



## Stimulus Bill Includes Significant Changes to COBRA

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The American Recovery Reinvestment Act of 2009 (the "Stimulus Bill"), signed into law on February 17, includes significant changes to COBRA continuation coverage rules, including a partial employer subsidy of COBRA premiums for involuntarily terminated employees.

### Eligibility for the Subsidy

Individuals who become eligible for and elect COBRA between September 1, 2008, and December 31, 2009, due to an involuntary termination of employment ("Assistance Eligible Individuals") are entitled to the COBRA subsidy. The subsidy applies to former employees, spouses and dependants who are eligible for COBRA coverage.

### How the Subsidy Works

A group health plan can only require an Assistance Eligible Individual to pay 35% of the plan's COBRA premium. The employer must pay the remaining 65% of the premium. The federal government will reimburse the employer for the subsidy through a payroll tax credit.

### Effective Date of the Subsidy

The subsidy provision is not retroactive. The subsidy applies to COBRA premium payments due for coverage periods beginning on or after February 17. For example, if COBRA premiums are billed on a monthly basis, the subsidy will apply to the March 2009 payment.

### Duration of the Subsidy

The subsidy ends as of the ***earliest*** of:

- the date the Assistance Eligible Individual becomes eligible for coverage under another group health plan;
- nine months after the subsidy takes effect;
- the end of the maximum COBRA coverage period required by law; or
- for an Assistance Eligible Individual who elects COBRA during the special election period, the end of the maximum COBRA coverage period that would have applied if the Assistance Eligible Individual had elected COBRA coverage when first entitled to do so.

### **Special Election Period**

Individuals who would be Assistance Eligible Individuals except that they had not elected COBRA as of February 17 have another opportunity to elect COBRA. Such individuals may elect COBRA within 60 days after receiving the notice described below.

### **Income Limitations**

The full subsidy is available to individuals with a modified adjusted gross income of up to \$125,000 (\$250,000 for joint filers) for the taxable year in which the subsidy is received. A reduced subsidy is available if the individual's modified adjusted gross income is between \$125,000 and \$145,000. If the subsidy is provided with respect to an individual whose modified adjusted gross income exceeds these limitations, then that individual's income tax liability will be increased by the amount of the subsidy.

### **Notice Requirements**

COBRA notices must be modified to describe 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 the notice. The notice must be given to new COBRA qualified beneficiaries and to individuals entitled to the special election period described above. The notice must be provided by April 18, 2009. The Department of Labor will issue a model notice.

There are many unanswered questions on how to apply the subsidy. We will be happy to provide you with additional guidance on the application of these COBRA provisions and assistance drafting a new COBRA notice. Please contact your regular Williams Mullen attorney with whom you work, or another member of the Williams Mullen Employee Benefits Group if you need assistance.

## **Related People**

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