

The American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act of 2009 (the "Act") was signed by President Obama on February 17, 2009. The Act contains a provision that provides a temporary subsidy for COBRA premiums. The subsidy applies to all public and private sector group health plans that are subject to COBRA and to continuation coverage under similar federal and state laws. The effective date is for the first period of coverage after February 17, 2009 (that is, March 1, 2009).

The Federal Government Is Funding The Subsidy By Way Of A Reduction In Your Payroll Tax

The subsidy covers 65% of the COBRA premium charged to former employees who were involuntary terminated. This means that qualified beneficiaries who were paying \$1000 a month in COBRA premiums will, effective 3/1/2009, only be required to pay \$350 a month. The remaining \$650 will be paid by the federal government.

The remaining \$650 is provided to you, the Employer, by way of a payroll tax credit (FICA and employees' withholding tax) that you would otherwise pay to the Treasury Department with regard to your own employees.

Thus, this program is being funded by the Federal Government. You will be able to offset your 65% portion of the COBRA premium that you will be paying by reducing your payroll taxes. There is no added cost to employers under the Act, other than an administrative burden and nominal costs thereof.

Only Involuntarily Terminated COBRA Participants & Dependents Are Eligible

The first step is to determine who among your group is eligible for the subsidy. The subsidy is available to any COBRA qualified beneficiary who: (1) Elects COBRA coverage; and (2) whose qualifying event is related to involuntary termination that occurs between September 1, 2008 and December 31, 2009.

Be aware, however, individuals who elected COBRA due to an involuntary termination on or after September 1, 2008 but prior to the date the Act was enacted are eligible to receive the subsidy on a prospective basis only, beginning as of the first coverage period following the date of enactment. Individuals who were eligible to elect COBRA during that time period due to an involuntary termination but did not elect COBRA must be given a special enrollment opportunity to elect COBRA now, on a prospective basis, with the maximum coverage period measured from the earliest date that COBRA coverage could have been elected.

The subsidy is phased out for couples with incomes above \$250,000 in the year the subsidy would otherwise be available. And couples who make greater than \$290,000 are ineligible. Single persons who make \$125,000 are phased out and those whose income exceeds \$140,000 are ineligible.

Maximum Amount of Time Subsidy is Available Is 9 Months

The subsidy is available for a maximum of 9 months, which can be cut back upon the occurrence of certain events including: (1) failure to pay discounted share of premium; (2) obtaining health care coverage from new employer or Medicare; (3) COBRA coverage is exhausted.

Premium Assistance Subsidy Payment: The Mechanics of The Payroll Credit

The 65% percent subsidy goes to the entity to which qualified beneficiaries pay their federal COBRA premiums, which is you, the employer, in this case. Reimbursement comes in the form of a credit against payroll taxes (FICA and employees' withholding tax) that you would otherwise pay to the Treasury Department with regard to your employees.

You will be required to submit reports to the Treasury Department identifying those former employees who were terminated in order to verify the payroll tax credit. Additional information and new regulations are currently being devised by the Treasury Department regarding this reporting requirement.

In the unlikely event that the COBRA premium is more than the payroll taxes owed, the rest is reimbursed by the government to you in cash. You must affirmatively apply for reimbursement and you must prove-up the requested subsidy amount and make a showing that the COBRA benefits provided meet federal standards. PINNACLE will assist you with this part of the reimbursement process in the unlikely event that your payroll tax is insufficient to offset your share of the COBRA payments.

Special Election Period

If a qualified beneficiary who would be eligible for the subsidy has not yet elected COBRA as of the date of enactment, he or she will have an additional opportunity to elect it. COBRA coverage elected during this extended election period will begin on the first coverage period after February 17, 2009 (generally March 2009). It will not extend the total period of available COBRA coverage measured from the date the person lost coverage as an active employee.

Pre-existing Conditions

Individuals who elect COBRA coverage under the premium subsidy program shall not be subject to the 63-day break in coverage rule for purposes of determining pre-existing conditions.

Notices

COBRA notices must be modified and must inform eligible participants of the availability of the COBRA subsidy and the option to enroll in different coverage during the COBRA period if permitted by your plan. The notice must describe the obligation of the eligible participant to notify the plan about subsequent eligibility for coverage under another employer-sponsored health plan or Medicare and the penalty for failure to do so. The Secretary of Labor is directed to issue model notices no later than March 19, 2009. Thereafter, you will have 30 days to provide notice to your qualified beneficiaries.

Option to Change Coverage

An eligible participant may elect to change coverage under the health plan if such a change is permitted by your plan and the premium for the different coverage does not exceed the premium for coverage under the plan in which the participant was enrolled at the time the qualifying event occurred. The election has to be made within 90 days of the COBRA notice.

Penalties for Noncompliance

Employer/Plan Penalties: A failure to comply with the Act's notice requirements will be treated as a failure to provide adequate COBRA notification under the existing COBRA penalty provisions under ERISA and the Internal Revenue Code. After May 2009, noncompliance penalties will apply, and there will be no statutory relief for inability to administer the program correctly, other than general ERISA noncompliance relief based on excusable neglect.

Employee/Qualified Beneficiary Penalties: There is a small burden placed upon employees who qualify for the subsidy. Covered individuals who become eligible for coverage under another group health plan or become eligible for Medicare coverage before the expiration of the nine month period must notify the health plan providing COBRA in writing or face a 110% penalty of the subsidy received.

Task Items To Complete To Ensure Proper Implementation of the New COBRA Subsidy

1. Identify individuals whose qualifying event was triggered by involuntary termination. Please be aware that not all COBRA qualifying events trigger eligibility for the subsidy. For example, loss of plan eligibility due to a reduction in hours, retirement or voluntary quit are also qualifying events that entitle people to COBRA, but in those circumstances the subsidy is not available.

2. Identify qualified beneficiaries whose health plan coverage terminated after August 31, 2008, including those who did not elect COBRA, because the plan will need to notify them about the new election and subsidy options.
3. Modify existing COBRA election notices to include information regarding the premium assistance subsidy and, if applicable, new coverage elections.
4. Review COBRA premium methodology and be prepared to document that it meets the COBRA standards, in order to qualify for the payroll tax credit.
5. In the event that it is necessary, PINNACLE will provide you with supporting information that you can report to the government to document the premium assistance amount you are requesting and confirm that the qualified beneficiaries for whom the premium assistance is sought met the eligibility standards.
6. Review your processes for determining and paying payroll taxes in order to be able to modify them as needed to receive the benefit of the subsidy from the federal government. It is imperative that you immediately contact your payroll department or outside payroll vendor in order to arrange to reduce your payroll tax accordingly.

Our Legal, Compliance and Administrative departments are awaiting final regulations. Once in receipt we will provide notification letters that outlines the program requirements and what Pinnacle will need from each employer. Employers should begin gathering data reports that delineate employees who were involuntary terminated between September 1, 2008 through present day. Once we have evaluated the administrative impact, associated costs, we will be contacting PINNACLE employers to offer our assistance to ensure compliance. To reiterate, in the interim you may also contact your account manager, Carlton Cook or our web site for information as it becomes available.