



January 22, 2009

**The
ERISA
Industry
Committee**

Dear Member of Congress:

On behalf of The ERISA Industry Committee and its members, I am writing today in response to the provisions relating to COBRA continuing health coverage contained in the economic stimulus package as introduced in the U.S. House of Representatives—namely Title III, the *Health Insurance Assistance for the Unemployed Act*.

The ERISA Industry Committee (ERIC) is a non-profit association committed to representing the advancement of the employee retirement, health, and compensation plans of America's largest employers. ERIC's members provide benchmark retirement, health care coverage, compensation, and other economic security benefits directly to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their cost and their effectiveness, as well as the role of those benefits in the American economy.

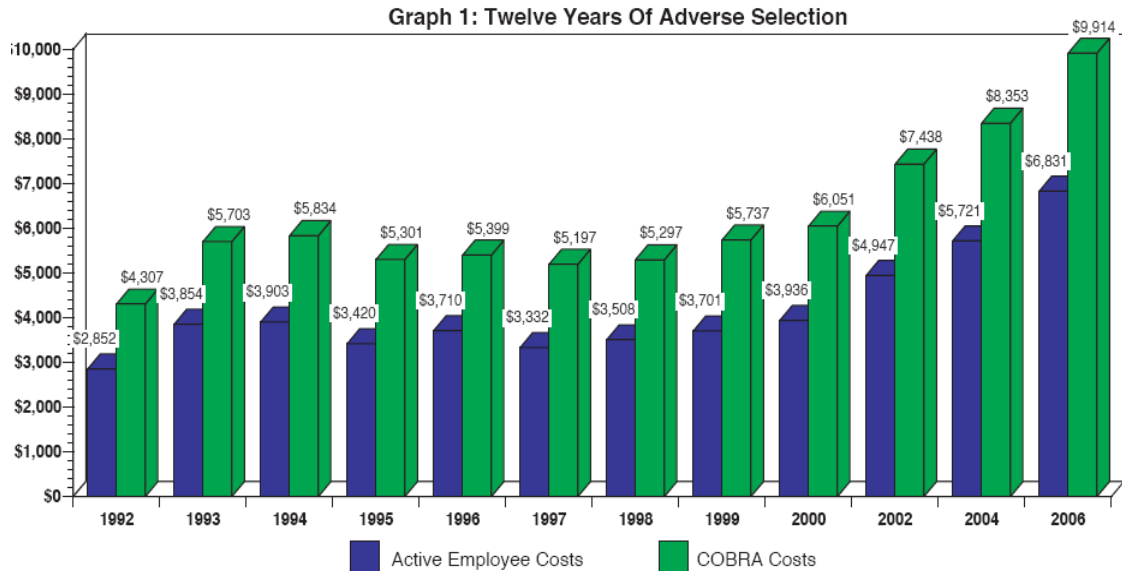
As you know, under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, employees are generally eligible to continue participating in their employer-sponsored health plan for up to 18-36 months after leaving their job. **The purpose of COBRA coverage is to prevent coverage gaps so that employees who leave their job can, for a limited time, continue to be insured while they seek alternative, permanent coverage. The purpose of the COBRA program is not, and should not be, to provide long-term or permanent coverage.**

In these troubling economic times, it is thus appropriate to offer **temporary** assistance to displaced workers to pay their COBRA premiums while they seek new employment and alternative coverage. **However, Congress should not lengthen the period of time during which employers are obligated to offer COBRA coverage to workers they no longer employ.** Section 3002(b) of the proposed stimulus bill eliminates any time limits for COBRA participation by workers with 10 years of employment at a company or those over the age of 55. If it becomes law, group health plans will suffer the effects of further adverse risk selection, resulting in additional costs to be borne not only by employers but by other workers as a result of increased beneficiary cost-sharing, premiums, and reduced coverage.

COBRA coverage is both administratively burdensome and very expensive for group health plan sponsors. The notice and tracking requirements, and threat of litigation, make compliance resource-intensive. Many employers outsource the administration of COBRA plans, carved out from regular benefits. Indeed, COBRA continuation coverage is among the least efficient and least effective ways of delivering health care coverage.

Most importantly, COBRA suffers from—if not encourages—adverse risk selection. Displaced workers who elect COBRA are required to pay the entire coverage premium—including that portion previously paid for by the employer—plus 2%. This total is generally more expensive than individual coverage that healthy beneficiaries can otherwise find. On the other hand, for high utilizers of health insurance who often have preexisting conditions, it is cost effective to elect COBRA because they are either unable to find individual coverage, or else face extremely high premiums. As a result, employers are left with the most expensive beneficiaries in their insurance pools without having that risk offset by healthier plan participants. Moreover, the 2% administrative fee rarely comes close to covering actual administrative costs.

In fact, on average COBRA beneficiaries' coverage costs about 45% more than other group health plan participants according to *Spencer's Benefits Reports 2006* study.



Spencer's Benefits Report 2006 Survey

Another troubling consequence of the proposed indefinite extension of COBRA continuation eligibility is the creation of a de facto retiree health mandate. According to the *Statement of Financial Accounting Standards No. 106: Employers' Accounting for Postretirement Benefits Other than Pensions (SFAS 106)* issued in 1990 by the Financial Accounting Standards Board (FASB), employers would have to account for this anticipated benefit by accrual method; meaning they would have to include on their current accounts benefits they anticipate they would be obligated to pay out in the future based on an indefinite COBRA liability. It is impossible to even estimate the magnitude of premium increases necessary to account for this future liability, and will lead to some employers dissolving their benefit plans. In the wake of SFAS 106's original passage in 1990's, a great blow was dealt to employer sponsored retiree benefit plans, and many were forced discontinue that benefit. The same will be true of group health plans in general if the economic stimulus package is allowed to create a de facto retiree health mandate, especially in these difficult times.

The COBRA system is inefficient, litigious, administratively burdensome, costly, and an actuarial and accounting nightmare. Extending employers' obligation to operate these plans is not stimulative, will result in a cost shift to currently employed beneficiaries, and does nothing to provide viable, long term coverage to uninsured people. Limited premium assistance to help displaced workers buy time to find alternative coverage is a reasonable policy proposal we would like to discuss further. Using COBRA for purposes that extend beyond the original legislative intent will provoke many serious unintended consequences.

Sincerely,

Mark J. Ugoretz
 President
 The ERISA Industry Committee