

IMPORTANT CHANGES TO COBRA CONTAINED IN 2009 STIMULUS ACT

The American Recovery and Reinvestment Act of 2009 (Stimulus Act) contains several significant changes to the Federal COBRA regulations. Outlined below are the major provisions contained in the Act.

- The changes are effective March 1, 2009 (the first COBRA billing date after the Act's enactment on February 17, 2009)
- The Act includes a Federal Government subsidy equal to 65% of the COBRA payment (including the 2% admin fee) for individuals who have been involuntarily terminated (except for gross misconduct) from September 1, 2008 through December 31, 2009. These individuals are referred to as "Assistance Eligible Individuals (AEI). This subsidy is available to eligible COBRA beneficiaries that qualify for up to nine months. Eligible COBRA beneficiaries include the covered employee, the covered employee's spouse and the covered employee's eligible children.
- Employers must communicate the new COBRA rights and the subsidy available, to all COBRA beneficiaries, who become entitled to elect COBRA beginning September 1, 2008 and ending December 31, 2009, not just employees who were involuntarily terminated (except for gross misconduct) since September 1, 2008. In other words, all individuals that had COBRA rights, not just those due to an involuntary termination, need to be notified of the new rights and the new subsidy. The subsidy does not apply to individuals who lost their coverage due to a reduction in hours that were not terminated and it does not apply to individuals who lost coverage due to a qualifying act other than involuntary termination. However the Act contains an appeal process whereby an individual can appeal an employer designation that the individual does not qualify for assistance under the Act. That is why all COBRA qualified beneficiaries must be notified of the new provisions.
- Employers have 60 days from the date of the Act's enactment to provide this notice.
- Also, existing individuals currently on COBRA due to an involuntary termination (except for gross misconduct) since September 1, 2008 are eligible for the new subsidy and thus must also have received notifications. For these individuals the subsidy would also be available March 1st. Eligible AEIs that originally took COBRA coverage on or after September 1, 2008, but subsequently dropped coverage due to non payment of premium, are now eligible to re-elect COBRA with the subsidy as of March 1, 2009.
- The Act allows employers to offer AEIs the option to change their health coverage, if the employer offers more than one coverage option
 - This new coverage option must have the same or lower premiums and must be available to similarly situated non-COBRA employees under the plan.
 - If the employer chooses to offer this option and AEI must elect to change his or her coverage within 90 days of receipt of the COBRA election notice.

- This provision is optional and an employer is not required to make this option available
- Former employees have 60 days after receiving the new notification to elect COBRA.
- The new COBRA effective date for these individuals will be March 1, 2009.
- The subsidy applies for nine months or until the individual is no longer eligible for the subsidy due to becoming eligible for other qualified medical coverage or Medicare entitlement. The individual does not actually have to take other coverage to lose the subsidy, just become eligible for other coverage or Medicare.
- The Act includes a penalty equal to 110% of the subsidy amount if the COBRA beneficiary fails to notify the employer of their entitlement to other coverage or Medicare.
- The employer receives the Federal subsidy through a direct reduction in payroll taxes owed to the Federal Government. This subsidy will be taken when submitting payroll tax amounts.
- Employers can either use existing notifications or they can use a new special form.
- The Act requires the Department of Labor to provide model language for the new notice within 30 days of enactment. If an employer decides not to wait for the new model language, the Act states the notice must include the following information:
 - An explanation of the eligibility requirements for the COBRA subsidy
 - The name, address and phone number of the plan administration if the individual has questions or requires more information
 - A description of the qualified beneficiary's obligation to notify the plan if he or she becomes eligible for coverage under another group health plan or Medicare, and a description of the penalty for failure to notify the plan
 - A description of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium
 - A description of the election of different coverage option contained in the Act (if the employer chooses to offer other coverage at this time; it is not required)
- Individuals that elect coverage due to these new coverage rights will have their health coverage effective March 1, 2009. There is no retroactive COBRA coverage. Entitlement to COBRA due to rights contained under this new Act will not extend beyond the individual's original COBRA termination date.

- The full subsidy does not apply to high income individuals: individuals with adjusted gross incomes in excess of \$125,000 per year or \$250,000 for joint returns. However, they may be eligible for a portion of the subsidy. Individuals earning between \$125,000 and \$145,000 (\$250,000 to \$290,000 for joint filers), will have their income tax increased by a percentage of their total subsidy received in that calendar year. Individuals earning more than \$145,000 (\$290,000 joint filers) will have their income tax increased by the total amount of the subsidy they receive. In other words, employers should apply for the subsidy for all individuals, regardless of their potential earnings, but the individuals outlined above should be notified they will lose all or a part of the subsidy when they file their income taxes for the year.
- If the employer subsidizes a porting of an individual's COBRA premium (for instance as part of a severance agreement) the 65% subsidy is calculated based on the net amount the individual is obligated to pay.
- The subsidy applies to premiums for Dental and Vision coverages, but not Section 125 Flexible Spending Accounts (FSA).
- If the individual has family coverage, the subsidy applies to the entire family premium, including the 2% admin fee.
- If an individual who was involuntarily terminated after September 1, 2008, and initially declined coverage, and now takes COBRA coverage due to the subsidy, the break in service from the actual termination date till the effective date of the new coverage does not count as part of a 63 day break in service for purposes of determining if HIPAA's pre-existing condition applies to an individual.

These are the main provisions of the Act. You should begin to work with your COBRA administrator to determine individuals that have terminated employment due to involuntary termination (except for gross misconduct) since September 1, 2008. These individuals as well as individuals who have taken COBRA in these circumstances since September 1, 2008 must receive the new notifications. You should also begin to work with your payroll vendor to determine how the amounts of the subsidies will be withheld from future payroll tax withholdings.

As more information becomes available with more specific guidance, SBG will let you know.