

**CBIA COBRA Continuation Services**  
**COBRA Changes resulting from the American Recovery and Reinvestment Act / Stimulus Package**  
**(aka “The Act”)**  
*February 25, 2009*

**Overview**

The enactment of the February 17, 2009 stimulus package has major implications on COBRA (and State Continuation) coverage. In essence, a federal subsidy of 65% of the COBRA / State Continuation coverage premiums is available **immediately** for any Qualified Beneficiary who experienced an involuntary termination of employment since 9/1/08 through 12/31/09. The subsidy will remain in effect for up to nine months, until 12/31/09. Qualified Beneficiaries (QB) include all covered employees, spouses and dependents (who are all treated as separate continuants under COBRA). In addition, these QBs DO NOT currently have to be on COBRA, as long as their involuntary termination happened on or after 9/1/08. As an FYI, The Act defines QBs who experienced an involuntary termination between 9/1/09 and 12/31/09 as “Assistance Eligible Individuals” or “AEIs.” All AEIs must be notified of these COBRA changes within 60 days following enactment of The Act.

**Employer Subsidy**

All employers offering COBRA-eligible health insurance through the workplace are now responsible for payment of the remaining 65% of the COBRA premium for any AEI who elects COBRA. This portion of the COBRA premium will be reimbursed to the employer by means of a payroll tax credit at the end of the tax reporting period (on IRS form 941). In the next month, the Treasury Department will issue updated forms and guidance detailing how the tax credit is to be filed. If the payroll tax credits are insufficient to cover the COBRA expense, then the employer will receive the remainder of reimbursement directly from the Treasury Department.

**Subsidy Eligibility**

AEIs that experience an involuntary termination of employment (definition forthcoming) between 9/1/08 and 12/31/09 who **ELECTED COBRA** prior to the date of The Act (2/17/09) are able to receive the subsidy on a prospective basis as of the date of The Act, starting on the next billing cycle (typically 3/1/09).

AEIs that experience an involuntary termination of employment (definition forthcoming) between 9/1/08 and 12/31/09 but **DID NOT ELECT COBRA** coverage during their initial 60-day election period must be given another opportunity to elect COBRA during a special second 60-day election period. This second election period also applies for QB’s that elected COBRA initially but have subsequently lost coverage prior to the date of The Act.

For any AEI that elects COBRA coverage, their subsidy can extend back to the date of The Act, but their maximum COBRA eligibility period (typically 18 months) is measured from the original qualifying event date.

**Income Limitations**

The full subsidy is only available for individuals with a modified adjusted gross income of up to \$125,000 (\$250,000 for joint filers) or less for the taxable year in which the subsidy is received.

Individuals earning more than \$125,000 but less than \$145,000 (\$250,000 but less than \$290,000 for joint returns) will have their income tax increased by a percentage of the total subsidy they received during that year (this percentage will be determined by the Treasury Department). Individuals earning more than \$145,000 (\$290,000 for joint returns) will have their income tax increased by the total amount of the subsidy they receive. These reconciliations will occur when these individuals file their personal income tax return. In order to avoid this penalty, individuals can permanently waive their rights as AEIs. These waivers must be provided by the AEI in the COBRA Subsidy election forms (in a manner yet to be prescribed by the Treasury Department). The AEI will need to inform their former employer of this waiver. Any AEIs concerned about exceeding these limitations may want to consider waiving the subsidy to avoid the negative tax consequences. However, the subsidy may not be recovered if the individual later determines that the income threshold was not exceeded.

Employers and insurers need not determine whether the AEI's income exceeds the eligibility requirements, and can treat all AEIs as eligible for the subsidy and receive reimbursement for 65% of the premiums for coverage provided.

### **Duration of Subsidy**

The subsidy will be available for a maximum of nine months, but not beyond the end of the maximum period of coverage required under COBRA or the individual's becoming entitled to coverage under another group health plan or Medicare.

### **Lower-Cost Health Plan Options**

Generally under COBRA, qualified beneficiaries can only elect to continue the coverage that they had immediately before the qualifying event, until open enrollment occurs. However, The Act states that an employer may permit AEIs who are eligible for the COBRA subsidy to elect a lower-cost health plan option available under the employer's plan. CBIA is in process of reviewing how we will handle this going forward.

### **Notice Requirements**

The Act requires that the existing COBRA notices need to be modified to contain additional information about the availability of the subsidy, the availability of any lower cost health plan options, the obligation of a qualified beneficiary to notify the plan of eligibility under another plan, and the penalty for failure to provide this notice. In addition, notice must be given to qualified beneficiaries entitled to the special election period described above. The Secretary of Labor is required to prescribe model notices by March 17, 2009.

### **Employer Considerations and Impact of the Law**

Employers should review their severance arrangements and health plan documents to determine how these plans and programs will be affected by the new law. It appears that employer paid severance benefits (e.g. the employer paying for 50% of the medical insurance for the first 3 months) are not eligible for the reduction of payroll taxes.

### **CBIA's Actions**

CBIA is in process of contacting all of our insured employer groups who utilize CBIA's COBRA Continuation Services, as well as AEIs who have experienced a qualifying event on or after September 1, 2008. Employer subsidies will appear on the insurance bills, and AEIs will continue to be billed direct.