COBRA Provisions in American Recovery and Reinvestment Act

Background

Under current law, an employee of an employer with 20 or more employees who loses coverage under the employer's group health plan due to a termination of employment may elect to continue that coverage under COBRA for a period of time (generally 18 months from the date coverage is lost) by paying premiums to continue such coverage. Members of the employee's family who have lost medical coverage due to the employee's termination of employment are also eligible to elect to pay premiums and continue coverage. The Act provides federal assistance for payment of COBRA premiums to employees and covered family members with adjusted gross incomes below a maximum threshold who lost or will lose coverage due to *involuntary* termination of employment from September 1, 2008 through 2009. As described below, these federal assistance provisions impose new obligations upon sponsors of single-employer group health plans, multiemployer plans and group health insurers, with penalties for failure to comply.

COBRA Premium Subsidy for Eligible Individuals

Generally. The Act provides a subsidy of 65 percent of the COBRA continuation coverage premiums for eligible individuals for a maximum of 9 months, so that an eligible individual will only have to pay 35 percent of the COBRA premium in order to get coverage. For example, if the required COBRA premium is $1,000 per month, an eligible individual would only need to pay $350 per month to receive COBRA coverage.

Eligibility Requirements. An individual is eligible for this COBRA premium subsidy if he or she is involuntarily terminated from employment during the period beginning September 1, 2008 and ending December 31, 2009 and is eligible to elect COBRA during that time. Members of the individual's family are also eligible for this premium subsidy if the reason that they become eligible for COBRA is due to the employee's involuntary termination of employment during the applicable time period. Individuals who *elected* COBRA due to an involuntary termination on or after September 1, 2008 but prior to the date of enactment are eligible to receive the subsidy on a prospective basis, beginning on 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 will need to be given the opportunity to elect COBRA on a prospective basis, with the maximum coverage period measured from the earliest date that COBRA coverage could have been elected.

Individuals with modified adjusted gross income that exceeds $250,000 (for joint return filers) or $125,000 (for all other filers) will not be eligible for the full premium subsidy. The premium subsidy will be fully phased out for those individuals with adjusted gross income of $145,000/$290,000.

Mechanics of Receiving the Premium Subsidy

The mechanics of the subsidy program require the entity that provides the coverage and collects 35% of the premium to receive reimbursement for the remaining 65% of the premium from the federal government. For a group health plan that is a multiemployer plan, the *plan* will be reimbursed for the premium subsidy. For a group health plan that is not a multiemployer plan and is not insured, the *employer* will be entitled to the reimbursement. For a group health plan that is not a multiemployer plan and where some or all of the coverage is provided by insurance, the *insurance company* providing the insurance will be entitled to the reimbursement.

The method of providing the reimbursement is for the reimbursement to be taken from the payroll taxes that the entity receiving the reimbursement owes. If the amount of the premium subsidy is greater than the payroll tax liability for that period, the additional amount due will be treated as a refund or a credit of payroll taxes as if it was an overpayment of payroll taxes. The IRS will have to provide details on how the payroll tax returns will need to be filed to reflect this reimbursement of the premium subsidy, and what additional information is required to verify that the reimbursements are correct. In this regard, the Act provides that entities who receive the subsidy will be required to file a report with the Secretary of Treasury that contains information about the amount of the subsidy, and the taxpayer identification numbers of the individuals who received the subsidy. The Act requires Treasury to issue regulations or other guidance describing this report requirement in detail, and to explain how the reporting will work for multiemployer plans.

Notice Requirements

The Act requires employers to modify COBRA election notices or provide separate, supplemental notices to all individuals who become entitled to elect COBRA continuation coverage during the period beginning on September 1, 2008 and ending on December 31, 2009. Such notices must describe the new premium subsidy and, if applicable, the right to change coverage options, as well as certain other information. The Act requires DOL, Treasury, and HHS to work together to develop a model notice within 30 days of the date of enactment. With respect to individuals who became entitled to elect COBRA before the date of enactment, the employer must provide the additional notification within 60 days after the date of enactment.