



### THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009: Changes to COBRA

Late Friday evening Congress passed a finalized version of the American Recovery and Reinvestment Act, a \$787 billion economic stimulus bill, which is expected to be signed by President Barack Obama at some point during the next few days.

The Act includes major changes to "COBRA" laws, which mandate the continuation of group health coverage for employees experiencing a "qualifying event" - such as the termination of employment - resulting in the loss of that coverage.

Before the passage of this Act, a qualified beneficiary who elected COBRA was wholly responsible for the payment of 100% of his or her COBRA premiums for the duration of the COBRA coverage period.

The new Act changes this by allowing employees who were involuntarily terminated from employment between the dates of September 1, 2008 and December 31, 2009 to have 65% of their COBRA federally subsidized for nine months. This includes employees who have already declined COBRA coverage during this period. This subsidy will only be available to participants with a modified adjusted gross income of less than \$125,000 for the taxable year (\$250,000 in the case of a joint return) and will be paid through credits against employers' payroll tax liability. The Act is to become effective immediately.

This is the most significant change to COBRA since it was enacted in 1986 and will have a major effect on the administration of COBRA, both for AmeriFlex and our clients whose COBRA offerings AmeriFlex administers on a third-party basis.

There are a number of issues left open for plan administrators to grapple with, for instance:

- When and how should notice of these new COBRA rights be given, especially to employees who have been termed in the past?
- What is the definition of "involuntary termination"?
- What are the exact procedures to follow if payroll tax credits aren't enough to cover an employer's 65% COBRA subsidy?
- Whose ultimate responsibility will it be to determine whether a participant is below the income threshold (an initial reading of the bill indicates that this is the responsibility of the taxpayer, but what if the employer has notice of a discrepancy)?

These are just a few of the issues left open by this Act, and it will be up to the federal agencies with jurisdiction over COBRA, most notably the United States Department of Labor ("DOL"), to settle them. We expect that specific, comprehensive guidance will be made available soon, as the Act requires that the DOL draft model notices within 30 days of the Act's passage.

We understand that these legislative changes can be stressful and costly for plan administrators. It's important to remember that these amendments affect all employers who are presently subject to COBRA, virtually every employer in the country.

AmeriFlex is monitoring these developments very closely and will make further details available as soon as possible with regard to the ways in which these new provisions will impact both our clients and our COBRA administration services.

► For Additional Information please contact [compliance@flex125.com](mailto:compliance@flex125.com).

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