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COMPLIANCE ALERT
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REVISED COBRA MODEL NOTICES ISSUED REFLECTING SUBSIDY EXTENSION

The Department of Labor (DOL) issued updated model notices to reflect the COBRA subsidy extension included as part of the 2010 Department of Defense Appropriations Act (2010 DOD Act). The DOL also released additional FAQs clarifying these new requirements. The model notices may be downloaded for use at http://www.dol.gov/ebsa/COBRAmodelnotice.html.

OVERVIEW

The American Recovery and Reinvestment Act of 2009 (ARRA) reduced the COBRA premium for Assistance Eligible Individuals (AEIs) for a limited period of time. The 2010 DOD Act amends the ARRA provisions to extend eligibility for the reduced COBRA premium to include involuntary terminations that occur through February 28, 2010.[1] It further extends the maximum duration of the subsidy from 9 to 15 months.

Individuals who reached the end of the 9-month subsidy period prior to December 19, 2009 will receive extra time to pay their reduced COBRA premium. In order to continue coverage, individuals will need to pay their 35% share of the premium by the later of **February 17, 2010, 30 days after notice of the extension is provided by the plan administrator, or the end of the otherwise applicable payment grace period.**

THE NOTIFICATIONS

The DOL provides three model notices that, when appropriately modified, may be used to comply with the new notification requirements.

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[1] As a reminder, only *Assistance Eligible Individuals ("AEIs")* are eligible for the reduced COBRA premium. In order to qualify as an AEI, the individual must be the employee, the employee's spouse or dependent child who:

- Has a qualifying event for continuation of COBRA (or a state "mini-COBRA" law) that is the employee's ***involuntary termination of employment at any point from September 1, 2008 through February 28, 2010****;* and
- Timely elects COBRA.

The above definition reflects the changes made by the 2010 DOD Act to remove the condition that COBRA eligibility must occur on or before the last day of the eligibility period. See FAQ-3 below for further discussion.

Updated General Notice

The model Election Notice (referred to as the General Notice under ARRA, as amended by the 2010 DOD Act) has been updated to incorporate the changes to the subsidy.

This notice must be provided to all qualified beneficiaries who have not yet received an Election Notice and experience a qualifying event at any time from September 1, 2008 through February 28, 2010, regardless of the type of qualifying event.

The DOL points out that individuals who experienced a qualifying event in December 2009, but were not eligible for COBRA until January 2010 likely did not receive the proper notice, as it would not have included information on the subsidy extension. **These individuals should receive the revised General Notice and the full 60 days from the date the updated notice is provided to make a COBRA election.**

Premium Assistance Extension Notice

This notice provides information regarding the additional COBRA rights provided by the 2010 DOD Act.

This notification is provided to the following affected individuals:

- Individuals who were AEIs as of October 31, 2009 *(unless they are in their transition period – see the next notice)* and individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage *(unless they were provided the revised General Notice, described above)*.

- Individuals who are in a *transition period* must be provided this notice within the first 60 days of the *transition period*. Generally, the *transition period* is the period that begins immediately after the end of the original 9-month premium reduction period that was available prior to the subsidy changes. The individual is only in a *transition period* if the premium reduction provision would continue to apply due to the extension from 9 to 15 months and they are otherwise eligible for the premium reduction. The transition period may include multiple periods of coverage.

The DOL indicated that to the extent these notices may overlap, providing the Premium Assistance Notice by the earliest date required will satisfy the notice requirement.

Alternative Notice

This notice is to be used by insurance issuers that provide continuation of coverage under state law (i.e. “mini-COBRA”). This notice can be modified to appropriately reflect the applicable state laws regarding continuation of coverage.

ADDITIONAL FREQUENTLY ASKED QUESTIONS

FAQ-1: If eligibility for the premium reduction expired at the end of November (the full 9 month period) and the AEI did not pay the December premium – will he/she be able to re-enter the program and get the additional six months of subsidy?[2]

Yes, as long as he/she otherwise remained eligible for the premium reduction program.

The law has a retroactivity provision, but 35% of the premium must still be paid for each month for coverage to remain in effect. Individuals who now have additional months of reduced premiums available are in a *transition period* and will have additional time to pay certain unpaid reduced premiums related to the extension.

To continue their coverage, individuals described above must pay 35% of the full premium for the December and January periods of coverage by the later of February 17, 2010, or 30 days after notice of the extension is provided by their plan administrator.

FAQ-2: What if the individual (described in the above scenario) continued to pay the full COBRA premium for December after the subsidy expired?[3]

The 2010 DOD Act allows individuals to pay the reduced COBRA premium for an additional 6 months following the expiration of the original 9 month period.

Those individuals who are eligible for this extension, but paid the full COBRA premium, may have the payment applied as a credit against future payments or a refund consistent with the original ARRA provisions.

FAQ-3: If an employee is involuntarily terminated on February 15, 2010, will he/she be eligible for the reduced COBRA premium if COBRA coverage does not begin until March 1, 2010?

Yes. The 2010 DOD Act removed the COBRA eligibility condition from the definition of an AEI. Therefore, assuming the individual is otherwise eligible, an AEI who experiences an involuntary termination on or before February 28, 2010, and timely elects COBRA will be eligible for the subsidy.

FAQ-4: Are the other ARRA requirements regarding the COBRA subsidy still in effect?

Yes. The 2010 DOD Act only changes a few provisions of the ARRA COBRA subsidy. The majority of the requirements remain in effect, including (but not limited to):

- All group health plan coverage except the health FSA is eligible for the reduced COBRA premium (e.g. medical, dental, vision, HRAs, some EAP and wellness programs);

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[2] *See Q/A-3, FAQ on the COBRA Premium Reduction Extension Provisions* http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html

[3] *See Q/A-4, FAQ on the COBRA Premium Reduction Extension Provisions* http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html

- Eligibility for other group health plan coverage or Medicare will cause the subsidy to terminate. The AEI has the responsibility to notify the group health plan of other coverage;
- The employer seeks reimbursement for the 65% using Form 941;
- Denials of the subsidy may be appealed by the AEI to the DOL; and
- Certain high income individuals will be required to repay a portion or all of the subsidy based on their adjusted gross income in the taxable year.

FAQ-5: I am a small employer (19 or fewer employees). What about state continuation of coverage requirements (mini-COBRA)?

Some states have "mini-COBRA" laws that apply to small groups not subject to Federal COBRA (i.e. employers with 19 or fewer employees). ARRA, as amended by the 2010 DOD Act, continues to apply to state continuation of coverage.

Washington
Washington does not have a state "mini-COBRA" law.

Oregon
Oregon issued temporary rules to expand its state mini-COBRA program to implement the subsidy extension for health plans offered by small employers. Prior to the temporary rule, Oregon mini-COBRA only provided 9 months of continuation of coverage. The new rules extend state continuation of coverage to 15 months and recognizes all of the changes made by the 2010 DOD Act, including the additional 2 months to qualify for the subsidy and the 15-month maximum subsidy period. Further, individuals in a *transition period,* as described above, will be able to retroactively pay premiums and remain covered under the small group plan. As these continuation requirements are generally insurer obligations, employers with plans subject to Oregon mini-COBRA should discuss these changes with their carriers.

For more information, see
http://www.cbs.state.or.us/external/ins/FAQs/federal-stimulus-cobra-faq.html.

A copy of the temporary rules is available at
http://www.cbs.state.or.us/external/ins/rules/attachments/recently%20proposed/id13-2009_rule.pdf

New York
New York also has a state mini-COBRA requirement for small groups. Again, the subsidy provisions will continue to apply to small group health insurance plans written in New York. As these continuation requirements are generally insurer obligations, employers with plans subject to New York mini-COBRA should discuss these changes with their carriers.

Information on New York mini-COBRA can be found at
http://www.ins.state.ny.us/cobra/cobra_prem.htm

FAQ-6: Will the subsidy be further extended?

It is possible that we may see the subsidy further extended. Late last year, the House passed the Jobs for Main Street Act of 2010. This bill contains (among other things) an additional extension of the subsidy eligibility period to June 30, 2010. The Senate is expected to consider this legislation in early 2010.

For more frequently asked questions and additional information, see the DOL COBRA Web site at http://www.dol.gov/cobra.

EMPLOYER ACTION ITEMS

- If using a COBRA vendor, discuss compliance with the 2010 DOD Act to ensure appropriate notifications are sent within the required timeframes.
- Send the Premium Assistance Notice to individuals in their transition period within the first 60 days of that period.
    - For individuals who lost eligibility for the subsidy as of December 1, 2009 – notification is due by January 29, 2010.
- For individuals who were AEIs on October 31, 2009 – send the Premium Assistance Notification by February 17, 2010.
- For ongoing qualifying events, use the revised General Election Notice to ensure proper notification.
- Continue to administer COBRA and the subsidy in accordance with the IRS and DOL rules.
- Stay abreast of the proposed legislation and prepare for a possible extension of the COBRA subsidy in 2010.

As always, we will continue to monitor developments and keep you up to date with the latest information.

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