

**MORE COBRA CHANGES FOR 2010:
WHAT YOU NEED TO KNOW
By Christopher J. Marren**

As we have all witnessed, the frenzy of activity on Capitol Hill has only intensified since the end of 2009 and throughout the first and second quarters of 2010.

Since our last newsletter when we summarized the requirements of ARRA and the COBRA premium subsidy, the duration of the subsidy was extended from 9 months to 15 months and the eligibility period was extended twice: to March 31, 2010 and again to May 31, 2010.

Besides the extensions, the provisions did the following:

- Allowed for a 60-day period for retroactive premium payments for assistance eligible individuals ("AEIs") – individuals entitled to the subsidy – whose subsidy period expired on November 30th and who failed to pay their premium for December coverage. The same refund/credit rules under the original bill applied to any AEI whose subsidy expired in November and who had paid the full COBRA premium;
- Required a special notice describing the new subsidy provisions to all AEIs who were on COBRA on or after November 1, 2009 or whose qualifying event was an "involuntary termination" of employment occurring on or after November 1, 2009;
- Conditioned eligibility for the COBRA subsidy on only one factor: a qualifying event that is an "involuntary termination" of employment occurring on or before the February 28, 2010 sunset date. The previous version of the subsidy took into account when the COBRA coverage period actually began. This meant that employees who were involuntarily terminated before February 28, 2010 but were receiving employer-subsidized coverage that deferred the COBRA start date past February 28, 2010 were still able to receive the subsidy.

Articles and releases from a variety of sources suggest the eligibility period will be extended again through December 2010, but let's not get ahead of ourselves...

What do the latest changes mandate?

In addition to extending the eligibility period, the Extension Acts signed in March and April included a few "tweaks:"

- New Penalties: The Act adds punitive measures for Plan Administrators who fail to comply with Department of Labor (DOL) or Department of Health and Human Services (HHS) rulings regarding Qualified Beneficiaries' (QBs') entitlement to ARRA subsidies. Plan Administrators may now be sued by both QBs and the government, and there is a new \$110/day penalty for Plan Administrators who do not comply with DOL (or HHS) determinations.

- COBRA Notifications: All relevant COBRA notifications, including the ARRA notice, must contain language provided by the DOL explaining the changes.

- Definition of AEI/new Second Qualifying Event: Previously, an AEI was a person involuntarily terminated from employment between September 1, 2008 and March 31, 2010. Qualification for that status is now extended to May 31, 2010, AND includes: (1) anyone with a Qualifying Event (QE) that resulted from a *reduction of hours* after September 1, 2008; (2) anyone who wasn't on COBRA as of March 2, 2010; and (3) anyone who was also involuntarily terminated on or after March 2, 2010 but before June 1, 2010.
- Second Election Period: People deemed AEIs due to a reduction of hours and a subsequent involuntary termination are entitled to a new 60-day COBRA election period. A new modified ARRA notice must be sent to these individuals within 60 days of the passage of the new law. These individuals will only be entitled to COBRA continuation coverage (and any subsidy) starting on or after March 2, 2010 and ending a maximum of 18 months from their **original** QE.

Easy, right?

As noted above, many sources have indicated there are more changes to come. With potential further extensions and additional requirements, an already complex topic will become even more confusing. As a result, more employers will likely seek the assistance of third parties for COBRA administration services that will help their organizations remain compliant.

Christopher J. Marren is Director, Benefits Consulting and Administration, at The Elite Group.