



# The American Recovery and Reinvestment Act of 2009

## A Summary of the COBRA Premium Subsidy Law for Employers by Ceridian

New legislation will soon go into effect that will greatly change the way your business must now administer federal health care continuation coverage, or COBRA, for certain unemployed individuals and their families.

The recently passed American Recovery and Reinvestment Act of 2009 (the Act) includes a new U.S. Government subsidy to assist eligible individuals who recently lost their jobs. It will require you to adjust your company's payroll and tax filing procedures to handle the subsidies.

As the nation's largest and oldest COBRA administrator and a recognized leader in payroll administration and tax filing, Ceridian is in a unique position to offer up-to-date and accurate information on the new COBRA subsidy law and insight into how it affects you and your company.

This communication complements a series of updates Ceridian has recently sent out—including a press release, a compliance e-alert and a notice in our clients' monthly invoices. We will routinely provide updates and refinements as we proactively seek more information from the various federal agencies that are expected to provide detailed information by March 19, 2009.

Below are frequently asked questions and detailed answers on the COBRA legislation. To help you better prepare for the changes ahead, we have also provided important considerations for you as an employer.

### **How Does the Act Affect COBRA?**

Generally, the Act approved by Congress and signed into law by the President on February 17, 2009, is an economic stimulus package that includes an expansion of COBRA by providing COBRA assistance for certain unemployed individuals and their families with adjusted gross income below a maximum threshold. The Act imposes a number of requirements on employers, plan administrators, and insurers and also applies to any state-mandated continuation coverage. Briefly, it requires employers (or plan sponsors or insurers of certain insured plans) to provide a COBRA subsidy to an assistance-eligible individual. The subsidy is offset by a tax credit against the employer's wage withholdings and FICA payroll taxes. If the employer's subsidy payments exceed the amount of wage withholdings or FICA payroll taxes, the U.S. Treasury Department will reimburse the employer directly for the excess amount. The payroll tax credit cannot be taken by the employer or other named entity until the unsubsidized payment is received.

#### ***Important considerations:***

- The ability to accurately implement these changes in a timely manner—and get it right the first time—is essential.
- Because the subsidy is offset by a tax credit against the employer's wage withholdings and FICA payroll taxes, expertise in payroll, tax and COBRA administration is a distinct advantage and could prove invaluable in saving time and possibly money.

### **What is the COBRA Premium Subsidy?**

The Act provides a 65% federal subsidy of COBRA premiums for eligible individuals for a maximum of nine months. The subsidy period does not extend the period of COBRA coverage that would otherwise apply to that qualified beneficiary from the original qualifying event date. The subsidy is calculated based

on the COBRA premium that the eligible individual otherwise would have been required to pay. If an employer already provides a subsidy (e.g., under a severance plan), the employee would only need to pay 35% of the portion of the premium not paid by the employer (i.e., the employee contribution) and the employer may only apply a payroll tax credit against the 65% portion not already paid by the employer voluntarily (i.e., the employee contribution).

Eligibility for the subsidy ends when such individual becomes eligible for medical coverage under another group health plan or becomes eligible for benefits under Medicare. A qualified beneficiary's failure to notify the group health plan of the cessation of eligibility for the subsidy may subject him or her to a penalty of 110% of the amount of the subsidy. No penalty will be imposed if it is shown that such failure is due to reasonable cause and not willful neglect occurring after the date of enactment. Coverage under a health Flexible Spending Account (FSA) is not eligible for the subsidy, although a Health Reimbursement Arrangement (HRA) generally is covered by the new law.

Individuals with an adjusted gross income exceeding \$145,000 (for single filers) or \$290,000 (for joint filers) are not eligible for the subsidy and the subsidy is phased out for income above \$125,000 (for single filers) or \$250,000 (for joint filers). Qualified beneficiaries that receive subsidies during a plan year in which they exceed these income limits must repay the subsidy by adding it to their tax liability on their individual income tax returns. Individuals who do not want to receive the subsidy may decide to permanently waive it.

***Important considerations:***

- Experience in administering COBRA and processing subsidized rates will be a clear advantage in implementing the changes.
- HRAs are covered under the law; expertise in this area also will be beneficial.

**Who is Qualified to Receive the Subsidy?**

A qualified beneficiary is eligible for the COBRA subsidy if he or she is involuntarily terminated from employment on or after September 1, 2008 through December 31, 2009, including a dependent that makes an independent election of the involuntary termination qualifying event. The Act does not define "involuntary termination"; however, guidance is expected from the Department of Labor (DOL) by March 19, 2009. Those qualified beneficiaries who elected COBRA after an involuntary termination prior to the enactment date (February 17, 2009) and who meet the eligibility requirements may receive the subsidy for the first period of coverage on or after February 17, 2009 but there is no retroactivity of premiums prior to February 17, 2009.

***Important considerations:***

- Because the law says an individual is eligible for the subsidy if terminated on or after September 1, 2008, through December 31, 2009, accurate record keeping and dependable reporting systems are critical and will remain so throughout the duration of the Act.
- Changes are forthcoming. Your company needs a reliable, proactive source that not only reports on the changes but explains them as they pertain to your business.

**What are the Criteria for Qualifying for the Subsidy?**

A qualified beneficiary is eligible if they:

- Terminated from employment involuntarily on or after September 1, 2008 through December 31, 2009.
- Do not have access to any other medical coverage, including coverage under a spouse's group health plan or Medicare.

- Meet the income requirements as defined in the Act.
- Do not qualify for the Health Coverage Tax Credit Program under the Trade Assistance Adjustment Act.

If an individual elects the subsidy, he or she is required to notify the group health plan if he or she no longer qualifies. Penalties may be assessed to an individual if he or she fails to do so.

***Important considerations:***

- There are strict processes to determining eligibility, all reliant on accurate, timely information.

**Who Determines Whether an Individual is Qualified for the Subsidy?**

It is the employer's responsibility to determine eligibility. If it is determined that an individual is not eligible, the individual has the right to appeal. The DOL will review the appeal and make the final determination.

***Important considerations:***

- Make sure individuals requesting the subsidy can certify their eligibility.

**What is the Latest Date that Subsidies Will be Provided?**

Subsidies could last through September 30, 2010. For example, if a qualified individual is involuntarily terminated on December 31, 2009, they are eligible to receive the subsidy through September 30, 2010.

***Important considerations:***

- Make sure you're prepared to provide the subsidies for 18 months (The first period of coverage on or after February 17, 2009 through September 30, 2010). Be aware, however, that Congress could elect to extend the Act, depending on the economic outlook.

**What is the Special Election Period?**

A notice must be provided within 60 days of enactment (April 17, 2009) to **all** individuals who terminated employment during the applicable time period (not just to individuals who were terminated involuntarily) according to the Congressional Joint Explanatory Conference Agreement. The Conference Agreement clarifies that the special 60-day election period, begins on the date of enactment (February 17, 2009) and ends 60 days after the notice of the special election period is provided to the qualified beneficiary who is eligible for a reduced premium and who has not elected COBRA as of February 17, 2009. The coverage elected under this special election right begins with the first period of coverage beginning on or after the date of enactment (February 17, 2009) and is not retroactive to the original date that benefits terminated under the plan. Any resulting gap in coverage beginning with the qualifying event and ending on the effective date of the COBRA subsidized period will not be counted as a break in coverage for the purposes of the 63-day rule under HIPAA's portability rules. This special election period opportunity also is extended to a qualified beneficiary who elected COBRA coverage, but who is no longer enrolled on the date of enactment. For example, a qualified beneficiary who was terminated from COBRA coverage because he or she was unable to continue paying the premium would be extended the special election period. The conference agreement also clarifies that a violation of the new notice requirements is also a violation of the notice requirements of COBRA.

***Important considerations:***

- Understand the election periods: The special election period is 60 days after the notice is provided to a qualified beneficiary. Those individuals who would otherwise qualify for the COBRA subsidy but did not elect COBRA prior to February 17, 2009, or elected and are no longer enrolled as of February 17, 2009, will have a second election period.

- Compliance is essential: Failure to provide individuals notice of their rights to the subsidy within 60 days of enactment could subject your company to COBRA notice penalties.

### **What is the Additional Notice?**

An additional notice is required to be sent to all individuals who terminated employment beginning September 1, 2008. The notice will explain the temporary changes to COBRA and allow the individual to provide an election decision and information which will allow an employer or third-party administrator to determine if he or she is eligible for the subsidy. If the individual did not previously elect COBRA or elected and since discontinued the coverage, he or she will have the option to re-elect coverage. The U.S. Department of Labor, in conjunction with the Departments of Treasury and Health and Human Services, is expected to provide the model notice on or before March 19, 2009.

#### ***Important considerations:***

- As an employer, you are obligated to send an additional notice to explain the changes in COBRA to all individuals who terminated employment beginning September 1, 2008, to determine eligibility for the subsidy.

### **What is the Required Timing for Sending the Additional Notice Obligations?**

The U.S. Department of Labor, in conjunction with the Departments of Treasury and Health and Human Services, is expected to provide guidance and model notices by March 19, 2009, and these notices must continue to be provided for the duration of the subsidy period. For COBRA continuants that have elected as of the date of enactment and whose qualifying event falls within the dates referred to above, a notice must be provided within 60 days of the enactment describing the availability of the subsidy and the method of establishing eligibility.

#### ***Important considerations:***

- Again, it's important to be aware that in order to stay in compliance with the law, notices must continue to be provided for the duration of the subsidy period.

### **What is the Plan Enrollment Option?**

While not obligated to do so, employers or plan sponsors may provide qualified beneficiaries who are eligible for the COBRA premium subsidy the opportunity to change medical plans. Under this option, the qualified beneficiary can change from the medical plan provided at the time of the qualifying event to any health plan medical option that has the same or a lower premium as the individual's previous coverage offered by his or her employer or plan sponsor to active employees. The qualified beneficiary must elect this alternative coverage within 90 days of the date the notice of the option is provided.

#### ***Important considerations:***

- You will need to make a decision regarding Optional Coverage Offerings, knowing that it will require detailed plan information on all individuals who choose this option throughout 2009. Employers who partner with Ceridian to administer COBRA and want to offer this option must inform Ceridian of their decision by March 9, 2009. Ceridian will automatically default clients' accounts to reflect that this option is not offered unless notified otherwise. There will be additional fees associated with the Optional Coverage Offering.

**What Happens if Full COBRA Payments are Received between the first period of coverage on or after February 17, 2009 and April 30, 2009?**

If the full COBRA payment is received during the 60-day the first period of coverage on or after February 17, 2009 ,and the qualified beneficiary is determined to be eligible for the subsidy, the entity to which such payment is made (such as the employer, plan sponsor, or insurer of an insured plan) shall reimburse the amount in excess of 35% or provide a credit against future payments unless the credit will not be used within 180 days from the original receipt of payment date. Reimbursements will be made within 60 days of payment of the full premium. If it is determined later that the credit will not be used within the 180-day period, reimbursement will be made within 60 days of that date.

***Important considerations:***

- The COBRA claims experience and reimbursement process are greatly changed by the new legislation and will require coordination between your payroll and tax departments. Reimbursements to eligible individuals are time sensitive and it's important to have appropriate procedures in place.

**Are There Changes to the Trade Adjustment Assistance Act (TAA)/Health Coverage Tax Credit (HCTC) Program?**

A qualified beneficiary eligible for premium subsidy cannot also be an eligible individual during the same period under the HCTC program that was created by the TAA. The Act also provides provisions that increase the amount of the HCTC subsidy to 80% of the taxpayer's premiums for qualified health insurance, effective for the months beginning on or after the first day of the first month beginning 60 days after the date of enactment (May 1, 2009) until December 31, 2010. The maximum required COBRA continuation coverage period is modified with respect to certain individuals whose qualifying event is termination of employment or a reduction in hours. Where a TAA individual is still eligible as of the date the maximum coverage period would otherwise terminate on or after the date of enactment, the maximum coverage period must be extended during the period the individual is a TAA-eligible individual, but not beyond December 31, 2010.

***Important considerations:***

- You should be aware that there will be an increase in HCTC subsidy from 65% to 80% for eligible beneficiaries.

**Are There Any Changes to Other Benefits I Should be Aware of?**

Among its many provisions, the Act contains an increase in the monthly limit for Commuter Administration Services. Effective March 1, 2009, through the end of 2010, the cap on pre-tax transit reimbursement and voucher fare media purchases will be equal to the parking reimbursement limit, currently \$230. This increase provision expires January 1, 2011, which means the transit limit will revert to its current level unless Congress or the Treasury Department takes action before then.

**What Immediate Actions are Necessary?**

As an employer, you should plan for the following:

1. Identify eligible individuals who were involuntarily terminated on or after September 1, 2008.
2. Update COBRA notices and related materials to include information about the subsidy and eligibility requirements. Guidance and Model Notices should be available from the U.S. Department of Labor within 30 days of enactment (March 19, 2009).
3. Notify individuals within 60 days of February 17, 2009, of their new election period and include the forms necessary to determine eligibility for the subsidy.

4. Develop procedures for handling the subsidy paid by the eligible individual and coordinate with payroll systems the method of claiming the remaining 65% as a payroll tax credit; and then a method for changing the premium back to 100% when the subsidy ends.
5. Develop a method of handling reimbursements of premium overpayments.
6. Determine whether to apply the "Plan Enrollment Option" referred to above.
7. Understand how the COBRA claims experience and administrative costs may be impacted by this new Law.

**What is Ceridian's Role in Helping Employers Manage These COBRA Changes?**

Ceridian has anticipated the changes to COBRA and has been preparing our systems and processes to administer these new regulatory requirements within the time required. We have met with representatives from federal agencies, including the Internal Revenue Services (IRS), to better understand the changes.

Dedicated teams in our Employee Benefits, Tax and Payroll Services areas are working together to assure we are providing comprehensive information to you. We are committed to using our more than 75 years of experience in the industry and our vast resources to bring you some peace of mind in such uncertain times.