

## Extended Terms of original COBRA bill included in the American Recovery and Reinvestment Act of 2009

On December 21, 2009, President Obama signed into law the Department of Defense Appropriations Act, 2010 (Act). H.R. 3326 was part of the Act, and it extends the terms of the original COBRA subsidy bill that was included in the American Recovery and Reinvestment Act of 2009.

### To whom does this extension apply?

Please note that those plans are not subject to the "second chance" notice rules, as explained below. Employers not subject to COBRA, but subject to State continuation rules, should consult with their COBRA administrator and their counsel about the applicability of the federal subsidy.

### What does the extension provide?

A summary of the key highlights of the Act are provided below:

- The Act extended the duration of the subsidy from 9 months to 15 months.
- The Act extended the eligibility period through February 28, 2010. This means that anyone who experienced an involuntary termination on or before February 28, 2010 may be considered eligible for the COBRA premium subsidy, provided other criteria are met on the application form.
- The Act clarified that only the qualifying event (i.e., involuntary termination of employment) needs to occur on or before February 28, 2010 and the Act no longer requires that both the qualifying event and start of the COBRA period must occur prior to this date.
- Notification Requirements were added:
  1. *Model Premium Assistance Extension Notice*
    - a. Anyone who was considered an Assistant Eligible Individual (AEI) at any time on or after October 31, 2009 will need to be notified that the subsidy program was extended and that they are now eligible for 15-months of reduced COBRA premiums versus the 9-months originally communicated to them. **Notification must be made within 60-days of enactment of the Act, or by February 17, 2010.**
    - b. Any AEI who has lost, or is close to losing, the subsidy because they have exhausted the original 9-month period, must receive this notice, informing them of the extension and providing information on their ability to make retroactive payments of their premiums. Premium payment must be made within 60-days of December 21, 2009 or 30-days from the date the AEI is notified of the possibility of reinstatement (whichever is later). Coverage should be reinstated back to the COBRA termination date for non-payment due to subsidy exhaustion. For any qualified beneficiaries who have made full payment since their subsidy exhaustion, these individuals must receive a credit towards future payments if there is a reasonable belief that the credit will be used within 180-days. If there is not a reasonable belief that the credit will be used, then a 65 percent refund must be paid within 60-days. **Notification of the ability to make retroactive payments of their reduced COBRA premiums must be made within 60 days of an individual's transition period.**
    - c. Individuals who became AEIs or experienced a qualifying event that was the involuntary termination of employment on or after October 31, 2009 but who were not provided a notice that included information regarding the extension of the program must receive this notice. **Notification must be made within 60 days of enactment of this Act, or by February 17, 2010. We can send this notice on behalf of our clients we administer COBRA services for at a cost of \$3.50 per notice. Please note the fee will be waived for any clients where the charge would be \$25.00 or less.**

2. *General Notice.* In addition to the extension notice, general notices must be updated with information regarding the extension of this program. General notices must include the required information for qualifying events occurring on or after December 19, 2009.

### When does the extension go into effect?

The extension was effective immediately upon the enactment of the Act on December 21, 2009. The notice requirements have a tiered compliance date.

- *Updated General Model Notice.* This notice should be used now for any qualifying event on or after December 19, 2009. A copy of this model notice can be found on the [Department of Labor \(DOL\) Web site](http://www.dol.gov/ebsa/COBRAmodeInotice.html) at <http://www.dol.gov/ebsa/COBRAmodeInotice.html>

- *Model Premium Assistance Extension Notice*. This notice should be sent by no later than February 17, 2010 to the individuals identified above. A copy of this model notice can be found on the [DOL Web site](http://www.dol.gov/ebsa/COBRAModelNotice.html) at <http://www.dol.gov/ebsa/COBRAModelNotice.html>

### **How should plan sponsors address compliance with the Act?**

- Identify those individuals who need to receive the Model Premium Assistance Extension Notice which include:
  - Individuals who were eligible for the subsidy as of October 31, 2009.
  - Individuals who have exhausted their original 9-month subsidy period and failed to make payment at the end of that 9-month period.
  - Individuals who have exhausted their original 9-month subsidy period and who have made full payment to continue their COBRA.
- Identify how you will handle those individuals who are due a refund or credit.
- Identify those individuals who received a General Model Notice that did not contain the correct verbiage regarding the extension and resend an updated general notice to those individuals.

COBRA regulations state that the last known address should be used. Steps should be taken to ensure that systems are up to date with the most recent known address.

The DOL has also put together a very informative Q&A that you may wish to review at [their Web Site](http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html) at <http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html>

### **If someone was involuntarily terminated on November 30, 2009 and was otherwise provided with a timely COBRA notice is the health plan required to allow them a “second chance” to reelect COBRA based on the information provided to them?**

No. The only individuals who are eligible to make retroactive payment are those individuals who have exhausted their original 9-months of coverage at the reduced premium.

### **Do we have to allow Qualified Beneficiaries are not making retroactive premiums back to December 1st to make open enrollment and special enrollment changes?**

If your health plan's open enrollment period has taken place and the Qualified Beneficiary would have otherwise been able to make plan changes had they otherwise been enrolled in the plan, then they should be allowed to make open enrollment changes. The same applies for an individual that may have experienced a special enrollment right.

### **How long do individuals who have exhausted their original 9-months of subsidy coverage have to make payment to bring their COBRA coverage current?**

Premium payment must be made within 60-days of December 21, 2009 or 30-days from the date the AEI is notified of the possibility of reinstatement (whichever is later).

### **Because individuals will be receiving these notices late January, early February, if the Qualified Beneficiaries coverage terminated November 30, 2009, can the individual choose not to pay the December premium?**

Coverage should be reinstated back to the COBRA termination date for non-payment due to subsidy exhaustion. Individuals do not have the option of picking up coverage only from the date they needed it.

### **Now that individuals are going to be able to re-enroll in the COBRA subsidy program, how do I go about claiming the tax credit for those individuals?**

The Internal Revenue Service ("IRS") recently clarified through an informal announcement, how to properly claim the payroll tax credit on Form 941 for the ARRA premium subsidy. They have stated that the ability to claim the credit for the premium subsidy is based on the year in which the payment is received rather than the year the payment is applied. Payment has to actually be received in order to claim the credit. Premium payments made in 2009 would be claim on the 2009 Form 941. This includes payments that were made in 2009 for coverage in 2010. Premium payments received in 2010 (even if for coverage in 2009) would be claimed on the 2010 Form 941.