Allen Financial Group

Legislative Brief

COBRA Premium Subsidy: The American Recovery And Reinvestment Act of 2009

On February 17, 2009, President Obama signed into law H.R. 1, the American Recovery and Reinvestment Act of 2009 (ARRA). Among many other provisions designed to encourage economic recovery, Title III of ARRA expands the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation Coverage to provide a 65 percent federal subsidy toward an eligible worker's COBRA premium for up to 9 months. The provisions in ARRA providing this subsidy are effective as of the date of the President's signing. A brief summary of the newly enacted COBRA subsidy follows.

What Is The COBRA Subsidy?

Eligible workers will receive a 65 percent subsidy toward their COBRA continuation premium for up to 9 months. The Treasury Department will administer the subsidy, providing employers or health plans, if they administer COBRA benefits, with a credit against payroll taxes for the cost of the subsidy. The subsidy would terminate the date the individual becomes eligible for any new employer-sponsored health care coverage or Medicare coverage.

For What Coverage Is The Subsidy Available?

The federal subsidy is available for COBRA continuation coverage and for state programs providing comparable continuation coverage. The subsidy is not available for coverage under a health flexible spending arrangement.

Who Is Eligible For The COBRA Subsidy?

Individuals who have been involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and who have annual incomes of less than $125,000 (single) or $250,000 (joint filers) for the taxable year in which the subsidy is received (i.e., either 2009 or 2010) are eligible for the COBRA premium assistance, along with their families. If the premium subsidy is provided to an individual whose income exceeds $145,000 (single) or $290,000 (joint), then the amount of the premium subsidy for all months during the taxable year must be repaid. For taxpayers with income between $125,000 and $145,000 (or $250,000 and $290,000 for joint filers), the amount of the premium subsidy for the taxable year that must be repaid is reduced proportionately. Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction.

Do Any Special Enrollment Rights Exist?

Qualified individuals who initially decline COBRA coverage prior to the enactment of ARRA would be given an additional 60 days after they receive notice of the special election period to elect to receive the subsidy. The election period begins on the date of the enactment of ARRA. The special election opportunity is also available to a qualified beneficiary who elected COBRA coverage but who is no longer enrolled on the date of enactment, for example, because the beneficiary was unable to continue paying the premium.

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Federal COBRA law provides that a group health plan must allow an eligible individual to choose to continue with the coverage in which the individual is enrolled as of the qualifying event. However, ARRA allows group health plans to provide a special enrollment right to allow eligible individuals to elect different coverage under the plan in electing COBRA continuation coverage. Further, even though the premium subsidy is only for 9 months, the different coverage elected must generally be permitted to be continued for the applicable required period (generally 18 months or 36 months, absent a COBRA terminating event).

What Are The Notice Requirements?

COBRA notices must include information on the availability of the premium assistance and must be provided to all individuals who terminated employment during the applicable time period, not just to individuals who were involuntarily terminated. The Department of Labor has 30 days after the enactment of ARRA to issue model notices.

How Is The Subsidy Administered?

The subsidy is generally administered as a reimbursement. The entity to which premiums are payable will be reimbursed by the amount of the premium for COBRA coverage that is not paid by an eligible individual on account of their 65 percent premium reduction. An entity is not eligible for subsidy reimbursement, however, until it has received the reduced premium payment from the eligible individual. The entity to whom the federal reimbursement is payable is either (1) the multiemployer group health plan, (2) the employer maintaining the group health plan subject to federal COBRA, or (3) the insurer providing coverage under an insured plan.

The entity that is eligible for reimbursement may elect to offset its payroll taxes for purposes of reimbursement. To the extent that such entity has liability for income tax withholding from wages or FICA taxes with respect to its employees, the entity is reimbursed by treating the amount that is reimbursable to the entity as a credit against its liability for these payroll taxes. That is, the credit for the reimbursement is treated as a payment of payroll taxes. Any reimbursement for an amount in excess of the payroll taxes owed is treated in the same manner as a tax refund. Entities wishing to claim reimbursements will be required to file certain reports, including an attestation of the involuntary termination of employment of each covered employee for which reimbursement of premiums is claimed.

What Is The Effective Date Of The COBRA Subsidy?

These provisions are effective for periods of coverage beginning after the date of the enactment of ARRA. For group health plans using calendar months as the period of coverage, the subsidy applies beginning **March 1, 2009**. Additionally, eligible individuals who pay 100 percent of the premium required for COBRA for any month during the first 60-day coverage period after enactment will be reimbursed.

Is The Subsidy Retroactive?

Although the subsidy is available to employees who were terminated starting September 1, 2008, the subsidy itself is not retroactive. It will apply only to periods of coverage beginning on or after March 1, 2009.

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What Compliance Actions Should Be Taken Now?

At a minimum, the following compliance actions should be undertaken as soon as possible:

- Review records to identify employees who were involuntarily terminated from employment since September 1, 2008;
- Update COBRA materials to comply with the new requirements;
- Determine whether to permit individuals to elect a different health plan option when electing COBRA coverage;
- Review severance policies to revisit the issue of any employer COBRA premium contributions;
- Notify the appropriate individuals of their new rights and responsibilities under ARRA;
- Develop processes and procedures for the administration of the COBRA subsidy; and
- Keep informed about the status of the soon to be released model forms and regulations.

Where Can I Get More Information?

For a copy of the new law, ARRA, see: http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.00001:

For general information regarding COBRA, see: http://www.dol.gov/dol/topic/health-plans/cobra.htm

Your AFG representative is also available to assist you with any questions.

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