

President Obama Extends COBRA Subsidy Duration and Eligibility Period

December 22, 2009

As we originally reported in our February 2009 Client Alert and subsequent alerts, the American Recovery and Reinvestment Act of 2009 ("ARRA") provided for a 65% COBRA premium subsidy for a period of up to 9 months for certain eligible employees who were involuntarily terminated from employment during the period from September 1, 2008 through December 31, 2009, and their eligible family members. [[The American Recovery and Reinvestment Act – COBRA Revisions](#); [U.S. Department of Labor Issues Model COBRA Subsidy Notices And Other Guidance](#); [Finally: Answers To Unanswered Questions - IRS and DOL Issue Guidance On The COBRA Premium Subsidy](#)] **ARRA has now been amended by the Department of Defense Appropriations Act ("DDAA"), which was signed by President Obama on December 19, 2009. The DDAA increases the maximum COBRA subsidy period to 15 months and extends the eligibility period so that individuals involuntarily terminated from employment through February 28, 2010 (rather than December 31, 2009) (and eligible family members) may now qualify for the subsidy.**

Longer Subsidy Period

The DDAA amends ARRA to extend the 9-month subsidy period for an additional 6 months. Accordingly, the subsidy will now be available for up to a maximum of 15 months. The amount of the subsidy (*i.e.*, 65% of the required premium) remains unchanged.

Extended Eligibility Period

The DDAA amends ARRA to extend the eligibility period for the COBRA subsidy for two additional months. Accordingly, individuals who experience involuntary terminations of employment between January 1, 2010 and February 28, 2010 also will be eligible for the subsidy. In addition, the law clarifies that COBRA eligibility (*i.e.*, the loss of coverage) need not occur by February 28, 2010 in order for an individual to qualify for the subsidy. (This changes prior guidance from the government.) Accordingly, an individual may now qualify for the subsidy if he or she is a COBRA “qualified beneficiary” whose qualifying event is an involuntary termination of employment that occurred between September 1, 2008 and February 28, 2010, even if the COBRA coverage does not commence until after February 28, 2010.

Individuals Who Exhausted the 9-Month Subsidy Period Prior to Extension

The law includes a provision that allows eligible individuals who exhausted the original 9-month subsidy period to take advantage of the 6-month extension. These individuals must pay the reduced premium within 60 days of the DDAA’s enactment or, if later, within 30 days of notice of their right to do so (which is a required notice as described below).

In addition, “assistance eligible individuals” who pay the full COBRA premium for a period of coverage during the new 6-month extension will be entitled to a credit for, or refund of, the excess amounts paid for coverage periods to which the subsidy applies.

Notice Requirements

Notice of the changes made by the DDAA must be provided to individuals who were “assistance eligible individuals” at any time on or after October 31, 2009 and to individuals who experience a COBRA qualifying event of termination of employment (either voluntary or involuntary) relating to COBRA coverage on or after that date. The notice must be provided within 60 days of the DDAA’s enactment or, if the qualifying event occurs after that date, in accordance with the timing rules otherwise set forth in ARRA. In addition, notice must be provided to individuals who exhausted their premium subsidy (before the effective date of the new extension) and either failed to timely pay for COBRA coverage after exhausting the subsidy or paid the full premium for a period during which the new 6-month extension would apply. This notice must inform them of their right to pay a reduced premium (including for the retroactive period) and must be provided within 60 days of the date the 9-month subsidy expired.

For example, suppose a 9-month ARRA subsidy period expired November 30, 2009 (9 months after March 1, 2009). The individual needs to be provided with notice of the new ARRA extension within 60 days of December 1, not 60 days from the date of enactment. Therefore, it is essential that administrators get ready to provide new ARRA extension notices as soon as possible.

Conclusion

As explained above, ARRA’s COBRA subsidy provisions have been extended so that eligible individuals may receive the subsidy for a longer period of time and a greater number of individuals will qualify for the subsidy. As a result, plan sponsors and administrators will need to revise their existing COBRA notices to account for these changes and also provide a separate, supplemental notice to certain affected individuals who are (or were) receiving COBRA coverage. The DOL has stated that it intends to issue a new set of model notices incorporating the new requirements within 30 days. In addition to providing the required notifications, changes will need to be made to internal administrative processes in order to take into account the new eligibility period and the longer subsidy period. We also note that plan sponsors and administrators should continue to monitor developments, as there has been talk of possible additional subsidy changes coming in early 2010.

If you have questions relating to the COBRA subsidy program, please feel free to contact any member of our COBRA Subsidy Team.

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