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BASIC COBRA Administrative Bulletin

RE: COBRA Administrative changes resulting from the American Recovery and Reinvestment Act of 2009

To our Clients,

Most likely you are aware that on February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the "Act", a.k.a. the Economic Stimulus Package) into law. The Act includes COBRA subsidies for anyone that experiences an involuntarily loss of coverage between 9/1/2008 and 12/31/2009 and meets other eligibility criteria (defined below).

BASIC is committed to facilitating the administrative process to meet the requirements of the Act to ensure your compliance. There has been inaccurate information that has been communicated by other organizations. We have been working over the past month to develop a solution in conjunction with our COBRA software partner and our ERISA Attorney, Larry Grudzien, to ensure accurate interpretation of the Act. It will take time for the IRS and DOL to make determinations as to how the Act should be interpreted and administered. We are participating in weekly IRS teleconferences and have contacted the Department of Labor (DOL) to seek clarifications, both of which have provided insight not widely available through other sources.

Employers should be aware that the Act states that failure to provide the notices defined under the Act shall be treated as a failure to meet notice requirements under COBRA.

The Act defines the COBRA subsidy as follows:

The COBRA subsidy is 65% of the COBRA premium for up to 9 months. Individuals pay 35% of the insurance premium. Employers initially pay 65% of the premium and then are reimbursed via Federal payroll tax reporting (form 941) once premiums are received from COBRA participants that have the subsidy. [The IRS has updated the 941 form to include 12a and 12b to report the subsidy information \(click here to view the revised Form 941.\)](#) Also keep in mind that employers can file Form 941c to receive the tax credit.

- COBRA subsidies are for individuals that meet the following eligibility criteria:
 - Were participating in employer sponsored group coverage and experience an involuntary loss of coverage between 9/1/2008 and 12/31/2009.
 - Not enrolled in a group health plan and are not eligible for other coverage (e.g., spouse's health plan or the health plan of a new employer).
 - Full subsidy amount is allowable if individual income is less than \$125,000 per year or family income is less than \$250,000 per year for 2009.
 - The employer exists and continues to offer group coverage.
 - Their COBRA premium is not paid by the prior employer, new employer, or another source. Therefore, the subsidy does not provide reimbursement for employer-paid COBRA premiums.
- Those who meet the eligibility criteria and did not elect COBRA coverage or elected and then terminated COBRA coverage will be allowed a 60-day special election period with a start date of 3/1/2009 (or the first day of the monthly health plan after 2/17/2009). The subsidy is not retroactive and does not apply to COBRA premiums paid for coverage prior to the date of enactment (2/17/2009). The special election does not include a certificate of coverage. Special election notices must be sent within 60 days (4/19/2009) of when the Act was signed, although it is advised to send these as soon as possible. The individual then has 60 days to elect from the date of the notice and another 45 days after their election to pay their

premium(s).

Example:

Jane was involuntarily terminated and lost her group health plan coverage November 1, 2008. Jane determined that the cost was too expensive and did not elect to continue her coverage.

According to the Act, Jane will need to be notified of her right to elect COBRA and the availability of the subsidy. Jane has 60 days from the date of the notification to elect COBRA. If she chooses to continue, she will pay 35% of the COBRA rate.

Jane elects coverage and begins paying the premium starting on March 1, 2009. Her group health coverage is effective March 1st (not retroactive to November 1st), but her 18 months of continuation is measured from November 1, 2008.

- COBRA coverage will not be extended further than the original 18 months from the original COBRA start date.
- Those who meet the eligibility criteria and currently have COBRA coverage will be able to begin paying 35% of their COBRA premium as of 3/1/2009 (or the first day of the monthly health plan after 2/17/2009). Premiums collected at the higher rate will be applied to future premiums.
- New COBRA qualifiers between 3/1/2009 and 12/31/2009 need to be notified of the subsidy in their qualifying event letter and may elect the subsidy if they meet the eligibility criteria.
- The subsidy applies to all levels of coverage (e.g., single, two-party, family, etc.).
- The subsidy is available for all group health plans currently available under COBRA with the exception of Flexible Spending Accounts.
- Individuals may waive the right to the premium subsidy for all periods of coverage. This waiver is permanent and the individual must provide written notice to the employer.

Areas that require further clarification from the Department of Labor:

The Act did not address how the 2% COBRA Administration Fee should be handled and who is responsible for payment. BASIC is working to find resolution.

BASIC's Plan and Timeline:

- **Monday, 3/2/2009:** Our COBRA system will be updated and all Qualifying Events (QE's) processed after this date will be with a new letter offering the COBRA subsidy and an explanation of eligibility. The qualifiers will determine if they are eligible when selecting their COBRA premium amount.
- **Week of 3/2/2009:** BASIC will send employers a list of all employees that we have on file that have been terminated since 9/1/2008. This will give employers the opportunity to inform BASIC which prior employees were terminated involuntarily and therefore are possibly eligible for the COBRA subsidy. During a teleconference on 2/19/2009, the IRS stated that the definitions of voluntary and involuntary termination are not standard and therefore this is a gray area of liability risk in situations where an employer determines a qualifier to be voluntary and later the qualifier claims they were denied the subsidy. Therefore it is the IRS's current recommendation to offer the special election to all prior employees since 9/1/2008. Also, some of our clients used "Reduction in Work Hours" rather than termination for their reason for loss of coverage. BASIC is planning on sending notices to all qualifiers unless employers specify the qualifiers to receive notices. **Employers will have until 3/10/2009 to respond back to BASIC** as to which individuals to offer the special election.
- **Thursday, 3/19/2009:** By this date the DOL will provide a model notice to send to employees terminated since 9/1/2008. The DOL stated on 2/20/2009 that letters should not be sent prior to the issue of their model notice.
- **3/19/2009 through 4/19/2009:** This is the timeframe to notify prior qualifiers and current COBRA participants paying full premiums. BASIC will send these notifications on behalf of our COBRA clients. Individuals have 60 days from the date of the special election notification to elect and then have an additional 45 days after their election to pay their premium(s) back to 3/1/2009 (unless the health plan starts on a day other than the 1st of the month).

Administration Fees:

BASIC is currently working to determine our pricing for the special election notification. We expect that we will charge a per notice fee but that fee is not determined at this time.

Additional Resources:

- [Department of Labor - COBRA Continuation Coverage Assistance Under the American Recovery and Reinvestment Act of 2009](#)
 - <http://www.dol.gov/ebsa/COBRA.html>
- [Division B related to Healthcare](#)
 - http://www.house.gov/billtext/hr1_legtext_crb.pdf
- [IFEBP webpage with latest information](#)
 - <http://www.ifebp.org/Resources/News/Regulatory+Updates/AmericanRecoveryandReinvestmentBillIncludesCOBRACHanges.htm>

BASIC Sponsored COBRA Webinars

Our free 90 minute webinar will cover*:

- What is the COBRA subsidy?
- Who does the subsidy apply to?
- Items to keep in mind during implementation.

* Please note that this webinar will cover high level information related to the American Recovery and Reinvestment Act of 2009, not BASIC's administrative process.

Space is limited!

March 9, 2009 Filled

March 26, 2009

3-4:30 p.m. EST (1-2:30 PM MST)

<https://www2.gotomeeting.com/register/740319265> to register for this date and time

BASIC is dedicated to leading you through this process of compliance. Gray areas still exist as to exactly how the COBRA subsidies should be administered. BASIC will continue to update you as new information becomes available. In the meantime, please contact us if you have questions.