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January 12, 2010

COBRA PREMIUM ASSISTANCE EXTENSION **QUESTIONS AND ANSWERS**

1. QUESTION:

The initial DOL ARRA notices included an "Additional Election Period" which included a second chance to elect does this DOL amendment include a second chance for those who did not elect?

ANSWER:

Not directly. Someone who involuntarily terminated employment in December 2009, but did not become eligible for COBRA until January 1, 2010 (and was, therefore, not eligible for premium assistance under the original law) is now eligible for premium assistance. While the amended legislation does not directly address whether these individuals (and their COBRA qualified beneficiaries) should be given a new election option, it does require that they be notified of the extension. In addition, Assistance Eligible Individuals who lost COBRA coverage as a result of not paying their COBRA premium after they exhausted eligibility for premium assistance under the law before it was extended are entitled to an opportunity to reinstate coverage by paying the reduced premium. Implicit in all of this is that individuals who were not initially eligible for premium assistance and received notice of their COBRA election rights before the extension was enacted should also be given another opportunity to elect COBRA coverage and pay the reduced premium. In most cases it would make sense to give these individuals until the later of (1) their original COBRA election period, (2) February 17, 2010, or (3) 30 days after they are provided notice of the extension to make the election.

2. QUESTION:

If someone terminates on 2/28/2010, when will their subsidy COBRA coverage end?

ANSWER:

An employee (and their COBRA qualified beneficiaries) who (1) involuntarily terminates employment on February 28, 2010; (2) loses coverage as of March 1, 2010; and (3) elects COBRA coverage will be eligible for COBRA premium assistance for COBRA coverage through May 31, 2011 (15 months).

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3. QUESTION:

If an AEI's subsidy eligibility expired and they made the full payment for December and now will have credit going in to Jan. and Feb. are we allowed to take the payroll credit for the subsidy applied in December in January or do we need to amend December's 941 filing?

ANSWER:

Existing IRS guidance does not answer this question because it is a quirk arising out of the extension of premium assistance. However, the safer course would be to claim the credit in 2010, as the employee's credit for the excess payment is used up. The employer should not claim the credit until it has paid the 65% premium subsidy portion of COBRA coverage. Since the employer had not paid anything in December (even if it refunds the excess to the former employee in January), the safer course is to claim the December credit as it is paid by the employer in 2010.