

## COBRA SUBSIDY – REVISED MODEL NOTICES ISSUED

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended by the Defense Appropriations Act and the Temporary Extension Act of 2010 (TEA), provides a 65% COBRA subsidy for Assistance Eligible Individuals (AEI). The subsidy is available for a period of no more than 15 months.

Among other things, the TEA amended the ARRA subsidy provisions to:

- **Extend the COBRA premium reduction eligibility period** for one month to include involuntary terminations *through March 31, 2010*; and
- **Expand the definition of an AEI** to include an employee, or the employee's spouse or dependent children who:
  - Experienced a qualifying event that was a reduction in hours at any time from *September 1, 2008 through March 31, 2010*; and
  - Subsequently experienced the employee's involuntary termination of employment at any point from *March 2, 2010 through March 31, 2010*.

Certain individuals, as defined above, who experienced a qualifying event that was the employee's *reduction in hours* but did not elect (or elected and later dropped) COBRA coverage are eligible to make a new prospective COBRA election and may receive the subsidy. The duration of the COBRA coverage is measured from the original qualifying event date (the reduction in hours) and not from the involuntary termination.<sup>1</sup>

The DOL issued a revised fact sheet and model notices addressing these changes. The DOL states that using the model notices satisfies the requirements under ARRA as amended by the TEA.

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<sup>1</sup> Generally, the maximum period of continuation coverage is measured from the date of the original qualifying event (for Federal COBRA, this is generally 18 months). However, ARRA, as amended by TEA, provides that the 15-month premium reduction period begins on the first day of the first period of coverage for which an individual is "assistance eligible." This is of particular importance to individuals who experience an involuntary termination following a reduction of hours. Only individuals who have additional periods of COBRA (or state continuation) coverage remaining after they become assistance eligible are entitled to the premium reduction.

The revised fact sheet explaining these requirements is available at <http://www.dol.gov/ebsa/newsroom/fsCOBRAPremiumReduction.html>.

The new model notices are available at <http://www.dol.gov/ebsa/COBRAModelNotice.html>.

## **NEW MODEL NOTICES**

### *Updated General Notice*

Plan administrators must provide the updated General Notice to all qualified beneficiaries (not just covered employees) who experienced a qualifying event at any time from September 1, 2008 through March 31, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. This model notice includes updated information on the premium reduction as well as the information required in a COBRA election notice.

Individuals who experienced a qualifying event that was a termination of employment on or after March 1, 2010 may not have been provided proper notice. These individuals should receive the updated General Notice and the full 60 days from the date the updated notice is provided to make a COBRA election.

### *Notice of New Election Period*

Some individuals are newly eligible AEs as a result of the reduction-in-hours provision. These individuals will have a new COBRA election opportunity and may receive the premium discount.

A **Notice of New Election Period** should be provided within 60 days of the date of a termination of employment to all individuals who:

- Experienced a qualifying event that was a reduction in hours at any time from September 1, 2008 through March 31, 2010;
- Subsequently experience a termination of employment at any point from March 2, 2010 through March 31, 2010; and
- Either did not elect continuation coverage when it was first offered OR elected but subsequently discontinued the coverage.

It appears that this notice should be provided to individuals who experience voluntary or involuntary terminations – however, only those individuals who experienced an involuntary termination will actually be eligible for the subsidy.

### *Supplemental Information Notice*

Plan administrators should provide the **Supplemental Information Notice** to all individuals who **elected and maintained COBRA continuation of coverage** based on the following qualifying events:

- Terminations of employment that occurred at some time on or after March 1, 2010 for which notice of the availability of the premium reduction available under ARRA was not given; or
- Reductions of hours that occurred during the period from September 1, 2008 through March 31, 2010 which were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by March 31, 2010.

Individuals who experience an involuntary termination of employment after experiencing a qualifying event that consists of a reduction of hours must be provided this notice within 60 days of that termination.<sup>2</sup>

Individuals with qualifying events that occurred on or after March 1, 2010 for which notice of the availability of the premium reduction available under ARRA was not given must be provided this notice before the end of the required time period for providing a COBRA election notice.

### *Notice of Extended Election Period*

The **Notice of Extended Election Period** must be sent before the end of the required time period for providing a COBRA election notice, to all individuals who:

- Experienced a qualifying event that was a termination of employment at some time on or after March 1, 2010;
- Were provided a notice that did not inform them of their rights under ARRA, as amended by TEA; and
- Either chose not to elect COBRA continuation coverage at that time OR elected COBRA but subsequently discontinued that coverage.

### *Alternative Notice (applicable to insurers)*

For states with “mini-COBRA” continuation of coverage laws, insurers must provide the Alternative Notice to all qualified beneficiaries who experienced any qualifying event through March 31, 2010. However, because continuation coverage requirements vary among states, this notice should be modified to reflect the requirements of the applicable state law. The DOL also encourages

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<sup>2</sup> It appears that this notice should be provided for both voluntary and involuntary terminations – however only those individual who experienced the involuntary termination will actually be eligible for the subsidy. While the DOL guidance provides a 60 day timeframe to send this notice to individuals who are involuntarily terminated – providing the notice to individuals who were voluntary terminated within the same timeframe seems appropriate.

insurers to use the model Alternative Notice, the model Notice of New Election Period, the model Supplemental Information Notice, the model Notice of Extended Election Period, or the model General Notice, as appropriate.

## **SUBSIDY'S FUTURE?**

Both the House and Senate have passed legislation that includes an extension of the COBRA subsidy through December 31, 2010. These bills are currently being reconciled in committee conference and a final bill is expected to be voted on and signed by the President in the near future.

## **EMPLOYER ACTION**

Employers should consult with their COBRA vendors to ensure appropriate notices are sent to eligible individuals. Employers self-administrating COBRA will want to review the revised notice requirements and utilize the updated model notices.

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