



## One Minute Memo<sup>®</sup>

# LEGISLATION ALERT: Congress Considers COBRA Expansion

The COBRA provisions in the economic stimulus bill (entitled the American Recovery and Reinvestment Bill of 2009) that were recently passed by the House and the Senate could potentially have a substantial impact on employers' ongoing obligations under COBRA. Both the House and the Senate have approved their own versions of the bill which provide for an employer subsidy of COBRA premiums for involuntarily terminated employees. The House version of the bill also includes a COBRA extension for terminated employees who are age 55 or older or who have completed at least ten years of service. As of the publication of this alert, the news agencies are reporting that a compromise has been reached which pulls together the separate stimulus bills passed by the House and Senate, and that a final compromise bill may be ready by Thursday.

### *The Subsidy*

Both the House version and the Senate version of the bill provide for a subsidy. The House version of the bill provides for a 65% subsidy of the COBRA premiums, while the Senate version of the bill provides for a 50% subsidy of the COBRA premiums. Under both versions of the bill, the subsidy would be available (prospectively after the date the President signs the bill) for individuals who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and who elect COBRA coverage.

COBRA is generally available for 18 months; however, under both the House and Senate versions of the bill, the subsidy would be available for only 12 months. An individual's eligibility for the subsidy would terminate earlier when he or she becomes eligible for coverage under any other group health plan or Medicare.

### *How It Works*

The employee would pay 35% (or 50%) of the COBRA premiums to the employer or health plan to whom the premiums are payable. The employer or health plan would pay the remaining 65% (or 50%) of the premium and then the payment would be applied as a credit against payroll taxes to the federal government. If that credit is insufficient to cover the employer's COBRA expense, then the remainder would be reimbursed directly from the Secretary of the Treasury.

### *Notice Requirements*

Both bills require that COBRA notices be expanded to include an additional notification of the availability of a subsidy.

### *Retroactive Application of the Subsidy*

Employees who were involuntarily terminated on or after September 1, 2008, but before the enactment of this stimulus bill and who did not elect COBRA coverage when available would have a special 60-day election period, from the receipt of the notice regarding the subsidy, to elect COBRA and benefit from the subsidy. If an employee elects COBRA after receiving the notice regarding the subsidy, coverage would begin on the date that this bill is enacted, and not the initial qualifying event, and would not go beyond the period of COBRA coverage that would have been required if COBRA had been initially elected.

### *Lower-Cost Health Plan Options*

Under COBRA, qualified beneficiaries can generally only elect to continue the coverage option that they had immediately before the qualifying event. The Senate bill includes a provision that would allow qualified beneficiaries who are eligible for the COBRA premium subsidy to elect a lower-cost health plan option available under the employer's plan. This option is not available under the House bill.

### *Effective Date*

The effective date of this subsidy could be as early as March 1, 2009.

### *COBRA Extension*

The House bill also includes a provision that would substantially expand COBRA coverage for any employee who loses coverage due to termination of employment. Under the House bill, terminated employees who lose coverage and who are age 55 or older, or who have completed at least ten years of service with their employer at the time of the qualifying event, can elect to remain on COBRA. (For multiemployer plans, service performed for two or more employers during periods for which such employers contributed to such plan will be treated as service performed for the entity.) Essentially, the House version of the bill would permanently extend the COBRA continuation period for these individuals and their spouses or dependents who are qualified beneficiaries until Medicare entitlement, failure to pay a required premium, or becoming covered under another group health plan. This provision would be effective immediately upon enactment. There is no similar COBRA extension in the Senate bill.

*If you have any questions about the COBRA provisions in the stimulus bill, or how this legislation may affect offering health coverage to terminating employees, please contact the Seyfarth attorney with whom you work, or any other Employee Benefits attorney on our website ([www.seyfarth.com/EmployeeBenefits](http://www.seyfarth.com/EmployeeBenefits)).*



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