

COBRA SUBSIDY EXTENDED

January 5, 2010

On December 21, 2009, President Obama signed legislation extending the Consolidated Omnibus Budget Reconciliation Act (COBRA) subsidy provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). As described in greater detail below, this new law:

- Extends the subsidy eligibility period
- Extends the maximum duration of the subsidy
- Allows individuals whose subsidy already expired to:
 - reinstate their lapsed coverage, or
 - receive a refund or credit for overpayments
- Requires plan administrators to provide notices describing these new provisions

Background Under ARRA, the federal government pays 65 percent of the amount assistance-eligible individuals (AEIs) pay for COBRA premiums for a period lasting up to nine months. An AEI was an individual who lost coverage as a result of an involuntary termination and became eligible for COBRA during the period beginning on or after September 1, 2008, and ending on or before December 31, 2009. Prior to the enactment of this legislation, eligibility for the subsidy was set to expire at the end of 2009 and the nine-month subsidized period had already expired for individuals who began receiving the subsidy last March.

New Law Extends Eligibility and Subsidy Periods The new law extends the period for subsidy eligibility by two months, from December 31, 2009, to February 28, 2010. Also, the maximum duration of the subsidized period has been extended from nine months to 15 months. Note the extensions apply to the eligibility and duration of the subsidy — the new law does *not* extend the maximum COBRA coverage period (i.e., the 18-, 27-, or 36-month period).

Plan administrators must send a notice, no later than February 17, 2010, describing the provisions of the new law to all individuals who, at any time on or after October 31, 2009, were AEIs, or were terminated either voluntarily or involuntarily.

Plan administrators should also modify their COBRA forms to reflect the changes made by this law. It is rumored that the Department of Labor intends to issue a new set of model notices that incorporate information about the COBRA subsidy extension. However, to date no official commitment or publication date is known.

New Law Redefines AEI The new law also changes the way an AEI is defined, no longer requiring an individual to be eligible for COBRA before the end of the subsidy eligibility period. Now, so long as an individual is involuntarily terminated

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on or before February 28, 2010, he or she is eligible for the subsidy. Under previous law, if an individual was involuntarily terminated before the subsidy eligibility deadline, but did not lose coverage until after the deadline, he or she would not have been eligible for the subsidy.

Expired Nine-Month Subsidy Issues Individuals who reached the end of the reduced premium period before it was extended to 15 months are permitted to reinstate their coverage by paying the missed premiums at the subsidized rate. To reinstate coverage, the missed premiums must be paid by the individuals by February 17, 2010, or 30 days after the date they are notified of the extension, if later.

For example, if an individual's nine-month subsidized period ended at the end of November, and he did not pay his December COBRA premium, he is permitted to continue his COBRA coverage by paying the missed December payment by February 17, 2010 (or 30 days following the date he is notified by the plan administrator of this new provision, if later). If, following the end of the nine-month subsidized period, an AEI continued COBRA coverage by paying the full unsubsidized premium, he or she is entitled to a refund of the overpayment or a credit in the amount of the overpayment to offset future COBRA premiums.

Plan administrators must send notices to AEIs whose nine-month subsidized period expired prior to December 19, 2009, notifying them of their right to reinstate coverage or a right to a refund. This notice must be sent by the plan administrator no later than February 17, 2010.