Proskauer

DOL Updates Model COBRA Subsidy Notices – Notification Deadline May Be Soon for Certain Individuals

April 29, 2010

On April 27, 2010, the U.S. Department of Labor (DOL) updated the information on its website to take into account the recent extension of the COBRA subsidy eligibility period to May 31, 2010, which was made by the Continuing Extension Act of 2010 (the CEA). Specifically, the DOL has posted the following updated materials -- Model Notices, an Application for Expedited Review of a Denial of COBRA Premium Reduction, a Fact Sheet, and Frequently Asked Questions.

Importantly, each of the updated Model Notices is designed for a particular category of individuals, and the DOL Fact Sheet describes which notice must be sent to whom and by what date. Inasmuch as these rules are quite detailed, plan sponsors and administrators will need to review them carefully in order to determine which notice applies in a particular case and the deadline for providing the notice. *In some instances, notice will need to be provided by mid-May.*

Below is a summary of the DOL guidance related to the updated notices.

General Notice. The updated General Notice must be provided to *all* qualified beneficiaries who experience *any* type of COBRA qualifying event through May 31, 2010 *if they have not yet been provided a COBRA election notice*. This notice must be provided within the usual timeframe for providing a COBRA election notice (i.e., generally, within 44 days of the event).

(Note: Before the issuance of this new DOL guidance, based on the language of the CEA it appeared that, with respect to an individual who terminated employment during the period from April 1 through April 14 (the CEA's enactment date), notice had to be provided within 60 days of the CEA's enactment, rather than within the usual timeframe for providing a COBRA election notice. Based on the new guidance, the deadline is therefore earlier for this subset of individuals.)

Notice of New Election Period. The updated Notice of New Election Period should be provided to *all* qualified beneficiaries who experience a qualifying event that is a reduction in hours of employment during the period from September 1, 2008 through May 31, 2010, followed by a termination of employment during the period from March 2, 2010 through May 31, 2010, *and* either did not elect COBRA coverage when it was first offered or elected such coverage but subsequently discontinued it. (Thus, this group of individuals previously received a COBRA election notice.)

The DOL indicates in the updated Fact Sheet that, although, in general, this notice requirement technically only applies to individuals whose terminations of employment were *involuntary* (except as noted below with respect to terminations occurring during the period from April 1 through 14), the DOL "strongly recommends that notice be provided to individuals who experienced *any* termination of employment [during the period from March 2 through May 31] because employers may be subject to civil penalties if it is later determined that the termination was involuntary and notice was not provided." The DOL further points out that, with regard to terminations occurring during the period from April 1 through April 14, 2010, the notice requirement under CEA does in fact apply to *any* termination (not only involuntary terminations).

With regard to the timing of this notice, the Fact Sheet provides that the notice must be provided within 60 days of the termination of employment. The DOL does not state whether, for individuals who terminated between April 1 and April 14, this Notice must instead be provided within the usual COBRA notice timeframe, but presumably it must be.

Supplemental Information Notice. The Supplemental Information Notice should be provided to all individuals *who elected and maintained COBRA coverage* based on the following qualifying events, if their COBRA election notice did not include information regarding the availability of the premium reduction:

- all qualifying events related to atermination of employment that occurred betweenMarch 1, 2010and April 14, 2010. For this group, the Notice must be provided within the usual time period for providing a COBRA election notice.

- a reduction in hours of employment during the period from September 1, 2008 through May 31, 2010 followed by a termination of employment between March 2, 2010 and May 31, 2010. (As noted above, the DOL strongly recommends that notice be provided with respect to *any* termination of employment, not only *involuntary* terminations of employment, and notes that the CEA indeed requires the notice for *all* terminations occurring between April 1 and April 14, 2010.) For this group, the Notice must be provided within 60 days of the termination of employment, except that notice related to a termination of employment that occurred from April 1 through April 14, 2010 must be provided before the end of the usual required time period for providing a COBRA election notice.

Notice of Extended Election Period. The Notice of Extended Election Period must be provided to all individuals who experienced a qualifying event that was a termination of employment during the period from April 1 through April 14, 2010, were provided with a COBRA election notice that did not inform them of their rights under ARRA (as amended by the CEA), *and either chose not to elect COBRA continuation coverage at that time or elected COBRA but subsequently discontinued it*. This notice must be provided before the end of the required time period for providing a COBRA election notice.

Conclusion

As described above, the updated model COBRA notices must be sent to various groups of individuals, and some of the deadlines may expire soon. Accordingly, plan sponsors and administrators are urged to review the rules carefully in order to determine how to proceed. For more information regarding these requirements or the COBRA subsidy in general, contact any member of our COBRA Subsidy Team.

- **Ira M. Golub**
- **Robert M. Projansky**
  Partner
- **Steven D. Weinstein**
  Partner
- **Roberta K. Chevlowe**
  Senior Counsel