



March 2009

RE: The American Recovery and Reinvestment Act of 2009 (ARRA)

Dear Valued Client:

Some of you may have heard that the recently signed stimulus bill included language regarding health care regulations for laid-off workers. This provision is called The American Recovery and Reinvestment Act of 2009 (ARRA) and applies to State Continuation as well as federal COBRA. There are still many unanswered questions. We will do our best to continue to keep you informed as additional updates become available.

The ARRA provides for premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35% of their COBRA premiums and the remaining 65% is paid for then reimbursed to the employer/coverage provider through a tax credit. The premium reduction applies to periods of health coverage beginning on or after 02/17 2009 and lasts for up to 9 months.

CHANGES REGARDING COBRA CONTINUATION COVERAGE UNDER ARRA:

Premium Reduction:

The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals". An "assistance eligible individual" is the employee or a member of his/her family who:

- is eligible for COBRA coverage at any time between 09/01/2008 and 12/31/2009;
- elects COBRA coverage; and
- is eligible for COBRA as a result of the employee's **involuntary termination** between 09/01/2008 and 12/31/2009.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for premiums paid for periods of coverage prior to 02/17/2009.

ARRA treats assistance eligible individuals who pay 35% of their COBRA premium as having paid the full amount. The premium reduction (65% of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes e.g., payroll taxes. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the employer, insurer or plan for the excess. Note that the 2% allowable surcharge for administrative expenses is included, meaning the subsidy is 65% of 102%.

The premium reduction applies to periods of coverage beginning on or after 02/17/2009. 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 who do not notify the employer of eligibility under another group health plan are subject to a penalty of 110% of the premium reduction provided.**

Special COBRA Election Opportunity:

Individuals involuntarily terminated from 09/01/2008 through 02/16/2009 who did not elect COBRA when it was first offered OR who did elect COBRA, but are no longer enrolled (for example because they were unable to continue paying the premium) have a new election opportunity. This election period begins on 02/17/2009 and ends 60 days after the plan provides the required notice. This special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after 02/17/2009. **This special election period opportunity does not apply to coverage sponsored by employers with less than 20 employees that is subject to State law.**

Notice: Plan administrators must provide notice about the premium reduction to individuals who have a COBRA qualifying event during the period from 09/01/2008 through 12/31/2009. Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event. This notice must go to all individuals, whether they have COBRA coverage or not, who had a qualifying event from 09/01/2008 through 12/31/2009.

Individuals eligible for the special COBRA election period described above also must receive a notice informing them of this opportunity. The Act requires notices of eligibility for COBRA and continuation coverage that must include the availability of premium reduction. The Departments of Labor and Treasury must furnish sample notices by 03/19/2009 (30 days from enactment) and the employer/plan sponsor must send notices to eligible persons by 04/18/2009 (60 days from enactment).

Expedited Review of Denials of Premium Reduction:

Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The Department of Labor and Treasury is currently developing a process and an official application form that will be required to be completed for appeals.

Switching Benefit Options:

If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage can not be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

Income limits:

If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

Sincerely,



Ed Gaelick, CLU
PSI Consultants, LLC

FOOTNOTE: The information in this memo was obtained from the fact sheet which has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210 (website: <http://www.dol.gov/ebsa/cobra.html>). It will be made available in alternate formats upon request: Voice phone: 202.693.8664; TTY: 202.501.3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.