



COBRA Premium Subsidy: Immediate Action Required

If you understand and are prepared to do the following, you do not need to read Part II of this alert, which summarizes the Stimulus Act changes to COBRA Continuation of Coverage.

Part I - Action Items

Identify all the individuals that terminated employment on or after September 1, 2008 and provide proper notification of the new subsidy under COBRA. This includes:

- Develop proper notices – DOL model notices should be available March 19, 2009.
- Update COBRA election notices and provide to qualified beneficiaries with qualifying events going forward.
- Send notice to current COBRA qualified beneficiaries that are assistance eligible employees eligible for a subsidy.
- By April 18, 2009, send the special election notice to individuals who are otherwise assistance eligible individuals but not receiving COBRA continuation of coverage.

Track qualified beneficiaries receiving the subsidy and comply with the proper reporting requirements to the IRS.

Collect waivers from highly compensated employees foregoing the subsidy.

If applicable, discuss these requirements with your COBRA administrator to ensure it has the proper notices and reporting process in place to assist you in your compliance obligations.

Part II - Overview of New Provisions

Earlier this week President Obama signed the American Recovery and Reimbursement Act. The provisions of the Act include significant changes to COBRA continuation of coverage for qualified beneficiaries who are “assistance eligible individuals” (AEI) for a period of no more than 9 months. This subsidy, at 65% of the COBRA premium, is available effective March 1, 2009.

There is a special COBRA election period available to individuals who would otherwise be an assistance eligible individual, but did not elect COBRA continuation of coverage when it was initially offered (or elected and later dropped coverage). Individuals who were involuntarily terminated on or after September 1, 2008 must be notified of their ability to elect continuation of COBRA coverage and receive the subsidy. They will have the opportunity to elect COBRA on or after February 17, 2009 and ending 60 days after the date a notification is sent to the individual. COBRA coverage will be offered from first period of coverage after February 17, which for most plans will be March 1, 2009.

Generally, the employer will receive a reimbursement for the amount of premiums not paid by the AEI by virtue of the Act. This will be 65% of the COBRA premium (unless the employer directly subsidizes the total COBRA premium). Upon receipt of the AEI's premium payment, the employer may reduce payroll taxes in an amount equal to the portion of such reimbursement related to the premium. Payroll taxes include wage withholdings, employee FICA taxes and employer FICA taxes.

The availability of the reimbursement is based on the amount of premiums that would otherwise be paid by the AEI without the Act. Thus, it appears that arrangements made by the employer to pay a portion of the COBRA premium (e.g. in some severance agreements) are not considered for purposes of this subsidy and reimbursement. The subsidy is based only on the portion of the premium payable by the employee and not the employer's contribution.

The subsidy ceases to apply (and a plan administrator may again charge the full COBRA premium) as of the earliest of the date AEI becomes eligible for coverage (not actually covered) under another group health care plan or Medicare coverage; or nine months after the first day of the first month to which the subsidy applies; or the end of the maximum COBRA coverage period required by law; or for an AEI who elects COBRA during this special enrollment period, the end of the maximum COBRA coverage period that would have applied if the AEI had elected COBRA coverage when first entitled to do so. Unless the law is amended, the federal subsidy will end for qualifying events occurring after December 31, 2009.

The full subsidy will not be available to certain high income individuals. An individual with an adjusted gross income for the taxable year exceeding \$145,000 (\$290,000 for a joint return) will need to repay the subsidy for all months received during the taxable year. This is handled by an increase in the taxpayer's liability for the year equal to such amount, referred to as the recapture tax. If the taxpayer's adjusted gross income is between \$125,000 and \$140,000 (or \$250,000 and \$290,000 for joint filers) the premium subsidy is available on a proportioned basis. However, individuals may waive the right to the premium subsidy for all periods of coverage. This waiver is permanent and the individual must provide written notice to the employer. The waiver avoids the recapture tax should the income threshold be exceeded.

The employer will need to submit reports to the IRS in a time and manner to be determined that include an attestation of the involuntary termination of employment of each employee claiming a subsidy; the amount of payroll taxes offset by the reimbursement; the tax identification numbers of all covered employees; the amount of the subsidy reimbursed with respect to each covered employee; and the type of coverage (one individual or two or more individuals) associated with the subsidy.

The foregoing is only a brief summary of the changes and many of the details may need future guidance. Please contact us with any questions.

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