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COMPLIANCE ALERT
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COBRA SUBSIDY EXTENSION

Over the weekend, the Senate passed the FY2010 Defense Appropriations Bill, which, as previously reported, includes provisions to extend the COBRA subsidy. The President is expected to sign the bill into law before the holiday recess. While we anticipate guidance from the Internal Revenue Service (IRS) and Department of Labor (DOL), it will likely be a few weeks following enactment before the agencies have an opportunity to review the changes and issue further information. The following summarizes the provisions of the bill in a question and answer format.

When will this extension take effect?

Once the President signs the bill, the subsidy provisions are effective as if they were included in the original subsidy language under the American Recovery and Reinvestment Act of 2009 (ARRA).

What is included as part of the subsidy extension?

Most of the subsidy requirements remain the same and will still apply:

- The subsidy is 65% of the assistance eligible individual's (AEI's) COBRA premium;
- In order for an individual to qualify as an AEI, the right to COBRA must derive from the involuntary termination of the employee;
- The subsidy is available for all group health plan lines of coverage (e.g. medical, dental, vision, HRA, some EAPs and wellness programs) except the health FSA; and
- The subsidy will terminate upon eligibility for other group health plan coverage or Medicare.

However, the bill makes the following significant changes:

- The duration of the subsidy is increased from 9 months to **15 months**; and
- Individuals who are involuntarily terminated on or before **February 28, 2010** will be eligible to receive the subsidy.

What about those individuals who already lost eligibility for the subsidy?

An opportunity to retroactively receive the subsidy and maintain COBRA coverage will be available for those individuals who lost eligibility for the subsidy when the 9-month period expired.

To take advantage of this opportunity, the plan administrator will need to provide notification to these individuals (*see next question*) and the individual will need to pay the premium within 60 days from the date of enactment or, if later, 30 days from notification.

Are there notification requirements?

Yes, there are two new notification requirements:

- A notification must be provided within 60 days from the date of enactment that describes the new subsidy provisions. This notice will need to be provided to all individuals who were AEIs on or after October 31, 2009. Also, for qualified events that occur after enactment, the COBRA Election Notice will need to contain information on the new subsidy requirements.
- A notification must be provided to those individuals who lost eligibility for the subsidy following the end of the 9-month period, including individuals who failed to pay COBRA premiums when the subsidy expired. This notification describes the COBRA subsidy changes, including the ability to make retroactive premium payments and retain COBRA coverage. This notice needs to be provided within 60 days of enactment.

It is expected that the DOL may issue revised notices to address these changes. Further, COBRA administrators should revise and update their notifications to comply with the new requirements. It is important to discuss these changes with your COBRA vendor to ensure compliance with the law.

What if an individual is now eligible for the subsidy under the 15-month extension but has paid the full COBRA premium?

The credit and refund rules that apply under ARRA will apply to overpayments made by individuals who become eligible for the longer subsidy period.

We had individuals who were involuntarily terminated in December and were told that they are not eligible for the subsidy, as they would be COBRA eligible on January 1, 2010 (outside of the prescribed period under ARRA). Are we going to have this same problem for individuals who are

terminated in February 2010 but are not COBRA eligible until March 1, 2010?

Upon enactment, individuals who are involuntarily terminated in December 2009 will be eligible to receive the subsidy (assuming they are otherwise eligible for the reduced COBRA premium).

The bill changes the original language of ARRA to only require that the involuntary termination occur on or before February 28, 2010. Therefore, the timing of the individual's COBRA eligibility should not be a factor in determining whether he or she is eligible for the subsidy.

Will the subsidy be extended again?

It is possible that we may see the subsidy further extended. The House recently passed the Jobs for Main Street Act of 2010. This bill contains (among other things) an additional extension of the eligibility period for the subsidy to June 30, 2010. The Senate is not expected to consider this legislation until next year, so a further expansion of the subsidy does not appear imminent.

Where can I find more information?

For a copy of the FY2010 Defense Appropriations Bill, see (Section 1010, pages 64-67) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3326enr.txt.pdf

We expect that questions about the application and implementation of these new rules will surface in the coming weeks. We will continue to monitor developments as they unfold and keep you updated with the latest information.

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