from the Pension Benefit Guaranty Corporation or as a Trade Adjustment Assistance eligible individual. If you would like more information on this, please contact us at the numbers below.

### **What should employers do?**

Group health plan administrators must take action in order to provide the subsidy beginning March 1, 2009, starting with sending notices to AEIs of their various rights and options. If you are an employer subject to COBRA and you have any questions about the impact of the Stimulus Bill on COBRA Coverage, you should contact your COBRA administrator or Dean Mead by calling Jay Van Heyde (407-428-5108), Nichole Mooney at (407-428-5110) or Christine Weingart at (407-428-5175).

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