

COBRA Premium Subsidy Extended

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An expansion of the COBRA premium subsidy originally adopted as part of the American Recovery and Reinvestment Act of 2009 ("ARRA") was signed into law by the President on December 19, 2009 as part of the Department of Defense Appropriations Act, 2010.

This Bulletin summarizes the newly expanded COBRA subsidy provisions and provides an Action Plan to ensure a good-faith compliance effort by employer plan sponsors.

Overview of New Provisions:

- a. Extends the end date for eligibility for the ARRA subsidy from December 31, 2009 to February 28, 2010
- b. Expands the ARRA premium subsidy period to 15 months (increased from the prior 9 months)
- c. Allows a period for the retroactive payment of premiums for assistance eligible individuals (AEIs); that is, individuals who were entitled to the subsidy, whose subsidy period expired on November 30, 2009 and who failed to pay their premium for December coverage. The retroactive payment period is 60 days from the enactment of the provision (February 17, 2010) or, if later, 30 days after provision of the Notice described in e. below.
- d. Applies the same refund/credit rules under the original ARRA legislation to any AEI whose subsidy expired in November and who has since paid the full COBRA premium
- e. Requires that a special Notice be provided to:
 - All AEIs who are on COBRA on or after October 31, 2009
 - Individuals whose qualifying event is a termination of employment (whether voluntary or involuntary) occurring on or after October 31, 2009 and on or before December 19, 2009
 - Individuals whose subsidy period expired on or before December 19, 2009 and who failed to timely pay their premiums for further COBRA coverage

This notice must be provided within 60 days after the date of enactment, by February 17, 2010.

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- f. Requires that COBRA notices reflect the new credit provisions for persons who have a termination of employment after December 19, 2009
- g. Addresses an issue with regard to the original subsidy that precluded eligibility for the subsidy for many individuals who terminated in the last month before the original sunset date, but whose COBRA period would not commence until January 2010. As originally provided under ARRA, both the qualifying event and the 18-month COBRA period must commence prior to the original sunset date of December 31st. As revised, eligibility for the COBRA subsidy is conditioned only on a qualifying event that is the involuntary termination of employment occurring on or before the new February 28, 2010 sunset date, without regard to when the COBRA coverage period actually begins. Thus, for employers providing subsidized coverage that defers the COBRA start date, the 15-month period (which is applicable only to the COBRA period) may not commence until well into the future.

Action Plan

In order for employers to meet these deadlines, as well as comply with the new law on an ongoing basis, employers need to develop a plan of action that will accommodate the preparation and communication of the special notice by February 17, 2010, as persons who terminate employment after December 19, 2009 will require that their COBRA notice reflect the new law. If a third-party administrator is involved with the administration of COBRA, we recommend that you contact your administrator to discuss how they will implement the new requirements, including addressing the following issues:

- The date for providing the special Notices to individuals (i) who were on COBRA at any time on or after October 31, 2009 (ii) whose qualifying event is a termination of employment on or after October 31, 2009 and before December 19, 2009 or (iii) whose subsidy period ended on or before December 19, 2009 and who failed to timely pay their premiums for further COBRA coverage
- The date for revising notices for on-going qualifying events (e.g., terminations of employment after December 19, 2009)
- Processes for implementing credits or refunds for persons who paid the full December premium
- An overview of systems changes that may be needed to implement the new rules, such as data that the employer may need to provide to a third party administrator

Finally.....

The Jobs for Main Street Act, 2010, as passed by the House, contains further expansion and modification of the COBRA credit. It is not clear when the Senate will consider this legislation, or whether such legislation will actually become law.