

CLIENT BULLETIN

DOL Posts Model Notices Regarding the New COBRA Subsidy Extension.

On December 19, 2009, the President signed into law the *Department of Defense Appropriations Act, 2010 (2010 DOD Act, also "the new law")* (Pub. L. 111-118), which extended the availability of the COBRA premium subsidy under the *American Recovery and Reinvestment Act (ARRA) of 2009* (Pub. L. 111-5) See [Special Bulletin 2009-65](#) for an initial summary of *2010 DOD Act*.

This *Client Bulletin* will address the mandatory Notice requirements under *the new law*. In particular, we'll take a look at two of the three new *Model Notices* the DOL posted online at: http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=200912-1210-002&icID=188172, the third notice is for insured plans only.

Changes Made By The New COBRA Extension Law

The 2010 DOD Act **extended** the COBRA subsidy eligibility period for two months until February 28, 2010 and **increased** the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).

Individuals who have reached the end of the original subsidy period (nine months) will have additional time to pay extension-related reduced premiums that were due prior to Notice of the changes being provided. To continue their coverage they must pay the 35% of the COBRA premium costs by the **later of**:

- February 17, 2010,
- 30 days after Notice of the extension is provided by their plan administrator, or
- the end of the otherwise applicable payment grace period.

Individuals who lost their subsidy but would be eligible for the extension and paid the full 100% premium for November, December or January should contact their plan administrator to discuss a credit for future months of coverage or a reimbursement of the overpayment.

Another IMPORTANT change made was that the qualified beneficiary must only *experience an involuntary termination* by the end of the subsidy period (February 29, 2010); they do *not also have to lose coverage* by that date, as was the case under *ARRA*.

Even with the detail in the law, how it applies to all fact patterns is not always clear. In ambiguous situations, plans could deny a claim for the subsidy out of an abundance of caution and let the DOL rule on it using the 15-day expedited appeals process.

The Model Notices

The DOL released the *Model Notices* for public comment, "[click here](#)" for a copy of the document. The *Model Notices* address the changes required by the new law and have been submitted to the federal Office of Management and Budget for review and clearance. Although **these *Model Notices* are not yet released for general use**, it is expected that they will be shortly; however, there is buzz they may be further revised for final release. Like the original COBRA premium subsidy *Model Notices*, these *Model Notices* also contain material that may not be applicable to your Plan and editing will be required. Isolating the changes in the new *Model Notices* compared to the prior *Model Notices* may help save re-drafting time.

Generally, a Notice about the COBRA subsidy extension and other information must be distributed to various individuals by February 17, 2010.

In some cases, Notice may be due by February 1, 2010. See discussion of "transition period."

For more information, the following links are available:

- A copy of the new law is available by "[clicking here](#)."
- A copy of just the section of the law extending the COBRA premium subsidy is available by "[clicking here](#)."
- A copy of *ARRA*, in redline, as amended by the *2010 DOD Act* is available by "[clicking here](#)."
- The DOL Fact sheet on the new law is available at <http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html> or by "[clicking here](#)."
- A set of 15 Q&As aimed at Employees but helpful for administrators is available by "[clicking here](#)."
- Job posters and flyers are also available at: <http://www.dol.gov/ebsa/COBRA.html>.

A Closer Look at The Model Notices

There are three Model Notice Packages:

- [General Notice](#)
- [Premium Assistance Extension Notice](#)
- [Alternative Notice](#) (applicable only to “insured” plans and not discussed herein)

Model General Notice

The heading of the *General Notice* states it is:

For use by group health plans for qualified beneficiaries who have not yet received an election notice and with qualifying events occurring during the period that begins with September 1, 2008 and ends with February 28, 2010.

According to the DOL Fact Sheet, health plans subject to the ERISA COBRA provisions must provide a **General Notice** to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through February 28, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice.

Individuals who experience any qualifying event after December 19, 2009 through February 28, 2010 must receive the updated **General Notice** within the normal timeframes for providing a COBRA election notice. The updated model **General Notice** includes information on the premium reduction as well as information required in a COBRA election notice.

In the event a qualifying event occurs prior to the *Model Notice* becoming available, the *Model Notice* does not need to be provided *to the extent that proper notice has already been provided*. However, the DOL also notes that in cases where the qualifying event was a termination of employment, the *Premium Assistance Extension Notice* may be used to satisfy the requirement to notify individuals of their new COBRA premium subsidy rights.

Premium Assistance Extension Notice

The heading of the *Premium Assistance Extension Notice* states it is:

For use by group health plans (and other entities) for individuals who were receiving premium assistance as of October 31, 2009 including individuals who have received the full nine months of premium assistance required under ARRA and either did not make any payment for subsequent periods of coverage or made payment of the full premium otherwise required to maintain coverage absent the subsidy; and individuals who became Assistance Eligible Individuals

or experienced a qualifying event that was the termination of a covered employee's employment on or after October 31, 2009 but who were not provided a notice that included the information required by ARRA, as amended.

The DOL Fact Sheet sums up the use of the Notices as follows:

Plan administrators must also provide notice to certain individuals who have already been provided a COBRA election notice that did not include information regarding the new COBRA premium subsidy extension. The new model ***Premium Assistance Extension Notice*** can be sent to the individuals below according to the following timelines to fulfill the new mandatory notice requirements:

- Individuals who were "assistance eligible individuals" [involuntarily terminated and elected COBRA] as of October 31, 2009 (unless they are in a "transition period" - see below) must be provided notice of the changes made by the new law by **February 17, 2010**;
- Individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated General Notice) must be provided notice of the changes made by the new law by **February 17, 2010**; and
- Individuals who are in a "transition period" must be provided notice of the new law's changes **within 60 days of the first day of the transition period**. (See discussion on the transition period below).

In a show of good sense, the DOL said that *"Generally, individuals do not need to receive two notices; if they are one of two classes of individuals described in this paragraph and receive the Premium Assistance Extension Notice, they do not need to receive the General Notice as well."*

"Transition Period" Individuals and the Premium Assistance Extension Notice

The DOL noted that this *Premium Assistance Extension Notice* may be used to notify individuals who are in a "transition period" of their new right to make a retroactive, reduced payment. The "transition period" is the first period of coverage that began prior to December 19, 2009 for which the COBRA premium subsidy would apply due to the extension from nine to 15 months by the new law. For example, most health coverage is for monthly periods. Given the original COBRA premium subsidy law was passed on February 17, 2009, the COBRA premium subsidy would generally begin March 1, 2009 and end nine months later on November 30, 2009. Such a person's "transition period" would begin on December 1, 2009.

The DOL explained that individuals who have received the full nine months of the COBRA premium subsidy and (1) either did not make any payment for subsequent periods of coverage or (2) made payment of the full premium otherwise required to maintain coverage absent the subsidy must also be provided notice within the first

60 days of their transition period. *For the individuals in the above example, the Notice must be provided by February 1, 2010.*

Given the short timeframe to notify such individuals, one can only hope the DOL takes such factors into account in the event a Plan is a little late in getting out any pre-February 17, 2010 Notices. If Plans are ready they can always send Notice early and aim for a February 1, 2010 mailing.

Conclusion

It is expected that these *Model Notices* may be modified before final approval. Given the short amount of time before *Notices* may be due for some individuals in a "transition period", plan professionals may wish to make a draft based on these *Model Notices* and then revise such a draft in light of any final revisions made by DOL. Additionally, though aimed at Employees, plan administrators and professionals will find the 15 FAQs mentioned earlier helpful.

Although we have focused on the DOL Model Notices and Fact Sheet, review of the Rules related to the new law, including the actual Notice requirements of the law may be helpful, "[click here](#)" for a copy of just these provisions of the new law.

We will be taking a close look at other details of the new COBRA subsidy extension law in an upcoming *Research Memo*.

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NEWSFLASH!!!!

IRS Extends Cycle D Filing Deadline to February 1

Because January 31 is a Sunday this year, the deadline for Cycle D determination letter applications is extended to Monday, February 1, 2010. Note that some Cycle D plans with fiscal year plan years may make a one-time election to file in Cycle E under a special rule in Section IV of the 2008 Cumulative List (Notice 2008-108). Since February 1, 2010 is also the first day of the Cycle E submission period, to avoid confusion as to whether a particular plan is filing under Cycle D or Cycle E, the IRS requests that a plan sponsor of a Cycle D plan filing on February 1, 2010, who is electing to file under Cycle E under this special rule, note this on a cover letter or on the application.

<http://www.irs.gov/retirement/article/0,,id=146889,00.html>

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