



## One Minute Memo<sup>®</sup>

# COBRA Subsidy May Be Extended Before Year End

Lawmakers have indicated that they are interested in extending the COBRA subsidy program that was enacted in February of this year as part of the American Recovery and Reinvestment Act of 2009. Under the current COBRA subsidy program, a nine-month subsidy for COBRA continuation coverage is available to individuals who are involuntarily terminated from employment and lose coverage on or after September 1, 2008 through December 31, 2009. While there is an interest to extend the COBRA subsidy program among lawmakers, it is not clear exactly how the program will be extended. There is some discussion about extending the period of eligibility beyond December 31, 2009, as well as expanding the nine-month period of the subsidy. While the uncertainty regarding a COBRA subsidy extension remains, employers are faced with certain choices that must be made before year end.

### Possible Retroactive Extensions

One proposal being discussed is a retroactive extension of the nine-month maximum subsidy period. If Congress acts to extend on this basis, employers who charged the full amount of the premium to their participants in December may face the challenge of having to issue refund checks and adjust future COBRA premiums to offset earlier overpayments made in the month of December. In the face of this uncertainty, some employers have charged the full amount of the premium to those COBRA participants whose subsidy has expired, and others have made a conscious decision to charge the subsidized premium amount in anticipation of an extension.

### Loss of Coverage on December 31, 2009

Unfortunately, the economy is still struggling and involuntary terminations are continuing. If the subsidy program is not extended, any individuals who are involuntarily terminated in December of 2009, but who do not become eligible for COBRA until after December 31, 2009, will *not* be eligible for the COBRA subsidy. To avoid this result, employers with self-funded plans may want to consider amending their plans so that active coverage for these employees is terminated before year end. This type of amendment could make employees who were involuntarily terminated in 2009, but who wouldn't otherwise be eligible for COBRA until 2010, eligible for the current COBRA subsidy program. Of course, those employees who do not intend to elect COBRA and take advantage of the subsidy will not be in favor of this approach, insofar as it will cause them to lose coverage earlier.

### Proposed Legislation

There is still no clear indication as to what form any extension of the COBRA subsidy program will take. Two bills were recently introduced in the House of Representatives (H.R. 3930 and H.R. 3966), and one bill was recently introduced in the

Senate (S. 2730). While H.R. 3966 simply extends the current nine-month subsidy program for involuntary terminations and losses of coverage occurring through June 30, 2010, H.R. 3930 and S. 2730 expand on that by extending the subsidy program for six months (from nine months to fifteen months); although all subsidies under H.R. 3930 and S. 2730 would end by December 31, 2010. The Senate bill also raises the 65% premium subsidy amount to 75%.

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