



February 26, 2009

Ms. Phyllis Grimes
Chief, Industry Liaison
Internal Revenue Service
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Ms. Grimes:

On behalf of the National Small Business Association (NSBA), the nation's oldest small business advocacy group reaching more than 150,000 small businesses nationwide, I am writing to express concerns in regard to the implementation of the Consolidated Omnibus Budget Reconciliation Act (COBRA) subsidy provision included in the American Recovery and Reinvestment Act (ARRA) of 2009 [P.L. 111-5].

ARRA will provide funding to subsidize premiums under COBRA, or similar coverage under State law, for up to nine months to continue employer-sponsored coverage for individuals who were involuntarily terminated from their jobs between Sept 1, 2008 and Dec 31, 2009, and who meet certain annual income requirements. According to the law, eligible individuals can remit a 35 percent payment for COBRA coverage to their former employer or plan administrator and obtain a 65 percent premium subsidy for up to 9 months to help cover the cost of COBRA premiums. The employer or plan administrator is responsible for notifying eligible former employees of the federal subsidy. In addition, employers must also provide notice to inform former employees of a special open enrollment period that allows eligible individuals to change coverage options under the employers' plans. NSBA has documented concerns communicated by small business owners reflecting the financial and administrative requirements included in the law.

The passage of the temporary subsidy assistance is a commendable act of Congress. Employers and employees alike are facing extraordinary times during this economic recession. Providing health coverage assistance to former employees who have been laid off of work is an act that exemplifies the challenges we face in our current economy. However, not much consideration has been given to small employers' ability to be the financial backdrop to this subsidy plan. Without a doubt, a small employers operating budget will be compromised by the requirement that they advance the COBRA subsidy to an insurance carrier. In particular, employers with less than 20 employees who are subject to state continuation coverage requirements could face exceptional operating budget challenges. Many employers will struggle to maintain a viable operating budget under current economic conditions. Furthermore, the time between advancing the subsidy amount to an insurance carrier and recovering that cost from the Department of the Treasury could be detrimental to a businesses operating under a tight budget. For example, it is a reasonable scenario for an employer to advance more for a subsidy than


they will be able to net from a deduction on a payroll tax deposits. Consequently, if an employer waited until the end of the quarter to recover that difference, then a cash flow concern would be simply exacerbated.

Research shows that small employers bear a disproportionate share of the federal regulatory burden. Undoubtedly, the impact of regulatory burdens increases exponentially during tough economic times when resources are limited or strained. ARRA provides additional requirements on small employers to provide notice to former employees on the subsidy option and other issues. In addition, small employers will be required to provide proper documentation to the Department of the Treasury in order to recover advanced subsidies. The small businesses that make up NSBA have often characterized these requirements as an administrative nightmare in the context of the current economic environment.

Clearly small business owners are anxiously preparing to comply with the COBRA subsidy provisions in ARRA. NSBA is providing the most up-to-date and relevant information made possible by the Internal Revenue Service (IRS) to our members in order to support their needs. Yet, with less than one week before ARRA's implementation date, several questions and concerns remain. In order to address these concerns, NSBA remains ready to assist the IRS with timely information from a small business perspective in order to limit potential problems.

NSBA welcomes the opportunity to meet with the appropriate staff to consider less burdensome alternatives for the subsidy implementation or protections for small employers. We look forward to hearing from you.

Sincerely,



Todd O. McCracken
President