

# COMPLIANCE

## ...the bottom line.

## Congress Passes Stimulus Package Including COBRA Subsidy

### The Bottom Line

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On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (aka the "Stimulus Package"). The final version of the Stimulus Package contains significant changes to COBRA providing for health insurance continuation subsidies for workers involuntarily terminated for any reason other than gross misconduct between September 1, 2008 and December 31, 2009. **These provisions are effective March 1, 2009.**

Following is a summary of the changes to COBRA.

#### COBRA Subsidy

The COBRA premium subsidy applies to involuntary losses of employment between September 1, 2008 and December 31, 2009. Under the subsidy, the qualified beneficiary would pay 35% of the applicable COBRA premium and 65% of the premium would be subsidized by the employer. The employer may then claim the amount of that subsidy as a credit against its payroll taxes. The subsidy would expire after 9 months, leaving the remaining months as unsubsidized. If a second qualifying event occurred during that time frame, it appears that the qualified beneficiary would be able to continue utilizing the subsidy (e.g., a divorce or death).

The bill also requires a special 60-day election period for those who are eligible for the subsidy but failed to previously elect COBRA (e.g., an individual who terminated employment in October 2008 because it was not affordable and who did not elect COBRA would receive a second chance to enroll). Further, the bill allows, but does not require, employers to allow current COBRA participants to switch to any other medical option under the employer's plan. Finally, the subsidy starts to phase out at incomes above \$125,000 for individuals and \$250,000 for married couples and terminates upon eligibility for alternate coverage (e.g., Medicare, employer group health plan). The COBRA provisions specifically do not apply to Health Care Flexible Spending Accounts (FSAs).

#### Preparations for Change

Employers/COBRA administrators will need to make the following administrative revisions to implement the new COBRA provisions:

- 1. Prepare a special enrollment notice and, within 60 days of the bill's enactment, send the notice to those employees who were involuntarily terminated since September 1, 2008 and their dependents who did not elect coverage.** These employees could then elect COBRA now with the premium subsidy effective March 1, 2009. COBRA would continue for the remainder of its original term.
- 2. Prepare a special notice to existing COBRA participants who were involuntarily terminated since September 1, 2008 informing them of the new premium subsidy and their new premiums going forward,** and possibly allowing them the opportunity to change to another medical option offered by the employer. Should employees have previously paid premiums for coverage after March 1, 2009, the bill includes a 60-day grace period that allows refunds of overpaid premiums.
- 3. Develop additional notices to inform COBRA participants when they reach the maximum subsidy limit as well as a notice to inform them of a penalty for not notifying the employer when they become eligible for other group coverage.**
- 4. Develop additional procedures and notices to allow high income enrollees to opt out of the subsidy.** An attestation process is included in the final bill.
- 5. Develop administrative procedures to implement all of the changes:**
  - Revise and update COBRA communication materials.
  - Coordinate with payroll and systems staff

personnel to revise systems and other procedures to receive the payroll tax credit equal to 65% of the COBRA premium and for reflecting the revised charges on premium statements sent to participants.

- Coordinate with payroll and systems personnel to revise systems and other procedures for determining premium overpayments and crediting the payments to future premiums or returning overpayments directly to the participant.
- Develop processes, procedures and systems changes necessary to end the subsidy when the individual is no longer able to claim it and to reinstate the regular COBRA premium charge if the individual continues to be eligible for COBRA after termination of the subsidy.
- Determine whether employer wishes to allow the former employee to switch to alternative health coverage for COBRA purposes.
- If employer currently pays for some portion of COBRA premiums, determine whether these payments should be restructured.

- If significant reductions in force have been made since September 1 or may be made in the near future, determine how these new rules will affect COBRA claims experience and administrative costs for self-funded plans. If necessary, perform the actuarial calculations necessary to revise future plan rates and liabilities.

### **The Bottom Line**

The purpose of this bulletin is to make you aware of the impact of the stimulus bill with regard to COBRA. The Treasury Department is hosting a call with select COBRA administrators this week, at which point they will release more details regarding how to comply and how the administrative processes are going to work.

Laurus Strategies will continue to monitor these developments on a daily basis, coordinate with COBRA administrators and provide you with more information as details unfold.

***Please contact your Laurus Strategies Client Manager for more details.***

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