

Employer Compliance Alert



“Meeting employee needs is a challenge. Meeting the government’s is critical.”

▶ DOL UPDATES MODEL COBRA NOTICES

As we reported in our [December 2009 article](#), Congress and the President have extended the 65% COBRA premium subsidy enacted as part of the American Recovery and Reinvestment Act ("ARRA"). The maximum subsidy period is now *15 months* (rather than 9), and the subsidy will now apply to COBRA coverage attributable to involuntary terminations occurring on or before *February 28, 2010* (rather than December 31, 2009).

Now comes the task of administering the extended subsidy. Fortunately, the Department of Labor has just issued model COBRA election notices that employers, COBRA administrators, and insurers may use for this purpose.

GENERAL AND ALTERNATIVE NOTICES

Two of the three new notices are simply updates of model notices that were issued last spring. These are the "[Model General Notice](#)" (for use by plans that are subject to the *federal* COBRA rules) and the "[Model Alternative Notice](#)" (for use by small-employer plans and their insurers that are subject to *state-law* continuation coverage requirements).

These updated notices reflect the extensions of both the maximum subsidy period and the deadline for becoming eligible to receive the subsidy. They should immediately be substituted for the earlier versions of these notices when notifying COBRA qualified beneficiaries who have not yet received any COBRA election notice. As with the earlier notices, these should be sent to *all* COBRA qualified beneficiaries, regardless of the qualifying event.

PREMIUM ASSISTANCE EXTENSION NOTICE

The third new model notice is more interesting than the first two. This "[Model Premium Assistance Extension Notice](#)" (the "Extension Notice") has been designed to serve a number of different functions, and so would be provided to a number of different groups. Depending on the group to whom the Notice is addressed, the deadline for providing the Notice will vary.

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Notice of Subsidy Extension. One group that should receive the Extension Notice consists of those individuals who were receiving the COBRA premium subsidy at any point on or after October 31, 2009. The Notice should also be provided to individuals who, although not yet receiving the premium subsidy, experienced a termination of employment (voluntary *or* involuntary) that constituted a COBRA qualifying event on or after October 31, 2009, and who received a COBRA election notice that did *not* describe the 15-month maximum subsidy period.

For both of these groups, the Extension Notice will simply explain that the 9-month subsidy period described in the COBRA election notice they received earlier has now been extended to 15 months. The Notice must be provided to these groups by February 17, 2010 (i.e., 60 days after the extension bill was signed into law by President Obama).

Notice of Extended Payment Grace Period. The Extension Notice is also designed to satisfy the statutory requirement of notice to individuals who, as a result of the subsidy's extension, are now in a "transition period." Such individuals may be entitled to an *extended* premium payment grace period. For this purpose, an individual's "transition period" began on the day after the individual's original nine months of subsidized coverage expired. Accordingly, to be entitled to this Extension Notice (and thus the extended payment grace period), such an individual must have maintained his or her COBRA coverage - *and remained subsidy-eligible* - through the end of the original nine-month subsidy period and then either *dropped* that COBRA coverage or began paying the *non-subsidized* premium.

Any such individual who chose to *drop* COBRA coverage (rather than pay the full premium) may now retroactively reinstate that coverage by paying the subsidized premium amount during an extended grace period. The end of this extended grace period depends on when the individual receives the Extension Notice. The Notice must be provided to these individuals within 60 days of the beginning of their transition period. Individuals who began receiving the premium subsidy as of March 1, 2009 (when the subsidy first became available), will have completed their first nine months of subsidized coverage on November 30, 2009. Their transition period thus began on December 1, 2009, and the deadline for receiving the Extension Notice will be January 29, 2010 (i.e., 60 days later). Such an individual will then have until February 17, 2010 (or, if later, 30 days after the Notice is provided), to make retroactive premium payments for any prior months of COBRA coverage during their transition period.

The DOL apparently also interprets the statutory language to apply to individuals whose original nine months of subsidized coverage expired *after* the extension was enacted. For instance, individuals whose premium subsidy commenced on April 1, 2009, would have exhausted their first nine months of the subsidy on December 31, 2009. They would thus

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have a transition period that began on January 1, 2010, and the 60-day deadline for providing the Extension Notice would be March 1, 2010.

Treatment of Overpayments. The Extension Notice also explains the options available to those subsidy-eligible individuals who chose to pay the *full* COBRA premium for any months of coverage during their transition period. As when the subsidy was first enacted, these individuals may now either receive a refund of any overpayment or have that overpayment applied to pay COBRA premiums for future months of coverage.

WHAT LIES AHEAD?

Note that this may not be the final extension of the COBRA premium subsidy. Other bills, including one already approved by the full House of Representatives, would extend the subsidy through June 30, 2010. Some of those bills would also expand the *scope* of the subsidy - for instance, making it available for COBRA coverage attributable to a reduction in work hours. Watch this space for further updates.

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