

# Compliance Alert

## COBRA Subsidy Extension – Updated Notices Released

On April 15, 2010, the President signed into law the *Continuing Extension Act of 2010* (CEA, the Act) providing for another extension of unemployment benefits, including a two-month extension of the eligibility period for the COBRA subsidy. A copy of the Act is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4851enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4851enr.txt.pdf).

As we have previously reported, the COBRA subsidy was included in the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended. The subsidy is a 65% tax-payer funded reduction in COBRA premiums available to *assistance eligible individuals* (AEIs). The subsidy is available for a period of no more than 15 months and may expire earlier should, among other things, the AEI become eligible for other group health plan coverage or Medicare.

The Act extends the eligibility period for the COBRA subsidy through **May 31, 2010** for certain qualifying events. Under the prior law, the eligibility period expired as of March 31, 2010.

The definition of an AEI now includes the employee (or an opposite-sex spouse or dependent child of the employee) who:

- Experiences a qualifying event that is the employee's involuntary termination of employment at any point from September 1, 2008 through **May 31, 2010** and elects COBRA continuation of coverage (or state mini-COBRA coverage); or
- Experiences a qualifying event that is the employee's **reduction in hours** from September 1, 2008 through May 31, 2010, **followed by the employee's involuntary termination of employment** that occurs on or after March 2, 2010 but not later than May 31, 2010.

The Act provides extended election opportunities for those individuals who were involuntarily terminated after March 31, 2010 and before April 15, 2010.

### UPDATED NOTICES RELEASED

---

On Tuesday, April 27<sup>th</sup>, the DOL updated their COBRA website where information on the subsidy is posted (<http://www.dol.gov/ebsa/cobra.html>) to include all updated Model Notices and Fact Sheets reflecting the extended eligibility period.

#### 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 May 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 from April 1, 2010 through April 14, 2010 may not have been provided proper notice. Those individuals who have not been provided any notice must get the updated General Notice and receive the full 60 days from the date the updated notice is provided to make a COBRA election. Individuals who received a notice that did not include information related to the CEA extension must also be provided updated information. The DOL indicates that,

depending on the particular circumstances, either the Supplemental Information Notice or the Notice of Extended Election Period may be used.

### Notice of New Election Period

Some individuals are newly eligible AEIs as a result a termination that follows a reduction in hours. 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 May 31, 2010;
- Subsequently experience a termination of employment at any point from March 2, 2010 through May 31, 2010; and
- Either did not elect continuation coverage when it was first offered OR elected but subsequently discontinued the coverage.

This notice should be provided to individuals who experience voluntary or involuntary terminations – however, only those individuals who experienced an involuntary termination are 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 through April 14, 2010 for which notice of the availability of the premium reduction under ARRA was not given; or
- Reductions of hours that occurred during the period from September 1, 2008 through May 31, 2010 which were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by May 31, 2010.

Under the first bullet point above, plans must provide this notice to all individuals with a qualifying event related to any termination of employment if they have not already been provided a notice of their rights under ARRA. This notice should be provided before the end of the required period for providing a COBRA election notice.

Under the second bullet point, 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. However, as noted above, the CEA requires plan administrators to provide notices to all individuals with qualifying events related to any termination of employment that occurs from April 1, 2010 through April 14, 2010. In such cases, the notice must be provided before the time frame for providing a COBRA election notice.

Also, this notice should be provided for both voluntary and involuntary terminations – however only those individuals who experienced the involuntary termination will actually be eligible for the subsidy.

### 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 from April 1, 2010 through April 14, 2010;
- Were provided a notice that did not inform them of their rights under ARRA, as amended by CEA; 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 May 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 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.

## A Reminder on Notices and Penalties

A common question is whether these ARRA notices need to be provided to qualified beneficiaries who voluntarily terminate employment. The simple answer is “yes”. The General Notice is provided to all qualified beneficiaries regardless of qualified event. With respect to the other applicable notices, the DOL strongly encourages plan administrators to provide notice to individuals who experience any termination (voluntary or involuntary) because employers may be subject to civil penalties if it is later determined that the termination was involuntary and notice was not provided.

## THE SUBSIDY’S FUTURE

---

This is not likely to be the last extension of the COBRA subsidy. The House and Senate have each passed separate legislation that includes extending eligibility for the COBRA subsidy through December 31, 2010. The legislation will need to be reconciled in joint conference and voted on again by the respective chambers before a final bill is presented to the President for signature.

We will keep you updated as information develops.



These materials are produced by Kibble & Prentice/USI Insurance Services for educational purposes only. Certain information contained in these materials is considered proprietary information created by Kibble & Prentice/USI. Such information shall not be used in any way, directly or indirectly, detrimental to Kibble & Prentice/USI and/or their affiliates. Neither Kibble & Prentice/USI nor any of its respective representatives or advisors has made or makes any representation or warranty, expressed or implied, as to the accuracy or completeness of these materials. Neither Kibble & Prentice/USI nor their respective representatives or advisors shall have any liability resulting from the use of these Materials or any errors or omission therein. These materials provide general information for the use of our clients, potential clients, or that of our clients' legal and tax advisors.

IRS Circular 230 Disclosure: USI Insurance Services and its affiliates listed below do not provide tax advice. Accordingly, any discussion of U.S. tax matters contained herein (including any attachments) is not intended or written to be used, and cannot be used, in connection with the promotion, marketing or recommendation by anyone unaffiliated with USI Insurance Services of any of the matters addressed herein or for the purpose of avoiding U.S. tax-related penalties. Also, the information contained in this brochure should not be construed as medical or legal advice and is intended for educational purposes only.

USI affiliates: Kibble & Prentice Holding Company dba Kibble & Prentice operates in the State of California under the name of Kibble & Prentice Holding Company dba Kibble & Prentice Insurance Agency (0E28835). Campbell, Galt & Newlands, Inc. dba USI Northwest operates in the State of California under the name of Campbell, Galt & Newlands, Inc. dba USI Northwest Insurance Agency (0734627). USI Insurance Services of Northern California, Inc. operates in the State of California under the name of USI Northern California Insurance Services (0B84501)

Kibble & Prentice offers securities through M Holdings Securities, Inc., a registered broker/dealer, member FINRA/SIPC. Kibble & Prentice, a registered investment adviser, offers investment advisory services. Kibble & Prentice is independently owned and operated.

Please contact us if you have any questions regarding the content of this document.

601 Union St  
Suite 1000  
Seattle, WA 98101  
206.441.6300  
kpc.com

700 NE Multnomah  
Suite 1300  
Portland, OR 97232  
503.224.8390  
usinw.usi.biz

50 California Street  
Suite 650  
San Francisco, CA 94111  
415.273.8700  
usi.biz

2021 W March Lane  
3rd Floor  
Stockton, CA 95207  
209.957.6800  
usi.biz