

COBRA Benefits Extended by ARRA--On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act ("ARRA"). Among other things, ARRA extended benefits available under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

With regard to COBRA, ARRA does two important things: (1) it makes available to "assistance eligible individuals" ("AEI") a premium reduction in the amount of 65% for COBRA continuation coverage for up to 9 months, and (2) it provides a special COBRA election opportunity to individuals "involuntarily terminated" from September 1, 2008, through February 16, 2009 who did not elect COBRA when it was first offered *or* who did elect COBRA, but are no longer enrolled.

An AEI is a COBRA "qualified beneficiary" who meets all of the following requirements: (1) is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009; (2) elects COBRA coverage (when first offered or during the additional election period); and (3) is eligible for COBRA as a result of the employee's *involuntary termination* between September 1, 2008 and December 31, 2009.

The employer must provide the COBRA coverage if the AEI pays 35% of the otherwise required premium. The remaining 65% (the subsidy) is treated as a payment of payroll taxes by the employer maintaining the plan and is reimbursed to the employer by the federal government by being claimed as a credit on Form 941, the employer's quarterly federal tax return. Form 941 has been revised to allow for this credit.

No additional information relating to the COBRA subsidy is to be submitted with the Form 941; however, employers claiming the credit must maintain supporting documentation for the credit claimed. Such documentation includes but is not limited to: (1) information on the receipt, including dates and amounts, of the AEI's 35% share of the premium; (2) in the case of an insured plan, a copy of the invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA; (3) in the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the AEIs; and (4) attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from Sept. 1, 2008, to Dec. 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction starts on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 9 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Individuals eligible for the special COBRA election period described above also must receive a notice informing them of the special COBRA election opportunity. This notice must be provided within 60 days following February 17, 2009 (April 18, 2009). The model notice can be found at <http://www.dol.gov/ebsa/COBRAmodelnotice.html>. The special COBRA election period begins on February 17, 2009, and ends 60 days after the new required notice is provided. COBRA coverage elected in this special COBRA election period begins with the first period of coverage beginning on or after February 17, 2009. However, the special election period does not extend the period of COBRA continuation coverage beyond the original maximum period.

ARRA makes clear that individuals who are eligible for other group health coverage or Medicare are not eligible for the premium reduction. The premium subsidy is not included in the individual's income; however, there is a phase-out of eligibility for the subsidy, which will increase some high-income individuals' tax liability if they receive the subsidy.

Finally, individuals who are denied the premium reduction may soon be able to appeal to the Department of Labor or Health and Human Services. The DOL and HHS are currently developing a process and an official application form that will be required to be completed for such appeals.

<http://www.dol.gov/ebsa/cobra.html>

<http://www.irs.gov/newsroom/article/0,,id=205370,00.html>

Contact **Heather Brickman** or **Barbara Erickson** for more information regarding the impact of the COBRA continuation provision on your district.