



## COBRA ADMINISTRATION

### American Recovery and Reinvestment Act (ARRA)

The economic stimulus package includes important new COBRA compliance obligations. The new law, known as the American Recovery and Reinvestment Act of 2009 (Act), creates detailed new rights to COBRA premium assistance for employees (and their families) who are involuntarily terminated between September 1, 2008 and December 31, 2009. It also adds an option to change enrollment to a different plan.

**1. COBRA Premium Assistance.** The Act provides for COBRA premium assistance for certain assistance eligible individuals (AEIs) for periods of coverage beginning on or after February 17, 2009—generally March 1. An AEI is a qualified beneficiary (1) who at any time during the period that begins September 1, 2008, and ends December 31, 2009, is eligible for COBRA; (2) who elects COBRA; and (3) whose qualifying event is the involuntary termination of a covered employee's employment during such period. (Under the Act, COBRA includes a state program that provides continuation coverage comparable to COBRA--but the Act's COBRA provisions do not apply to health FSAs under Code Section 125 cafeteria plans.) The premium assistance is available for up to nine months of the AEI's maximum coverage period. The way it works is that the AEI pays 35% of the COBRA premium and the employer (or, in some cases, the plan or insurer) is then reimbursed by the federal government for the other 65% of the COBRA premium, through a credit or refund of an overpayment of payroll taxes. There is a phased-in recapture of premium assistance provided for taxpayers whose income exceeds \$125,000 (\$250,000 for a joint return).

**2. Extended Election Period.** The Act applies to AEIs who were terminated back to September 1, 2008. The assistance is not retroactive, but if such an AEI does not have a COBRA election in effect on February 17, 2009, then he or she may elect COBRA coverage during a special extended election period. The extended election period begins on February 17, 2009, and ends 60 days after the date on which notification is provided to the individual. If an AEI elects COBRA coverage during the extended election period, the coverage begins with the first period of coverage after February 17, 2009 (generally March 1), and will not extend beyond the maximum period of coverage that would have been required if COBRA had been elected.

**3. Plan Enrollment Option.** The Act also creates a "plan enrollment option," under which a plan may permit an AEI to elect to enroll in different coverage. The AEI has 90 days after notice of the plan enrollment option is provided to elect. The premium for the different coverage cannot exceed the premium for the coverage in which the individual was enrolled, and the different coverage must be coverage also offered to active employees. Certain coverages, including stand-alone dental, vision, counseling, or referral services, are excluded.

**4. Notices.** The Act provides that the COBRA election notice for all individuals who become entitled to elect COBRA between September 1, 2008 and December 31, 2009, must include additional notification of the availability of the premium assistance and the option to enroll in different coverage (if permitted by the plan). The notice obligation can be met by amending existing notices or by providing the required notices in a separate document. Also, for any AEI who became entitled to COBRA before February 17, 2009, the plan administrator must provide a notice of the assistance and the extended period to elect COBRA, within 60 days after February 17, 2009. The DOL is directed to draft model notices within 30 days of February 17, 2009.

**5. Modification of Health Coverage Tax Credit (HCTC).** The Act also increases the HCTC premium subsidy from 65% to 80% for the health insurance premiums of certain eligible individuals and their qualifying family members. The HCTC is generally available to eligible individuals under the Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) programs, and retirees receiving PBGC pension benefits, who have lost their employer-sponsored health coverage. (Other changes are also made in the Act to the HCTC and TAA programs.) The HCTC changes are effective for coverage months that begin at least 60 days after February 17, 2009 (that is, May) and before January 1, 2011. Note that the Act provides that AEIs who receive premium assistance under the Act will generally not be eligible for the HCTC program.