

CLIENT BULLETIN

DOL Announces Expedited Review Process for ARRA COBRA Premium Subsidy Denials

The Department Of Labor (DOL) just announced the procedures to obtain an expedited appeal for individuals who apply for the *American Recovery and Reinvestment Act of 2009 (ARRA)* COBRA premium subsidy and are denied the subsidy. [Client Bulletins 2009-15](#), [2009-19](#) and [2009-20](#) discuss some of the main aspects of the ARRA COBRA premium subsidy applicable to private group health plans. Individuals with continuation coverage provided through a Federal, State or local government plan, or pursuant to State insurance law should direct their request for review to the [Department of Health and Human Services](#).

Section 3001(a)(5) of ARRA calls for the Secretary of Labor to make a determination regarding an individual's eligibility for COBRA premium assistance within 15 business days after receiving the individual's application. The Secretary's determination upon review of the denial shall be *de novo* (i.e. no deference to plan's decision) and shall be the final determination of the Secretary. Under the statute, a reviewing court is to grant deference to the Secretary's determination.

The application is titled "*Application to the U.S. Department of Labor for Expedited Review of Denial of COBRA Premium Reduction*" (Appeal Form). A copy of the Appeal Form is available by "[clicking here](#)" or at:

<http://www.dol.gov/ebsa/pdf/COBRAapplication052109.pdf?submit=Print+the+Application>. An online Appeal Form is available at:

<https://www.askebsa.dol.gov/COBRA/?submit=Online+Application+%3E%3E>.

The DOL's main ARRA COBRA premium subsidy webpage is found at: <http://www.dol.gov/ebsa/COBRA/main.html>. The webpage has an "employee" and an "employer" link for information on the expedited appeal process. The "employee" page is at: <http://www.dol.gov/ebsa/COBRA/main.html> and the "employer" page is at: <https://www.askebsa.dol.gov/COBRA/CobraAppUpdate.aspx>. The "employer" webpage appears to be only for attaching and submitting documents.

Unfortunately, the webpage does not describe the process whereby the DOL contacts the “employer/plan”. Presumably, the DOL will contact the plan sponsor when the DOL needs additional information and for input prior to overturning a plan’s denial.

The DOL Appeal Form consists of some introductory background information on the ARRA COBRA premium subsidy law and its eligibility requirements, contains a set of ten “eligibility” questions and a reminder of the documents that may be needed to complete the Appeal Form.

Individuals seeking a review must complete the DOL’s Appeal Form in order to begin the review process. The DOL listed the following steps for applicants to easily submit the completed Appeal Form online, by mail or fax.

- Go to <http://www.dol.gov/ebsa/COBRA/main.html> to download the Appeal Form or to complete online.
- Answer eligibility questions on the Appeal Form to the best of your knowledge and ability.
- Attach any documents relevant to the DOL’s review of the Appeal Form.
- Include complete contact information (e.g., daytime phone number, an alternate phone number and an email address, if available).
- Separate Appeal Form(s) must be completed for any family member whose plan information is not identical to the information you provide.
- Keep a copy of the Appeal Form(s) and original supporting documentation for your records.

Individuals requiring assistance may contact the EBSA toll-free at (866) 444-3272 or visit its webpage at www.dol.gov/cobra.

The DOL’s review does not begin until it has received a complete Appeal Form, including copies of all documentation the applicant believes would assist the DOL in making a determination.

Before filling out the online Appeal Form, users are instructed to gather any documentation they have including copies of the documents on the next page. Users will need to have each document in an acceptable electronic format (see list on the next page), and saved on electronic media (such as a computer’s hard drive, disk or USB flash drive). Each document must accompany the Appeal Form and can be attached by following the instructions in the online application.

The DOL listed the following documents that are necessary to complete an online application:

- COBRA election notice;
- Information on your plan sponsor, employer, insurance company and/or plan administrator;
- A *"Request for Treatment as an Assistance Eligible Individual"* or other form used to request the premium reduction;
- Insurance information card;
- Payroll stubs showing deductions for health benefits;
- Any documents detailing the date and circumstances of the termination of the employee's employment; or
- Any documentation you were provided regarding the denial of the premium reduction.

According to the DOL, the following file formats are acceptable for submitting the above listed documents:

- Plain text (txt or rtf)
- MS Word® (doc)
- MS Excel® (xls)
- Joint Photographic Experts Group (jpeg)
- CompuServe Graphics Interchange (gif)
- Tagged Image File (tiff)
- Bitmap (bmp)
- Adobe Portable Document Format (pdf)

Note: According to the DOL, users filing the Appeal Form online cannot save information. Once a user has begun the process, if left unattended, the user will receive a 15 minute warning and the user's computer session will time-out after 30 minutes. If the user's session has timed-out, the user will need to begin the Appeal Form process again and re-enter any information previously entered.

FURTHER RESOURCES

- The main IRS COBRA premium subsidy webpage is located at: <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.
- The main DOL COBRA premium subsidy webpage is located at: <http://www.dol.gov/ebsa/cobra.html>.

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