December 1, 2009

Talking Points on the Proposed Extension of the ARRA COBRA Premium Subsidy

Key Messages/ Recommendations

Employers understand the compelling reasons Congress may have for extending the COBRA premium subsidy established under the American Recovery and Reinvestment Act of 2009 (ARRA) during these challenging economic times. The costs and other implications for employers, however, should be taken into consideration in enacting such policies.

- The temporary ARRA COBRA premium subsidy is not cost-neutral to employers. Employers bear the administrative costs of administering the subsidy, as well as increased COBRA claims expense due to adverse selection.
- The least disruptive approach to extending the ARRA COBRA premium subsidy is to temporarily extend existing requirements and apply them prospectively.
- Such extensions could generally be accommodated by the changes to COBRA administrative processes and systems that employers were required to make in order to implement the subsidy when ARRA was enacted earlier this year.
- Employers are less likely to be concerned about an extension if it is prospective only and provides adequate lead time for implementation.
- Even a prospective extension, however, means that employers will continue to incur administrative costs and COBRA claims expense due to adverse selection.
- We strongly recommend against expansion of eligibility or other changes that would require retroactive action by employers and "second chance" COBRA elections that substantially increase administrative complexity.
- Any legislation extending the ARRA subsidy should codify the "reasonable interpretation" standard in existing IRS guidance. The standard has benefited terminated employees by allowing employers to provide the subsidy without undue delay in situations where eligibility is unclear and has also helped to minimize the use of the Department of Labor's expedited review process for denied subsidy applications.

Background

- Under ARRA, the nine-month COBRA premium subsidy is limited to individuals who have been involuntarily terminated from employment on or after September 1, 2008 through December 31, 2009, and who lose health coverage during that period. Assistance-eligible individuals pay 35% of the COBRA premium.
- The federal government reimburses employers and insurers for the 65% subsidy payments via a payroll tax credit.
- Administrative fees incurred by employers are typically per employee or a one-time set up charge to administer the ARRA COBRA subsidy. These fees are ultimately shared with employees in the form of higher health plan costs.
- Administrative fees increase significantly if changes to the ARRA subsidy require retroactive action – employers must re-program systems, revise notices and communications, change election processes, timeframes, call center procedures, etc.
- Historically COBRA claims costs are 150% of active claims due to adverse selection. Although it is too early for definitive post-ARRA claims data, employers have ongoing concerns about high COBRA claims costs.

Proposed Legislation

S. 2730, introduced November 5, 2009 by Senators Sherrod Brown (D-OH) and Robert Casey (D-PA) would:

- extend the subsidy an additional 6 months to a total of 15 months (to June 30, 2010);
- extend the time window for eligibility to June 30, 2010;
- increase the government subsidy amount from 65% percent to 75% of the COBRA premium; and
- expand eligibility for the subsidy to include workers who experience loss of health coverage as a result of an involuntary reduction in hours.

H.R. 3930, introduced by Representative Joe Sestak (D-PA) on October 26, 2009 would:

- similarly extend the ARRA eligibility and subsidy period;
- NOT increase the amount of the government subsidy or expand the eligibility criteria to include involuntary reduction in hours;
- extend the current 18 months duration of COBRA coverage to 24 months for eligible individuals terminated from employment on or after April 1, 2008, and before December 31, 2008.

These bills include several provisions that could substantially increase the complexity of administration for employers including expanding categories of eligibility and extending current law limits on the duration of COBRA coverage for certain individuals. The requirement in H.R. 3930, for example, that would require employers to look back to April 2008 to identify, notify and enroll certain former employees who may be eligible for extended COBRA coverage, would be particularly difficult to implement. Any legislative changes to the ARRA premium subsidy should be expressly prospective and consistent with the ARRA premium subsidy processes and procedures employers have in place to keep any additional administrative complexity to a minimum.